



UNIVERSITY OF
TORONTO

University of Toronto

Income Tax Guide

Employee

or

Independent Contractor?

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Chapter 1

Introduction

The purpose of this income tax guide is to assist departments to determine the correct classification for income tax purposes of payments made to persons or business entities providing services to the University of Toronto. The choices are:

Employee

The payment is classified as T4, income from employment, on the basis that an employee/employer relationship exists between the individual or entity providing the service and the University.

OR

Independent Contractor

The payment is classified as business income on the basis that there is no employee/employer relationship between the entity providing the service and the University. The independent contractor receiving payment may be an individual (who would receive a T4A), a sole proprietorship, a partnership or a corporation.

Whether or not an employee/employer relationship exists is a complex issue. Even with tests supplied by the Canada Revenue Agency, firm and clear rules are difficult to establish.

This guide will discuss situations commonly encountered at the University of Toronto, interpretation of the tests supplied by Canada Revenue Agency (CRA), the types of entities that request payment and the problems that can occur if payments are incorrectly classified.

The guide has been reviewed by the University's tax consultants, Ernst & Young, and contains the best and most detailed advice that can be provided. For complex situations, for situations not covered by this guide, or in any case where you feel it would be appropriate to have some discussion before determining a tax classification, you can get advice from these contacts.

Chapter 2

Questions You Should Ask!

When confronted with the need to classify a payment for income tax purposes, the first step is to get the facts regarding the work being done.

Once the data has been collected, the next step is to see how the parameters established by Canada Revenue Agency, the legal form and the type of service work together to lead you to the appropriate income tax classification. The next chapter will show you how the facts you collect in this step can be used to help you classify the payment.

A questionnaire has been developed to ensure that you get the information needed to make your own assessment or to seek advice on what the income tax classification should be. Here are the questions:

- Who sets the service provider's hours of work?
- Where will the work be performed?
- When will the service provider work?
- What will the service provider be doing?
- How long will the assignment take to complete?
- Is the work being performed related to research and/or teaching?
- Is the service being provided associated with instructing in a degree program?
- Does the service provider have a business registration number (or HST registration number)?
- What is the legal form of the service provider (i.e. individual, sole proprietorship, partnership or corporation)?
- Is the service provider also currently an employee of the university?
- If the person is an employee of U of T, how does the work being performed relate to the employee's regular work duties?
- Does the service provider use any of the university's facilities to carry out their work (e.g. office space, equipment, clerical assistance, photocopying, meeting rooms, laboratory work, etc)?
- Is there a written agreement/contract on file?
- What is the basis on which the employee will be paid (e.g. flat fee, hourly, salaried)?
- Is the individual a member of a union and if so, are you familiar with the union agreement?
- Is the service provider entitled to any of the university's benefit plans?
- Who bears the risk of profit or loss?

Chapter 3 Concepts

3.1 Canada Revenue Agency Parameters

To help those contracting for services to be provided by others, Canada Revenue Agency has established four parameters, or tests, to be administered to determine whether someone is an employee or whether they are an independent contractor. The four tests are:

Who controls the work?

Generally, in an employee/employer relationship, the employer has the right to control the employee's method of doing the work. The degree of control exerted (frequently referred to as the control test) may be examined in light of the following:

- the University's power to select the individual.
- the extent to which the individual is subject to the supervision of the University person responsible for the service or activity.
- the method and nature of compensation.
- the University's right to determine the hours or work and where the work will be performed.
- the extent which the individual has the power to delegate.
- the University's right to dismiss or suspend the individual.

Who provides the resources?

This test examines the ownership of facilities and tools and the necessary support services to complete the task. Resources that the University provides could include things such as space, administrative support, supplies or equipment. Dependence on the University's assets and facilities could indicate an employee/employer relationship.

Who runs the risk of loss?

This test examines the opportunity for profit or loss. The absence of chance of profit and/or risk of loss may indicate an employee relationship (for example, where a fixed salary is paid and there are few expenses not reimbursed by the University). Alternatively, the potential that unforeseen expenses or additional time will have to be absorbed at the individual's expense without compensation may indicate a self-employed status.

Does the work integrate with teaching and research?

The University's principal businesses are teaching and research. The integration test examines if the service being provided integrates with this activity. If so, the individual is probably an employee.

If the service can be severed from the University, that may be an indication that the individual is self-employed.

It is important to note that the tax courts have held that it is not necessary for a person to meet all of these tests and that each test can be given more or less weight. Not all four parameters must be present in any particular situation. The facts of each situation must be weighed and a judgment call made.

As an example, the University of Toronto has teaching as a core function and exercises considerable control over the curricula in our degree, diploma and certificate programs. Graduate degree programs are often accredited through external bodies such as the Ontario Council of Graduate Studies. Very few courses stand on their own, but rather are part of a larger curriculum and as such, have course content which is dictated by the objectives of the particular program. At U of T we view the control test as the one to which we should give the most weight in determining whether an individual, who performs teaching services, is an employee.

Although an individual and a department of the University may enter into a written agreement stating that the individual is not to be considered an employee this does not in itself guarantee that the definition of independent contractor has been satisfied. The nature of the relationship between two contracting parties requires an examination of every element of the relationship.

3.2 Types of Relationships

The choices are employee or independent contractor.

Someone is an employee when:

- the University directs and controls how the work will be done.
- the University provides the facilities and other resources.
- the University runs the risk of loss.
- the work is related to the University's core business of teaching and research.

Someone is an independent contractor when:

- the individual specifies the work process, the university only the work outcome.
- the individual provides the facilities, equipment and other resources.
- the individual runs the risk of loss.
- the work is not related to the University's core business of teaching and research.

Between these two clear-cut extremes there are many situations where it is much less clear whether someone is an employee or an independent contractor.

If someone is an employee, the University:

- requires a letter be signed documenting the duties and responsibilities to be carried out, or a signed position description and letter of offer.
- classifies payments as T4 income and pays the individual via the Human Resources Information System (HRIS). This means that the individual cannot deduct expenses from the income, but will be covered for Canada Pension Plan, Employment Insurance and Worker's Compensation and is eligible for vacation pay.

If someone is an independent contractor, the University:

- requires that an agreement be signed with the individual specifying the desired outcomes (not duties or responsibilities).
- classifies payments as T4A income and pays via HRIS. This means the individual can deduct business expenses from the income but is not eligible for Canada pension plan, employment insurance, workers' compensation or vacation pay.
- must pay HST on amounts paid.

If the independent contractor is not an individual, the University:

- requires that an agreement be signed with the legal entity specifying the desired outcomes.
- does not specify who will do the work.
- pays via the Financial Information System (FIS) upon receipt of invoice.
- must pay HST on amounts paid.

HST must be paid by the university in all cases where an independent contractor status applies with the exception that if the independent contractor's annual revenues are less than \$30,000 a small traders certification form may be completed and held on file.

3.3 Legal forms:

3.3.1 Individuals

An individual is specifically identified with a social insurance number and receives payments for services which are reported on a T4 (if employment income) or T4A (if business income).

3.3.2 Sole Proprietorship

Canada Revenue Agency (CRA) defines a sole proprietorship as follows:
 "A sole proprietorship is an unincorporated business that is owned by one person. It's the simplest kind of business structure. The owner of a sole proprietorship has sole responsibility for making decisions, receives all the profits, claims all the losses and does not have separate legal status from the business".

A sole proprietorship can operate as an individual or as a registered unincorporated business.

3.3.3 Partnership

Canada Revenue Agency defines a partnership as follows:

"A partnership is an association or relationship between two or more individuals ...who join together to carry on a trade or business. Each partner contributes money, labour, property or skills to the partnership. In return, each partner is entitled to a share of the profits or losses in the business. The business profits or losses are usually divided among the partners based on the partnership agreement". The operation of a partnership is similar to that of a sole proprietor.

3.3.4 Corporation

A corporation is a legal entity incorporated within the laws of federal or provincial jurisdiction. The corporation can be either a private corporation (owned by one or more individuals) or a public corporation (issues company shares to the general public). The corporate is usually identified by an operating name followed by the words "Limited" or "Incorporated".

Chapter 4

Types of Services

This chapter attempts to describe as many as possible of the different types of services that are provided to the University of Toronto. Included are teaching, research, payments to students, to administrative and casual staff, and recognition payments. This section is supplemented with the matrix which summarizes in table form the recommended tax treatment for a wide variety of situations combining various types of payments with various types of legal forms.

4.1 Teaching

4.1.1 Degree programs

Degree programs consists of sets of courses which together form program curricula that are carefully defined, linked with other programs and which students must follow in prescribed ways in order to qualify for the degree. In many cases, degree curricula are externally accredited. Graduate programs, for example, are accredited by the Ontario Council on Graduate Studies.

As a result of the careful linkages that have been established between and amongst programs, the University exercises considerable control and direction over the content and delivery of degree programs. Application of the four tests reveals the following, with respect to degree programs:

Who controls the work? The University directs and controls the curriculum.

Who provides the resources? The University provides classroom facilities and administrative activities such as course scheduling, registration and fee collection.

Who runs the risk of loss? The University bears the loss due to low registration in a particular course or program.

Does the work integrate with teaching and research? Degree programs are very much at the heart of what constitutes the core teaching activity of the University.

As a result, those individuals who teach degree programs are considered to be employees and are paid T4 employment income through the payroll with applicable deductions.

In a few cases, due to the dictates of a particular program, a faculty or department may decide to subcontract all or a portion of a course to a legal form such as a corporation to provide the teaching activity. In such cases, some of the rights that the University would normally retain for itself, such as specification of the instructor, may be waived. In such cases, an agreement would normally be signed with the service provider and, in such cases, it would be acceptable to pay an invoice from the sole proprietorship, partnership or corporation.

4.1.2 Diploma and certificate programs

Diploma and certificate programs are very similar to degree programs in that these consist of courses which together form program which students must follow in prescribed ways in order to qualify for the diploma or certificate in question.

Application of the four tests reveals the following, with respect to diploma and certificate programs:

Who controls the work? The University directs and controls the curriculum.

Who provides the resources? The University provides classroom facilities and administrative activities such as course scheduling, registration and fee collection.

Who runs the risk of loss? The University bears the loss due to low registration in a particular course or program.

Does the work integrate with teaching and research? Diploma and certificate programs constitute part of the core teaching activity of the University.

As a result, those individuals who teach diploma and certificate programs are considered to be employees and are paid T4 employment income through HRIS with applicable deductions.

In a few cases, due to the dictates of a particular program, a faculty or department may decide to subcontract all or a portion of a course to a legal form such as a corporation to provide the teaching activity. In such cases, some of the rights that the University would normally retain for itself, such as specification of the instructor, may be waived.

4.1.3 Continuing education

In those cases where continuing education takes the form of a diploma or certificate program, the provisions of the previous section apply. For continuing education which consists of individual courses, or combinations of courses which do not lead to a degree, diploma or certificate, the four test apply as follows:

Who controls the work? The University may direct and control the course content or may cede that control to an expert who may receive no other direction than a course topic

Who provides the resources? The University provides classroom facilities and administrative activities such as course scheduling, registration and fee collection.

Who runs the risk of loss? The University bears the loss due to low registration in a particular course or program.

Does the work integrate with teaching and research? Continuing education courses fall within the core teaching business of the University.

Although three of the four parameters suggest an employment relationship, lesser control over course content and delivery make it possible that an individual teaching a course could be considered an independent contractor. In most cases, the facts would indicate an employment relationship; however in some cases a business relationship

may apply. Careful consideration of the particular facts and application of judgement are required to determine the relationship with respect to continuing education courses.

4.1.4 Short courses and seminars

For short courses and seminars of limited duration (2-3 lectures at most) which do not form part of a degree, diploma or certificate curriculum, the four test apply as follows:

Who controls the work? The University may direct and control the course content or may cede that control to an expert who may receive no other direction than a course topic

Who provides the resources? The University provides classroom facilities and administrative activities such as course scheduling, registration and fee collection.

Who runs the risk of loss? The University bears the loss due to low registration in a particular course or program.

Does the work integrate with teaching and research? Short courses and seminars would seldom fall within the core teaching business of the University.

All of these factors taken together would indicate an individual teaching a short course or seminar could be considered an independent contractor and that payments would be made to individuals via HRIS with a T4A classification or via invoice through FIS for sole proprietorships, partnerships and corporations.

4.1.5 Guest lecturers

A guest lecturer is invited to provide a lecture on which the lecturer is an expert in the field. Some factors that could distinguish a guest lecturer from other types of teachers included the following:

- no ongoing responsibility to the participants or students attending.
- no marking or grading responsibility.
- lectures infrequent, usually non-credit and in most cases not part of a result course.
- fee charged for those attending.
- no appointment with the University.
- University has little control over the content of the lecture other than with respect to topic.
- lecturer paid a single fee for giving the lecture.
- lecture or lecture series is of limited duration.

It is not necessary that all of these factors exist in every case. The four tests apply as follows:

Who controls the work? The University has little control over content except for topic.

Who provides the resources? The University usually provides the lecture facilities.

Who runs the risk of loss? The University usually bears any loss due to low registration.

Does the work integrate with teaching and research? Guest lectures would seldom fall within the core teaching business of the University.

All of these factors taken together would indicate that a guest lecturer would be considered an independent contractor and that payments should be made to individuals via HRIS with a T4A classification or via invoice through FIS for sole proprietorships, partnerships and corporation.

In those cases where the guest lecturer is a non resident of Canada, the payment will be made via payroll on a T4A-NR with income tax withholding as follows:

- if no tax waiver: 15% withholding.
- if a tax waiver has been obtained, then no tax or reduced tax will be withheld.

In order for the tax to be waived, the non-resident has to provide the University with a letter from the Canada Revenue Agency authorizing a waiver or reduction of the withholding amount. The University cannot apply for a waiver on an individual's behalf. Payment is made in Canadian funds.

4.2 Research

4.2.1 Research grants

For income tax purposes, research grants are not classified as employment income. They are classified as income to an independent contractor, and must be reported to the individual as T4A- other income. As such, the taxpayer can deduct legitimate expenses, as defined in the Income Tax Act, incurred in earning the income.

Interpretation bulletin IT 75R4 [<http://www.cra-arc.gc.ca/E/pub/tp/it75r4/it75r4-e.pdf>] defines research grants and distinguishes them from scholarships, fellowships and bursaries. The key implication of this distinction is as follows:

Scholarships, fellowships and bursaries are classified as T4A – scholarship. As such the taxpayer can claim a \$3,000 deduction and report only the remaining balance as income on which income tax will be assessed. Expenses cannot be deducted from this T4A category. Click here for more information on scholarships, fellowships and bursaries.

Research grants are classified as T4A – other. This category is not eligible for the \$3,000 deduction; however income reported under this classification is eligible to be included in determining the amount that can be contributed to an RRSP. Expenses, as defined under the Income Tax Act, can be deducted from income reported as T4A – other. In some cases, fellowships are to be treated as research grants. Click here (<http://www.cra-arc.gc.ca/E/pub/tp/it75r4/it75r4-e.pdf>) for more information on fellowships as research grants. IT75R4 defines and characterizes research grants as follows:

- A research grant is generally a sum of money given to enable the recipient to pay expenses necessary to carry out a research project. The grant may also include an element of remuneration to the recipient.

- Any amount received as a research grant (net of allowable expenses) is included in income to the taxpayer.
- Individuals (such as University faculty members) whose duties of employment include research responsibilities are not entitled to treat a portion of their regular salaries as a research grant when they engage in the type of research work ordinarily expected of them under their terms of employment.
- A research grant is not considered to be income to an individual if all of the following circumstances apply:
 - funds are made available to an individual who holds an academic appointment at a university, hospital or similar institution, to enable the individual to carry on research or similar work;
 - the funds are paid directly to the university, hospital, or similar institution;
 - the funds are provided only to pay for the costs of the research project, and
 - the funds were not used by the individual and were not otherwise available for the personal benefit of the individual.
- If part of a research grant is paid to a researcher or otherwise be made available for the researcher's personal benefit, but the remainder of the funds meet the criteria listed above, then the portion paid or benefiting the individual must be reported as T4A income to the individual
- Research involves a critical or scientific inquiry aimed at the discovery of new facts, or the development of new interpretations or applications.
- Research does not include research carried out for the sake of acquiring the experience or skill or conducting research, as may be the case with research carried out by undergraduate students.
- In order for a grant to be considered a research grant, the terms of the grant must establish that the primary purpose of the grant is to carry out research.
- If only one of the major purposes of the grant is to enable the recipient to carry out a research project, this does not in itself establish the primary purpose.
- The term or terms relating to the research requirements must be specific. Vague and general references, such as "including research" do not in themselves result in the amount being paid falling within the research grant definition.
- Generally, awards to undergraduates are classified as T4A – scholarship, even though some research for essays, project, etc. is required as part of the course requirements.
- If the terms of the grant do not mention research, then it must be classified as T4A – scholarship, even if a great deal of research is in fact done.
- A corporation or other entity (such as a university or college) may decide to give a grant to a person outside its own organization to do specific research. Where this is done, the grant is considered to be a research grant to the recipient, and classified as T4A – other, whether the results of the research belong to the grantor or the recipient.

If the recipient is an employee of the grantor and is retained on part salary while undertaking a specific research project, the part salary is included in the recipient's income.

What does the above mean for University of Toronto? In practice we have two procedures for situations where research grants which meet the above definitions made be paid to researchers. These are:

- the self-funded research grant program.
- the secondary research contract.

These procedures are described in the following sections. Please also see the Students section on scholarships, fellowships and bursaries for further information to help distinguish between research grants and these other types of payments.

4.2.2 Self-funded research grants

The University has established a program for faculty members whereby a portion of the income, that would otherwise be paid to the faculty member as T4 income from employment, may be paid out to the faculty member as a research grant, classified as T4A – other. This is the self-funded research grant program, which has been subjected to review by the Canada Revenue Agency.

The key provision for use of this program is that the faculty member must be undertaking a special research project that is not in the normal course of research, which would ordinarily be undertaken.

In order to access this program, the faculty member submits a research grant application to U of T Research Services. The application process may be accessed via the Research and Innovation web site.(www.library.utoronto.ca/rir/uofgdln.html).

4.2.3 Secondary research contract

A research contract is an agreement to provide research services under specified negotiated conditions in exchange for the full reasonable identifiable costs, including overhead. For University purposes a contract includes letters of agreement signed by both parties, purchase orders, form contracts and contracts requiring execution under seal. Subject to the contracting agency's guidelines and the Policy on Conflict of Interest – Academic Staff, researchers may include in the budget a stipend for their time spent on the project.

In certain circumstances, income derived by researchers from contract research will be regarded as income from self-employment and paid via a T4A, classified as T4A – other, without deduction of income tax at source. Such a designation is not automatic and will be made only if specific criteria are met. In such cases, payments are made using a Secondary Research Contract/Payment form.

The application process may be accessed via the Research and Innovation web site at www.library.utoronto.ca/rir/8pplpbm.htm/#selfemployment and forms can be accessed at <http://www.research.utoronto.ca/quick-find/research-related-forms/>.

4.3 Students

Payments to students as remuneration for various administrative duties provided by students are not covered by this section. For information on those duties please see the section on casual staff. This section deals with payments to students in their capacity as students, that is scholarships, fellowships and bursaries. Payments of scholarships, fellowships or bursaries must be classified as T4A – scholarship. As such these amounts are eligible for a \$3,000 deduction in the amount on which income tax is to be paid. These amounts are not eligible for deductions for expenses.

4.3.1 Scholarships and bursaries

Interpretation bulletin IT75R4 [<http://www.cra-arc.gc.ca/E/pub/tp/it75r4/it75r4-e.pdf>] characterizes scholarships and bursaries as follows:

- Scholarships and bursaries are amounts paid or benefits given to students to enable them to pursue their education.
- Scholarships and bursaries usually apply to education at a post-secondary level or beyond, such as at a university, college, technical institute or other education institution. However, there are circumstances where scholarships or bursaries are awarded for education below the post-secondary level.
- Scholarships and bursaries normally assist the student in proceeding towards a degree, diploma, or other certificate of graduation.
- Scholarships and bursaries may apply to any field of study, including an academic discipline (such as the arts or sciences), a professional program (such as law or medicine) or a trade or skill (such as plumbing or carpentry).
- Normally, a student is not expected to do specific work for the payer in exchange for a scholarship or bursary.

At University of Toronto, scholarships and bursaries paid to students are reported to Canada Revenue Agency via a T4A form and classified as T4A – scholarship.

4.3.2 Fellowships

Fellowships can be treated as scholarships and classified as T4A – scholarships, or as research grants, and classified as T4A – other. Click here for the differences between the two treatments. Interpretation bulletin IT75R4 <http://www.cra-arc.gc.ca/E/pub/tp/it75r4/it75r4-e.pdf> characterizes fellowships as follows and discusses when they should be classified as research grants:

- Fellowships are similar to scholarships and bursaries in that they are amounts paid or benefits given to persons to enable them to advance their education. However, the recipient is generally a graduate student and the payer is generally a university, charity, or similar body.
- Fellowships are generally awarded for doctoral studies and post-doctoral work. An amount on account of a fellowship is normally included in income as a fellowship,

classified as T4A – scholarship, but it can sometimes be included as a research grant and classified as T4A – other, depending upon the primary purpose for which the fellowship was granted as determined by reference to the terms and conditions attached to the award.

- If the primary purpose of the award is to further the education and training of the recipient in his or her individual capacity, such as studying for a doctoral degree, the award is classified as T4A – scholarship, even though research is undertaken as a means to achieve that purpose.
- If the primary purpose of the award is to carry out research for its own sake (for example, to further knowledge in a particular field by discovering new facts or by reinterpreting existing knowledge), the award is considered to be a research grant and is classified as T4A - other.
- Where the recipient's education and training is also furthered by such research, such a benefit does not invalidate the primary purpose of the grant provided the benefit can be considered to be a secondary purpose of the grant or an inevitable but incidental benefit.
- In some cases, an award, such as a leave fellowship, may be partly for the purpose of research and partly for the recipient's education and training. If so, it may become difficult to determine the primary purpose of the award. In such cases, the recipient may not include part of the fellowship or other award in income as T4A – other and another part as T4A - scholarship. In these borderline cases, the characterization of the amount may be left to the grantor to determine based on the primary purpose to the grantor. Such a determination must be reasonable in the circumstances and should be based on the general guidelines set out above.”

4.4 Administration

4.4.1 *Appointed senior management, administrative exempt and union staff*

All appointed staff of the university –senior management group, administrative exempt, and union staff - are employees who are entitled to fringe benefits and who are subject to deduction of income tax at source and to deductions for Canada Pension Plan and Employment Insurance. Appointed staff are considered to be employees using the four tests, as follows:

Who controls the work? The university controls the content and method of the work, the hours of work and the outcomes of the work.

Who provides the resources? The university provides the facilities, other staff, supplies and equipment.

Who runs the risk of loss? Salaries or hourly rates are pre-defined. Staff have no opportunity for profit or loss.

Does the work integrate with teaching and research? Yes, either directly in teaching or research or indirectly in roles supporting teaching and research.

4.4.2 Casual staff

Casual staff are hired in a large variety of roles, from grounds workers to library staff, in both union and non-union roles. What they have in common is that they meet the four tests for employment:

Who controls the work? The university controls the content and method of the work, the hours of work and the outcomes of the work.

Who provides the resources? The university provides the facilities, other staff, supplies and equipment.

Who runs the risk of loss? Hourly rates are pre-defined. Staff have no opportunity for profit or loss.

Does the work integrate with teaching and research? In most cases, although casual staff mostly perform a variety of support roles.

4.4.3 Consultants

Consultants can be defined as practicing members of professions offering their expertise to complete an assigned task, typically in such fields as:

- the practice of law, medicine, engineering, architecture or accounting.
- human resources consulting.
- computer consulting
- management consulting.

If individuals provide services in such areas of expertise, and where the university does not control the content or method of the work, but rather, simply describes a desired outcome, then the individual may be an independent contractor.

If such individuals engage in teaching or research, then the rules for those activities apply and the relationship with respect to teaching in degree, diploma, certificate programs is normally an employment relationship.

4.5 Recognition

4.5.1 Prizes

Interpretation bulletin IT75R4 defines and outlines the applicable tax treatment of a variety of types of prizes. It defines prizes and indicates that they should be reported in the same manner as scholarships and bursaries, as follows:

- The amount of a prize for achievement in a field of endeavour ordinarily carried on by the taxpayer (other than a prescribed prize) is to be included in income and classified as T4A scholarship.
- A prize can be considered to be an award to a particular person selected from a group of potential recipients and given for something that is accomplished, attained or carried out successfully. However, the type of prize to be classified as T4A – scholarship is restricted. The criteria for awarding the prize must be such that a

recipient is rewarded for success in an area in which the recipient regularly applies effort. Therefore, an amount generally qualifies as a prize to be classified as T4A – scholarship if it is paid in recognition of genuine accomplishment in a challenging area, whether it be of an academic, vocational or technical nature.

- A prize that is considered to be a “windfall” is not required to be included in income unless it is also a business receipt or income from employment.

4.5.2 Prescribed prizes

Interpretation bulletin IT75R4 <http://www.cra-arc.gc.ca/E/pub/tp/it75r4/it75r4-e.pdf> indicated that a prescribed prize is not included in computing the income of a recipient, even if the prize relates to accomplishments in the recipient’s ordinary field of endeavour.

A prescribed prize is any prize that is recognized by the general public and that is award in 1983 or later years for meritorious achievement in the arts, the sciences or service to the public. For example, a Nobel prize given to a scientist or the Governor General’s Literary Award given to a professional writer would qualify, as would many community service awards. Scholarships and bursaries awarded to students would not qualify. Any amount that can reasonably be regarded as having been received as compensation for services rendered, or to be rendered, is not a prescribed prize.”

4.5.3 Employees - prizes, awards, gifts

Interpretation bulletin IT75R4 <http://www.cra-arc.gc.ca/E/pub/tp/it75r4/it75r4-e.pdf> states that if an employee receives, from his or her employer, a prize or other award related to sales or other work performance, the fair market value of such an incentive is regarded as remuneration for services (T4 income).

Similarly, the fair market value of an award not regarded as remuneration, that is received by an employee in respect of, in the course of, or by virtue of the employee’s office or employment is also included in income from an office or employment (T4 income). For example, amounts received from an employer for exceeding sales targets, success in examinations, suggestion awards, and payments for exceptional service are not eligible for the \$3,000 exemption.

4.5.4 Honorarium

An honorarium is a payment made in recognition of voluntary participation in a program or activity, e.g. guest lecturer, volunteer research participant. The amount is usually of a nominal amount. There is no employment relationship. The usual form of payment is T4A or T4A-NR.

4.6 Performing artists

Performing arts are covered by interpretation bulletin IT525R <http://www.cra-arc.gc.ca/E/pub/tp/it525r-consolid/it525r-consolid-e.pdf>. In some cases it will be clear whether an artist is carrying on a business or is an employee. For example, a member of the full-time staff of a radio or television station or network would typically be an employee, whereas an artist who operates on a completely free-lance basis, seeking

and obtaining a variety of engagements, would be self-employed. However, in other situations the circumstances may fall somewhere between these extremes and the determination of the question is more difficult. Thus it is not possible to give one criterion or even a group of criteria that can absolutely determine, in all cases, whether or not an artist is an employee. The following two paragraphs give guidelines or factors which will help in the determination of the artist's status.

There is an indication of employment status where the University has:

- the right to decide on or change the size of the group with which the artist performs.
- the right to choose the nature of the artist's performance (opera, ballet, theatre, film, musical, concert, classical, popular, jazz) without obtaining the artist's consent.
- the continuing authority to dictate the time and place of the artist's performance including rehearsals, again without obtaining the artist's consent.
- the unilateral right to change the dates, time and places from those ordinarily scheduled or increase the number of rehearsals or performances.
- the obligation to pay overtime.
- the responsibility to provide or authorize transportation for the artist.

On the other hand, there is an indication that the artist could be a self-employed individual carrying on a business if the artist:

- has a chance of profit or risk of loss.
- provides instruments and other equipment.
- has a number of engagements with different persons during the course of a year.
- regularly auditions or makes application for engagements.
- retains the services of an agent on a continuing basis.
- can select or hire employees or helpers, fix their salary, direct them or dismiss them.
- can arrange the time, place and nature of performances.
- is entitled to remuneration that is directly related to particular rehearsals and performances.

4.7 Miscellaneous services

Miscellaneous services can include:

- marking exams and papers.
- grading correspondence courses.
- preparing exams.
- preparing course outlines.
- preparing graphic illustrations.
- preparing textbooks.
- invigilating (proctoring).
- typing.
- writing a computer program.
- acting as a course director.
- preparing stage props for a play.

For each miscellaneous service, the correct classification for income tax purposes will depend upon the facts associated with the individual situation.

Chapter 5 Adjudication

5.1 Adjudication process

The University faces two opposing sets of objectives. On one hand, it wishes to offer the greatest flexibility to persons providing services to it to ensure that they receive the most favourable tax treatment. On the other hand, the University has responsibilities under the Income Tax Act and the failure to meet these responsibilities can lead to severe penalties and interest charges.

In the event that the Canada Revenue Agency does not agree with any situation where applicable withholding taxes were not withheld, the University will be required to remit both the employee and employer amounts for Employment Insurance and Canada Pension Plan as well as assessed penalties and interest. Frequent offences of the same nature will result in more substantial penalty and interest, and in serious situations could lead to incarceration of the responsible individual involved. Similar problems can occur with respect to Employer Health Tax (EHT) if the provincial Ministry of Finance considers that a payment classified as business income should have been employment income and thus subject to EHT.

Disputes can arise in several ways:

- through a tax audit of an individual taxpayer.
- through an audit of the University.

Resolution has a series of progressive steps:

- discussions with Canada Revenue Agency.
 - adjudication through the tax courts.
- The following section deals with a number of examples of cases that have been adjudicated through the courts.

5.2 *Jurisprudence dealing with employment status(tax court cases) - teaching*

Rosen vs the Queen (76 DTC 6274, FC-TD)

(Source: Canadian Association of University Business Officers Income Tax Guide, Ernst & Young)

Mr. Rosen was employed on a full-time basis with the Government of Canada. He was also a part-time lecturer at three educational institutions in Ottawa. Prior to joining the civil service, Mr. Rosen had been a full-time professor at the University of Ottawa. Mr. Rosen, the taxpayer, adopted the position that he was not an employee of the various institutions. The Department did not accept that position.

There were no formal contracts although the “teaching acceptance formula” from the University of Ottawa (signed by Mr. Rosen and the Dean) did refer to the acceptance of the set standard of the University of Ottawa as “published on the reverse of the present contract in the Terms of Employment”.

Mr. Rosen contended that he was in the business of lecturing and was not an employee because the authorities of the various education institutions at which he lectured did not have sufficient degree of control over this lecturing activities. The Court, however, noted the following:

“On the other hand, the degree of control that the universities could exercise over the plaintiff’s lecturing activities appear to me to have been no different than the degree of control a modern university today exercises over the experienced and specialized members of its teaching staff, who are undoubtedly employees. The general freedom he was given in the teaching and examination of his students is certainly not exceptional today, specially at the post-graduate level or in a continuing education division. Besides, the fact that the plaintiff did not have his own office at the universities, that he did not have to attend faculty meetings and was not required to perform extra curricular, had nothing to do with the degree of control the universities had over his teaching activities and was simply a consequence of his being employed on a part time basis only.

And further on, “The work done by the plaintiff for the three schools at which he taught was done as an integral part of the curricula of the schools; the courses were regular courses and, if I may say so, the business in which he was actively participating was the business of the schools, not his own. His situation as a part-time teacher was essentially different from that of a guest speaker or lecturer but it was not for that matter essentially different from that of a full-time professor.

Mr. Rosen was held to be an employee”.

McFarlane v. Ministry of National Revenue (82 DTC 1787, TRB)

(Source: Canadian Association of University Business Officers Income Tax Guide, Ernst & Young)

The taxpayer was a chartered accountant employed by the Provincial Auditor, who was engaged by the University to teach a four month course on auditing theory. Although the written contract provided that the taxpayer was to perform his services under the direction of the dean, the taxpayer’s work was in fact not monitored or controlled by the university. The judge commented that “it is not at all clear that in the context of a relationship between a person possessing the considerable professional and practical qualifications of the Appellant and a University, those words of general impact should be interpreted as reserving to the University the right to exercise the sort of detailed control contemplated by the test in question”. Consequently he did not find that the control test, on the evidence, indicated a finding that the contract was one of service as opposed for service.

Further, the taxpayer’s services were required to meet a short-term bulge in the number of students who wanted to take the course and not to fill an ongoing need of the University. The integration test did not point to a contract of service since this service was accessory and not part of the regular business.

Chapter 6

Matrix to determine method of payment by type of service

Type of Service Provided	Letter Required to Document Arrangement	Agreement Required to Document Services Provided	Processed via Human Resource Information System (HRIS)		Processed via Financial Information System (FIS)
			Employment Relationship T4	Independent Contractor T4A or T4ANR	Payment via Invoice or TRA-NR
Teaching- Chapter 5.1					
Degree, Diploma, & Certificate Programs Chapter 5.1.1. & 5.1.2					
Faculty or staff member of the university	X		X		
Not a faculty or staff member of the university	X		X		
Sole proprietorship where the individual is a faculty or staff member	X		X		
Sole proprietorship where the individual is not a faculty or staff member	X		X		
Partnership where the individual is a faculty or staff member	X		X		
Partnership where the individual is not a faculty or staff member	X		X		
Corporation where the agreement is with the individual	X		X		
Corporation where the agreement is with the corporation		X			X
Continuing education courses which are not part of a diploma or certificate program - Chapter 5.1.3					
Faculty or staff member of the university	X		X		
Not a faculty or staff member of the university	X		X		
Sole proprietorship where the individual is a faculty or staff member	X		X		
Sole proprietorship where the individual is not a faculty or staff member	X		X		

Type of Service Provided	Letter Required to Document Arrangement	Agreement Required to Document Services Provided	Processed via Human Resource Information System (HRIS)		Processed via Financial Information System (FIS)
			Employment Relationship T4	Independent Contractor T4A or T4ANR	Payment via Invoice or TRA-NR
Partnership where the individual is a faculty or staff member:					
• course subject is directly related to the business of the partnership		X			X
• course subject is not directly related to the business of the partnership		X		X	
Partnership where the individual is not a faculty or staff member					
• course subject is directly related to the business of the partnership		X			X
• course subject is not directly related to the business of the partnership		X		X	
Corporation where the agreement is with the individual		X		X	
Corporation where the agreement is with the corporation		X			X
Short courses and seminars which are part of degree, diploma or certificate programs - Chapter 5.1.4					
Faculty or staff member of the university	X		X		
Not a faculty or staff member of the university	X		X		
Sole proprietorship where the individual is a faculty or staff member	X		X		
Sole proprietorship where the individual is not a faculty or staff member	X		X		
Partnership where the individual is a faculty or staff member:					
• course subject is directly related to the business of the partnership		X			X
• course subject is not directly related to the business of the partnership		X		X	
Partnership where the individual is not a faculty or staff member					

Type of Service Provided	Letter Required to Document Arrangement	Agreement Required to Document Services Provided	Processed via Human Resource Information System (HRIS)		Processed via Financial Information System (FIS)
			Employment Relationship T4	Independent Contractor T4A or T4ANR	Payment via Invoice or TRA-NR
• course subject is directly related to the business of the partnership		X			X
• course subject is not directly related to the business of the partnership		X		X	
Corporation where the agreement is with the individual		X		X	
Corporation where the agreement is with the corporation		X			X
Short courses and seminars which are not part of degree, diploma or certificate programs - Chapter 5.1.4					
Faculty or staff member of the university	X		X		
Not a faculty or staff member of the university		X		X	
Sole proprietorship where the individual is a faculty or staff member	X		X		
Sole proprietorship where the individual is not a faculty or staff member		X		X	
Partnership where the individual is a faculty or staff member:					
• course subject is directly related to the business of the partnership		X			X
• course subject is not directly related to the business of the partnership	X		X		
Partnership where the individual is not a faculty or staff member					
• course subject is directly related to the business of the partnership		X			X
• course subject is not directly related to the business of the partnership		X		X	
Corporation where the agreement is with the individual		X		X	
Corporation where the agreement is with the corporation		X			X
Guest Lecturers - Chapter 5.1.5					

Type of Service Provided	Letter Required to Document Arrangement	Agreement Required to Document Services Provided	Processed via Human Resource Information System (HRIS)		Processed via Financial Information System (FIS)
			Employment Relationship T4	Independent Contractor T4A or T4ANR	Payment via Invoice or TRA-NR
Canadian resident		X		X	
Non-resident without tax waiver		X		X	
Non-resident with tax waiver		X		X	
Research grants - Chapter 5.2					
Research forming part of regular employment	X		X		
Research grants		X		X	
Self-funded research grants		X		X	
Secondary research contract		X		X	
Students - Chapter 5.3					
Scholarships, fellowships, bursaries				X via Awards System	
Administration -Chapter 5.4					
All appointed staff	X		X		
Casual staff	X		X		
Consultants:					
Faculty or staff member of the university		X		X	
Not a faculty or staff member of the university		X		X	

Sole proprietorship where the individual is a faculty or staff member		X		X	
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Type of Service Provided	Letter Required to Document Arrangement	Agreement Required to Document Services Provided	Processed via Human Resource Information System (HRIS)		Processed via Financial Information System (FIS)
			Employment Relationship T4	Independent Contractor T4A or T4ANR	Payment via Invoice or TRA-NR
Sole proprietorship where the individual is not a faculty or staff member		X		X	
Partnership where the individual is a faculty or staff member:					
• course subject is directly related to the business of the partnership		X			X
• course subject is not directly related to the business of the partnership		X		X	
Partnership where the individual is not a faculty or staff member					
• course subject is directly related to the business of the partnership		X			X
• course subject is not directly related to the business of the partnership		X			X
Corporation where the agreement is with the individual		X		X	
Corporation where the agreement is with the corporation		X			X

Chapter 7 Contacts

Contacts

Human Resources Divisional Offices:

Ancillary Services	978-2559
Arts and Science	978-5124
Central Administration HR (CAHRS)	978-4001
Dentistry	979-4913x4386
University of Toronto at Mississauga	905-569-4387
Facilities & Services and Real Estate Op	978-2504
Library	978-2298
Medicine	946-5220
OISE/UT Professional Faculties North	978-1296
Professional Faculties South	946-3798
Rotman School of Management	946-7331
University of Toronto at Mississauga	905-828-3935
University of Toronto at Scarborough	287-7074

Payroll Department:

Payroll Manager	978-2814
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Chapter 8 Processing

A. Payment through HRIS: see, Updating T4A/T4A NR Payments below.

B. Payment of Invoice

For step by step instructions reference should be made to the FIS - Quick Reference Guide (QRG):

QRG Title: Process a Non-PO Related Invoice

Web address:

<http://www.finance.utoronto.ca/Assets/Finance+Digital+Assets/qrg/ap/create.pdf?method=1>

If the independent contractor is to be used frequently it is recommended the vendor number be made permanent. If this is a one time only payment, or One Time Account (OTA) please note the following conditions for using OTA vendor numbers, if the payment is made in:

- Canadian dollars use vendor 990001
- US dollars use vendor 990002
- Other foreign currencies use vendor 990003

Payments to Non-residents

For step by step instructions reference should be made to the HRIS guide:

Title: Updating T4A/ T4A NR payments

Web address: <http://www.ams.utoronto.ca/training/hris/CHGNRPAY.htm>

Please note - if the payment is to be issued in Canadian currency the payment will be processed in HRIS (refer to documentation entitled Hire a non-appointed casual admin monthly <http://www.ams.utoronto.ca/Assets/AMS+Digital+Assets/HRIS/Documentation/nonappt/fastnaca.s.pdf> for OTO – T4A/T4A NR). If the payment is to be paid in any foreign currency the payments should be processed in FIS.

Appendix 2 Sample Agreement (company or partnership)

THIS AGREEMENT made as of the . day of . 20. between:

The Governing Council of the University of Toronto (the “University”)
and
. (the “Consultant”)

WHEREAS the University desires to retain the Consultant to provide consulting services; AND

WHEREAS the Consultant desires to provide services to the University upon the terms of this Agreement.

NOW THEREFORE the University and the Consultant agree as follows:

1. **DEFINITIONS:**

“Course” means the course offered by .
(describe course or courses .
taught by the Designated Lecturer of the Consultant as set out in Schedule A (i.e. face
page of Firm Retainer Form).

“Designated Lecturer” means the person or persons designated by the Consultant and
accepted by the University to be lecturer(s) of the Course, or, in the event such
person(s) is/are unable to teach the Course, such other qualified person(s) as may be
designated by the Consultant;

“Fee” means the fee specified in Schedule A to be payable by the University to the
Consultant for services provided pursuant to this Agreement; and

“Term” of the Agreement means the period set out as such in Schedule A.

2. **SERVICES TO BE RENDERED BY THE CONSULTANT**

2.1 The Consultant shall provide to the University the services of the Designated Lecturer for
the conduct of the lectures in the Course and the provision of such other ancillary
services as may be required in connection with the Course, at such times, on such dates
and at such places as are set out in Schedule A, or at such other reasonable times,
dates and places as agreed upon by the University and the Consultant.

2.2 The Consultant will use and will cause the Designated Lecturer to use their respective
expertise and best efforts to carry out, in good faith, the said retainer and their
obligations under the agreement.

The Consultant will deliver to the University at least fourteen (14) days in advance of the
commencement of the Course, all Course materials in reproducible form for printing.
Course materials will not be used without the Consultant’s consent.

3. FACILITIES, EQUIPMENT AND MATERIALS

- 3.1 The University will provide such facilities and equipment as the University and the Consultant agree is reasonably necessary for the presentation of the Course, which may include classrooms, tables and chairs, audio-visual equipment and reproduction of instructional materials supplied by the Consultant for distribution to Course participants.
- 3.2 The Consultant acknowledges that, as an independent contractor and not an employee or the University, neither it nor the Designated Lecturer shall be provided by the University with an office in connection with the provision of services pursuant to this Agreement.
- 3.3 The Consultant agrees that it shall be solely responsible for providing the necessary instructional material for the Course and any support services required in connection with the provision of consulting services pursuant to this Agreement.

4. FEES, EXPENSES AND PAYMENT

- 4.1 The total Fees payable by the University to the Consultant shall be the sum set out in Schedule A.
- 4.2 The Consultant acknowledges that (except as may otherwise be expressly agreed upon in writing), no amount in addition to the Fees shall be payable by the University to the Consultant on account of expenses or disbursements incurred by the Consultant or the Designated Lecturer.
- 4.3 Payment for Fees shall be made upon presentation of the Consultant's invoice in a form satisfactory to the University for payment.

5. LEVIES, TAXES, ETC.

- 5.1 The Consultant agrees that the Fees (and any expenses agreed to be paid by the University in accordance with subsection 4.2) are inclusive of, and the Consultant shall be fully responsible for the prompt payment of, any levy, tax (including goods and services tax), contribution, premium or assessment, including without limitation any interest or penalties relating thereto, pursuant to any federal or provincial statute including, without limitation, federal and provincial sales and commodity tax, income tax, Worker's Compensation assessments, Employment Insurance premiums, Canada Pension Plan contributions and Employer Health Tax that may arise out of the provision of services under this Agreement (regardless of whether such levy, tax, contribution, premium or assessment may, under applicable law, be payable or owing by the University, the Consultant, the Designated Lecturer or more than one of them). Without limiting the generality or effect of the indemnity set out in Section 9 below, the Consultant hereby agrees to indemnify the University, its officers, employees and agents and save it harmless from an against any assessments, claims, actions, costs or liabilities of any nature or kind whatsoever relating to such levies, taxes, contributions, premiums and assessments, including without limitation any interest or penalties relating thereto.

6. TERM AND TERMINATION

- 6.1 Unless earlier terminated in accordance with this section, the Agreement shall terminate upon completion of the Term.
- 6.2 If the Consultant or the Designated Lecturer fails to provide the consulting services under this Agreement to the satisfaction of the University, the University may immediately terminate this Agreement and the provisions of services under it.
- 6.3 If in the opinion of the University, there is insufficient registration, the University may cancel the Course without incurring any obligation under this Agreement provided the University gives fourteen (14) days' prior notice to the Consultant.
- 6.4 The University may terminate this Agreement for any reason other than as provided in sections 6.2 and 6.3 by giving . days' notice to the Consultant.

The Consultant may terminate this Agreement for any reason by giving . days' notice to the University.

7. CONSULTANT IS NOT AN EMPLOYEE OR AGENT OF THE UNIVERSITY

- 7.1 The Consultant and the University acknowledge and agree that the Consultant and its officers, servants and agents (including the Designated Lecturer) are independent contractors and not employees, servants or agents of the University.
- 7.2 As independent contractors, the Consultant and its officers, servants and agents (including the Designated Lecturer) shall not receive, for the consulting services provided hereunder, any fringe benefits, sick leave, vacation leave, health or life insurance coverage or any other benefit.
- 7.3
 1. The Contractor warrants and agrees that he has complied with and will comply with the Workplace Safety and Insurance Board regulations and Employment Insurance Laws.
 2. The Contractor shall pay all assessments required by law under the Workplace Safety and Insurance Board regulations.
 3. The Contractor must show evidence of present and good standing with the Board.
 4. The Contractor shall provide the University with a Workplace Safety and Insurance Board Certificate of Clearance at the inception of this Agreement.
 5. The Contractor agrees to indemnify the University and save the University harmless if the Contractor fails to comply with the foregoing and, in event of such failure, the University may, in addition, cancel this agreement.

If the Contractor is not covered by the WSIB but has his own insurance, then the Contractor must provide a "Status Letter" from the WSIB certifying that the University would have no liability for any WSIB costs related to any accident.

8. NON-LIABILITY OF THE UNIVERSITY

The Consultant agrees that the University shall not be liable for any injury or damage (including death) to the Designated Lecturer of the Consultant, or any officer, employee or agent of the Consultant, or for the loss of or damage to the property of the Consultant or his officers, employees or agents in any manner based upon, occasioned by on in any way attributable to, the Consultant's provision of services under this Agreement, unless

the injury, loss or damage is caused by or contributed to by the wilful or negligent act or omission of the University or any of its officers, employees or agents while acting within the scope of their duties.

9. INDEMNITY

9.1 The Consultant will indemnify and save harmless the University, its officers, employees and agents from and against all claims in respect of any injury, loss or damage resulting from the performance or non-performance of this Agreement, unless the injury, loss or damage is caused or contributed to by the wilful or negligent act or omission of the University or any of its officers, employees or agents while acting within the scope of their duties.

10. NOTICE

10.1 Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by prepaid first-class mail, by facsimile or by other means of electronic delivery or by delivery as hereafter provided. Any such notice or communication, if mailed by prepaid first-class mail at any time other than during or within three business days prior to a general discontinuance of postal service due to strike, lock-out or otherwise, shall be deemed to have been received on the fourth business day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications shall be delivered by hand or sent by facsimile or other means of electronic communication and shall be deemed to have been received in accordance with the foregoing.

10.2 Notices and other communications shall be addressed as follows:

If to the Consultant:

. {Name}

. {Address}

. Attention: .

Telecopier number:

If to the University:

. {Name}

. {Address}

Attention: .

Telecopier number: .

11. INVALIDITY OF PROVISIONS

11.1 Each of the provisions contained in this agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision by a court of competent jurisdiction shall not effect the validity or enforceability or any other provision hereof.

12. ASSIGNMENT

12.1 This Agreement shall not be assignable by the Consultant or the University.

13. WAIVER AMENDMENT

13.1 Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver or any provision of this Agreement shall constitute a waiver of any other provision not shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

14. ENTIRE AGREEMENT

14.1 This Agreement constitutes the entire agreement between the parties and supersedes all agreements, arrangements or understandings between the parties, whether written or oral, in connection with or incidental to the retention of the Consultant by the University. Both parties acknowledge that Schedule A attached forms part of this Agreement.

15. COUNTERPARTS

15.1 This Agreement may be signed in counterparts and each of such counterpart constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

16. INTERPRETATION

16.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario.

16.2 The headings of this Agreement are for convenience only and shall not affect its interpretation.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date and year first above written.

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

By: _____

. {NAME OF THE CONSULTANT}

By: _____

Appendix 3 Small Traders Certification Form

I HEREBY CERTIFY THAT I QUALIFY AS A SMALL SUPPLIER UNDER SECTION 148 OF BILL C-62 AND I AM, THEREFORE, NOT REQUIRED TO REGISTER FOR HST PURPOSES.

NAME OR COMPANY – PLEASE PRINT

SIGNATURE

DATE

Small Suppliers

Section 148 Small supplier status

This section sets out the rules for determining the status of a person as a “small supplier” for HST purposes. A small supplier is not required to collect tax on taxable supplies. Nor is a small supplier entitled to claim an input tax credit for tax paid on taxable inputs.

It is important to note that a person qualifying as a small supplier may elect to become a HST registrant. A small supplier who registers is of course required to collect tax on any taxable supplies. However, it is to the advantage of small suppliers selling to other businesses to register as this allows the small supplier to obtain input tax credits on purchases and the supplier’s business customers will ordinarily be entitled to claim input tax credits for any tax they pay.

A person is not required to apply for status as a small supplier. Moreover, unless a small supplier applies for registration, there is no requirement to file any HST returns in respect of the commercial activity.

Pursuant to subsection 148(1), a person qualifies as a small supplier throughout any calendar quarter and the following month if the total consideration for taxable supplies made by the person in the preceding 12-month period did not exceed \$30,000. For the purpose of this rule:

- the \$30,000 threshold is determined by reference to the total consideration for taxable supplies, excluding the proceeds from any sales of capital property, made in that 12-month period;
- the threshold is determined by reference to the aggregate of the taxable supplies made by the person and any associated person in that period (“associated person” is defined in section 127); and
- persons carrying on lotteries or gambling activities are entitled to deduct certain prizes or winnings paid out to determine whether they are below the \$30,000 threshold. This provision is of particular relevance for charities and non-profit organizations.

Subsection 148(2) provides an exception to the rule described above. Under this subsection, a person ceases to qualify as a small supplier at any time in a calendar quarter when the total consideration for taxable supplies of that person and of associated persons in that quarter

exceeds \$30,000. For the purposes of this rule, proceeds from the sale of capital property are excluded. When the threshold is exceeded, the person ceases to qualify as a small supplier. As a result, the person is required to become registered and collect tax on all supplies, other than exempt supplies, made in the course of any commercial activities.

Subsection 148(3) denies “small supplier” status to a non-resident person whose only business carried on in Canada is the selling of admissions to a place of amusement, seminar, activity or event. The effect is to require non-residents in such circumstances to collect and remit tax on admissions which they sell directly to spectators/attendees even if the aggregate value of admissions charged does not exceed the