

Ministry of Finance **Ministère des Finances**
Office of the Bureau du
Assistant Deputy Minister sous-ministre adjoint

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December 11, 2014

James C. Carman
Senior Policy Advisor, Taxation
The Investment Funds Institute of Canada
11 King Street West, 4th Floor
Toronto ON M5H 4C7

Dear Mr. Carman:

Thank you for your email and memorandum of November 13, 2014, regarding the application of subsection 105 (3) of the *Taxation Act, 2007* (the "Act").

In your memorandum you point out that a mutual fund trust whose entire Ontario tax payable for the 2014 year is in respect of capital gains may be unable to claim a capital gains refund of the entire amount of surtax payable by the trust for that year.

We are prepared to recommend to the Minister of Finance that amendments be proposed to the Act that, if approved by the Ontario Legislative Assembly, would address the issue that you raise in your memorandum in the following manner.

A mutual fund trust would be entitled to an Ontario capital gains refund of surtax (under subsection 105 (3) of the Act) for a taxation year ending in 2014, equal to the amount of the trust's surtax for the year under section 16 of the Act if the following two conditions were met:

1. The tax payable by the trust under Division B of Part II of the Act for the year (calculated without reference to subdivisions c and e and section 21) is equal to, or less than, the product of the trust's taxed capital gains for the year (for the purposes of section 132 of Canada's *Income Tax Act*) multiplied by the highest tax rate for the year.

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2. The trust's Ontario capital gains refund of basic tax for the year under subsection 105 (1) of the Act is equal to the lesser of the amounts in respect of the year calculated under paragraphs (a) and (b) in formula item F in subsection (4) (that is, the amount from line 7 of the trust's form T184 for the year is equal to the amount from line 1).

While we cannot provide assurance that the Minister of Finance, the Government of Ontario or the Legislative Assembly will agree with our recommendation in this matter, we hope this will be helpful to you.

Thank you for bringing this matter to our attention.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Sriram Subrahmanyam', written in a cursive style.

Sriram Subrahmanyam
Assistant Deputy Minister