THE INVESTMENT FUNDS INSTITUTE OF CANADA | L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

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Delivered By Email: Consultation-Legislation@fin.gc.ca

Department of Finance Canada
90 Elgin Street
Ottawa, Ontario
K1A 0G5

Dear Sirs and Mesdames:

RE: Reporting Requirements for Trusts

The Investment Funds Institute of Canada (IFIC) appreciates the opportunity to comment on the draft legislative proposals to amend the *Income Tax Act* (Canada) (the "Act")[1] and the Income Tax Regulations related to the additional reporting requirements for trusts. IFIC is the voice of Canada's investment funds industry. IFIC brings together 150 organizations, including fund managers, distributors and industry service organizations, to foster a strong, stable investment sector where investors can realize their financial goals. IFIC operates on a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the IFIC Board or board-level committees for direction and approval. This process results in a submission that reflects the input and direction of a broad range of IFIC members.

We acknowledge the helpful discussions we have had with Department of Finance officials regarding this proposal and its policy objectives, and we are grateful for the opportunity to provide you with our suggested changes to these proposals. These changes would accommodate the fund industry while still meeting the policy objectives of the enhanced reporting requirements for trusts.

Background

Many of the investment funds managed and administered by members of IFIC are mutual fund trusts and would meet one of the exemptions from the additional reporting requirements for trusts in proposed subsection 204.2(1) of the Income Tax Regulations.

However, for various reasons, IFIC members also have trusts that do not qualify as mutual fund trusts, nor do they qualify for another exemption from the reporting rules in subsection 204.2(1) of the Income Tax Regulations (the "Funds"). These include new funds that have not yet achieved mutual fund trust status as they have not met the 150 unitholders threshold, established funds that do not have 150 unitholders as they are winding down, funds sold to institutional investors including Canadian pension plans and funds established by publicly traded corporations or labour unions to provide benefits to employees or members[2].

Each of these trusts managed by IFIC members have trust documents requiring them to pay sufficient distributions to unitholders such that the trusts are not subject to income taxes. The trusts are required to

[1] All references are to the Act unless otherwise noted.

[2] Please refer to Appendix A for more information on these trusts

pay such distributions to unitholders in a fair and equitable manner and adhere to subsection 104(7.1) and the Canada Revenue Agency's ("CRA") interpretation of that subsection.

Many of these trusts also prepare and file annual T3 Trust Income Tax and Information Returns, including any applicable tax slips such as:

- T3 Statement of Trust Income Allocations and Designations,
- NR4 Statement of Amounts Paid or Credited to Non-Residents of Canada, and
- T5008 Statement of Securities Transactions.

Our Comments on the Proposed Legislation

We appreciate the policy objectives of the proposed legislation, but we do not believe the proposed additional trust reporting requirements in subsection 204.2(1) of the Income Tax Regulations should apply to the Funds since these are not the types of trusts targeted by this proposal. If these proposed reporting requirements were to apply to the Funds, there would be duplication as the Funds' current filings already provide a substantial amount of the information required under the proposed reporting requirements. It is worth noting, that in certain situations (e.g., nominee accounts) the Funds may not have access to some of the information (e.g., date of birth) required under subsection 204.2(1) of the Income Tax Regulations and that in the case of trust funds established by publicly traded corporations or labour unions to provide benefits to employees or members that these trusts could have thousands, or even tens of thousands, of beneficiaries, which would add an unnecessary administrative burden while not targeting the individuals that the policy is intended to identify.

In addition, the proposed reporting requirements would result in the unnecessary reporting of unitholders that are themselves exempt from the additional tax reporting under the draft legislative proposals. For example, a trust the only beneficiaries of which are registered pension plans or registered charities would fall into this category.

We wanted to note that we will address the concerns related to expanding the trust reporting exemptions for trusts which do not have all of their units listed on a designated stock exchange that we raised in our call in a Joint IFIC and Canadian ETF Association submission.

For the reasons outlined above, and taking into account the Government's policy objectives, we suggest expanding the list of trusts exempt from the additional trust reporting requirements in subsection 204.2(1) of the Income Tax Regulations to include the following:

i. (a) a trust that would be a mutual fund trust if paragraph 132(6)(c) were not applicable, and

   (b) the trust is subject to, and substantially complies with, the requirements of National Instrument 81–102 Mutual Funds, as amended from time to time, of the Canadian Securities Administrators, and

   (c) the time is

   (A) during the 24-month period that begins on the day on which the first taxation year of the trust begins, or

   (B) during the 24-month period that ends on the day on which the last taxation year of the trust ends;

ii. A trust established by a publicly traded corporation or labour union to provide benefits to its employees or members, respectively, including:

   a. Supplemental Employee Retirement Plan (SERP);

   b. Registered Supplementary Unemployment Benefit Plan (SUBP);

   c. Employee Benefit Plan (EBP);

   d. Employee Trust (ET);

e. Employee Stock Purchase Plan (ESPP)3

f. Employee Savings Plan (ESP)4

g. Employees Profit Sharing Plan (EPSP) ; and

h. a trust for vacation payments as set out in paragraph 149(1)(y);

iii. A registered investment; and

iv. A trust in which all persons beneficially interested are persons who are exempt from the additional trust reporting requirements in subsection 204.2(1) of the Income Tax Regulations.

In addition, we would appreciate if the legislation could clarify when a trust needs to qualify as one of the exempted type of trusts for these purposes. In particular, proposed paragraph 150(1.2)(c) exempts a mutual fund trust from the reporting rule, but it does not seem to specify when the trust needs to qualify as a mutual fund trust in order for the exception to apply. As it is currently drafted, the legislative intention appears to be that a trust only needs to qualify at the end of the year, because other provisions of the Act that require a trust to qualify as a mutual fund trust throughout a taxation year use the specific words "throughout a taxation year'' (see, for example, subsection 132(1)). Please confirm that the trust only needs to qualify at the end of year.

We thank the Department of Finance for considering our submission and would be pleased to discuss any aspect of the above at your convenience.

If you have further questions, please do not hesitate to contact jbaillargeon@ific.ca.

Your sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

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Cc: Trevor McGowan, Director General, Finance Canada (Trevor.McGowan@fin.gc.ca)

[3] An employee stock purchase plan (ESPP) is an employer-run program in which participating employees can purchase shares of the employer at a discounted price. Employees generally contribute to the plan through payroll deductions which build up between the offering date and the purchase date.

An employer can provide financial assistance or other incentives in connection with employee purchases, including interest-free or low-interest loans, matching payments to maximum amount or the provision of additional shares free of charge.

An ESPP may establish a trust to hold all the shares purchased by the participants, who are the beneficiaries of the trust. The income earned by the trust is distributed to the participants and the shares of the employer will be distributed to them when they meet certain conditions or leave the plan.

[4] An Employee Savings Plan (ESP) is a non-registered savings plan that can be used to finance retirement or other personal goals. If an employee chooses to participate, the employee generally makes contributions through payroll deductions. Employers typically match an employee's contribution to the savings plan up to a certain dollar amount or up to a certain percentage

An ESP may establish a trust to hold all the assets received from the participants and the employer. The income earned by the ESP trust is distributed to the participants and the capital will be distributed to them when they meet certain conditions or leave the plan.

Appendix A

Below are the links to the Canada Revenue Canada and Department of Justice websites, which provide information (including reporting requirements) on the following trusts established to provide benefits to their employees or members stated in point ii:

a. Supplemental Employee Retirement Plan (SERP);

These trusts are described as “Specified trust” for purposes of T3 Trust Guide only as they are trusts where all or substantially all of the property is held for the purpose of providing benefits to individuals from employment or former employment. In general, they are required to file a T3 Income return and T3/T4/T4A tax slips.

https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4013/t3-trust-guide.html#P1302_146510

b. Registered Supplementary Unemployment Benefit Plan (SUBP);

Excerpt of the information provided under the following link “A supplementary unemployment benefit plan (SUBP) is a plan established by an employer or group of participating employers to top up employees' employment insurance (EI) benefits during a period of unemployment due to a temporary or indefinite layoff. A SUBP may be registered or unregistered.”

https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/payroll/payroll-deductions-contributions/special-payments/supplementary-unemployment-benefit-plan-subp.html

c. Employee Benefit Plan (EBP);

Excerpt of the IT-502 – Employee Benefit Plans and Employee Trusts (link below)

"An employee benefit plan is any arrangement under which the employer or someone not dealing at arm's length with the employer makes contributions to another person (called a custodian) and under which one or more payments will be made to or for the benefit of employees, former employees or persons with whom the employees and former employees do not deal at arm's length (hereinafter collectively referred to as "EBP beneficiary or EBP beneficiaries"). An arrangement which provides only for payment or payments to be made in respect of benefits which are expressly excluded from income by reason of subparagraph 6(1)(a)(i) of the Act is not an employee benefit plan.”

https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/it502/archived-employee-benefit-plans-employee-trusts.html

d. Employee Trust (ET);

Excerpt of the IT-502 – Employee Benefit Plans and Employee Trusts (link below):

“an employee trust is an arrangement established after 1979 which meets all of the following conditions:

(a) payments are made by an employer to a trustee in trust for the sole benefit of employees or former employees of the employer or employees or former employees of a person who does not deal at arm's length with the employer (the term "employee(s)" in the following paragraphs on employee trusts includes "former employee(s)");

(b) the right to the benefits vests in the beneficiaries at the time of each payment;

(c) the amount of a benefit does not depend on the beneficiary's position, performance or compensation as an employee;

(d) the trustee allocates annually to beneficiaries the amount as set out in 37 below; and (e) the trustee elects in the return of income filed within 90 days from the end of the first taxation year of the trust to be an employee trust.”

https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/it502/archived-employee-benefit-plans-employee-trusts.html

e. Employee Stock Purchase Plan (ESPP)

An employee stock purchase plan (ESPP) is an employer-run program in which participating employees can purchase shares of the employer at a discounted price. Employees generally contribute to the plan through payroll deductions which build up between the offering date and the purchase date.

An employer can provide financial assistance or other incentives in connection with employee purchases, including interest-free or low-interest loans, matching payments to maximum amount or the provision of additional shares free of charge.

An ESPP may establish a trust to hold all the shares purchased by the participants, who are the beneficiaries of the trust. The income earned by the trust is distributed to the participants and the shares of the employer will be distributed to them when they meet certain conditions or leave the plan

f. Employee Savings Plan (ESP);

An Employee Savings Plan (ESP) is a non-registered savings plan that can be used to finance retirement or other personal goals. If an employee chooses to participate, the employee generally makes contributions through payroll deductions. Employers typically match an employee's contribution to the savings plan up to a certain dollar amount or up to a certain percentage

An ESP may establish a trust to hold all the assets received from the participants and the employer. The income earned by the ESP trust is distributed to the participants and the capital will be distributed to them when they meet certain conditions or leave the plan.

The trusts under e. and f. are described as "Specified trust" for purposes of T3 Trust Guide only as they are trusts where all or substantially all of the property is held for the purpose of providing benefits to individuals from employment or former employment. In general, they are required to file a T3 Income return and T3/T4/T4A tax slips.

https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4013/t3-trust-guide.html#P1302_146510

g. Employees Profit Sharing Plan (EPSP);

An employees profit sharing plan (EPSP) is an arrangement that allows an employer to share profits with all or a designated group of employees. Under an EPSP, amounts are paid to a trustee to be held and invested for the benefit of the employees who are beneficiaries of the plan.

Each year, the trustee is required to allocate to such beneficiaries all employer contributions, profits from trust property, capital gains and losses, and certain amounts in respect of forfeitures.

https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/payroll/payroll-deductions-contributions/special-payments/employees-profit-sharing-plan.html

h. Vacation Pay (VP);

These are "trusts to provide vacation pay" as defined in paragraph 149(1)(y) and exempt from Part I tax.

https://laws-lois.justice.gc.ca/eng/acts/I-3.3/page-141.html#h-308266