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

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Mr. Steve Orsini
Associate Deputy Minister
Office of the Budget, Taxation and Pensions
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Dear Mr. Orsini:

Re: Ontario Capital Gains Refund

We understand that consideration is being given to retroactive legislation with respect to Ontario capital gains refunds for mutual fund trusts that were resident in Ontario prior to 2009. We strongly object to retroactive tax legislation on principle. As well, we are particularly concerned with retroactivity in this case due to the fact that the possibility of excess capital gains refunds had been drawn to the Ministry's attention, in view of the chill it would cause despite the province's stated intention of establishing a hospitable business environment for new investment and because of the administrative burden on investment managers and investors of processing the changes.

The Investment Funds Institute of Canada (IFIC) speaks for Canada's investment funds industry, including fund managers, retail fund distributors and service organizations. Our members are committed to helping Canadians invest for what is important to them. An estimated 47% of Canadians own mutual funds and nearly a third of Canadians' disposable financial assets are in mutual funds. Over two-thirds of households with combined incomes of less than $100,000 hold mutual funds *(Ipsos-Reid, 2009)* and mutual fund usage increases significantly as Canadians approach retirement, when nearly three in four mutual fund owners are near-retirees or retirees *(Pollara, 2009)*. Nearly 80% of households that own mutual funds hold them in RRSPs and RRIFs. Our views below stem from our concerns regarding the effect of retroactive legislation on investors, our economy and the industry.

1. **Opposition to retroactive legislation in principle:** The very essence of a credible tax system – one that maintains taxpayer confidence and promotes compliance – is that tax policy must be fair and certain. Fairness to the taxpayer means that tax legislation should not be retroactive as retroactive amendments introduce uncertainty and increase a business's risk. Over the last few years, concerns with retroactive amendments to tax legislation have been expressed by the Ontario Bar Association, the Toronto Board of Trade, the Joint Committee on Taxation of the Canadian Bar Association and the Canadian Institute of Chartered Accountants, the Tax Executives Institute and the Canadian Chamber of Commerce. All of these organizations have recommended eliminating or severely curtailing the use of retroactive tax law amendments.

2. **Opposition to retroactive legislation for capital gains refunds specifically:** When the amendment to change the rule was made for 2009 and subsequent years, no announcement was made that the Ministry was studying the issue for earlier years. More importantly, the possibility of excess refunds was drawn to the attention of Ministry staff by members of our industry several years ago, but no indication was provided that a legislative change would be made.

3. **Impediment to Toronto's efforts to expand its reputation as an international financial centre:** One of five key areas of competitiveness in the Global Financial Centres Index is the business environment. Retroactive legislation would place a chill on the province's efforts to create a hospitable place for new investment. Calling into question the certainty of the tax treatment of transactions lessens the competitiveness of the Ontario tax system, reducing the incentive to invest in the province. This is particularly inconsistent with the government's efforts to market Ontario to the financial services sector as open for business.

4. **Negative investor reaction**: While certainty is important for any business, it presents particular problems for mutual fund managers given that after-the-fact adjustments can be difficult to process and may have negative financial consequences for the investor. Financial statements for a fund are based on enacted or substantively enacted tax rules, which included the excess refund. Applying this rule can have an impact on the net asset value (NAV) of the fund, which in turn can have an impact on the price at which units trade (or NAV per unit). A NAV error that exceeds certain thresholds may force amended tax reporting, which would make the retroactive legislation more visible. It would be particularly poorly received by investors given that the Ontario government publicly is seeking to help those in and near retirement. For this reason, we think it should not be undertaken lightly.

We believe that the above four points are strong policy reasons for not enacting retroactive legislation in the area of capital gains refunds. We would appreciate an opportunity to discuss this matter with you further to elaborate on the points raised here and, in the meantime, please contact Barb Amsden, Director – Strategy and Research (416 309-2323; bamsden@ific.ca) if you have any questions.

Yours sincerely,

Cc: Simone Boxen, Manager, Personal Income and Payroll Tax Design
Mitchell Davis, Senior Legislative Design Specialist, Personal Income and Payroll Tax Design