



January 22, 2019

Delivered By Email

Mr. Tobias Witteveen
Tax Policy Officer
Tax Legislation Division, Tax Policy Branch
Department of Finance Canada
Ottawa, Canada K1A 0G5

Dear Mr. Witteveen:

RE: Reporting Requirements for Trusts

We are writing to provide our comments on the draft legislative proposals to amend the *Income Tax Act* (Canada) (the "Act")¹ and Income Tax Regulations ("Regulations") related to the additional reporting requirements for trusts.

We acknowledge the helpful discussions we have had with you regarding this proposal and its policy objectives to ensure that the government has sufficient information to determine and identify a trust's beneficiaries and their taxable liabilities. We are grateful for the opportunity to provide you with our suggested changes to the proposals that would accommodate the fund industry while still adhering to the policy objective to enhance the tax reporting requirements for trusts to improve the collection of beneficial ownership information.

Background

Many of the investment funds managed and administered by members of The Investment Funds Institute of Canada ("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 Regulations.

However, for various reasons, IFIC members also have trusts that do not qualify for the exemption available to mutual fund trusts (the "Funds"). These include new funds, established funds that do not have 150 unitholders and funds sold to institutional investors including Canadian pension plans.

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 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.

The 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.

¹ All references are to the Act unless otherwise noted.

Our Comments on the Proposed Legislation

We appreciate the policy objectives of the proposed legislation, but we do not believe the additional reporting trust proposal in subsection 204.2(1) of the Regulations should apply to the Funds. If the proposal 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 proposal.

In addition, the proposal would result in the unnecessary reporting of unitholders that are tax exempt registered plans in the Funds.

For the reasons outlined above, and taking into account the Department's policy objectives and our discussions with you, we suggest adding the following to the definition of "exception trusts" in proposed subsection 150(1.2) of the Act:

(o) a trust

- i. the only beneficiaries of which, who may for any reason receive, at or after the particular time and directly from the trust, any of the income or capital of the trust are beneficiaries that hold fixed interests within the meaning assigned by subsection 94(1) (determined as if the non-resident trust were a trust resident in Canada), and*
- ii. described in any of clauses (A) to (C) of the definition "exempt foreign trust" in paragraph 94(1)(h) (determined as if the non-resident trust were a trust resident in Canada).*

The definition of "exempt foreign trust" in paragraph 94(1)(h) was meant to capture "commercial" trusts which applies equally to the Funds. We believe the addition above meets the policy objectives while limiting the type of investment fund that could fit into this narrowed definition.

For your ease of review, we have included the relevant sections of 94(1) referred to in our proposed addition within the attached Appendix A.

* * * * *

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

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: James Carman
Senior Policy Advisor, Taxation

Appendix A

“exempt foreign trust”

(h) a non-resident trust (other than a trust that elects, in writing filed with the Minister on or before the trust’s filing-due date for the trust’s taxation year that includes the particular time, not to be an exempt foreign trust under this paragraph for the taxation year in which the election is made and for each subsequent taxation year), if at the particular time

(i) the only beneficiaries who may for any reason receive, at or after the particular time and directly from the trust, any of the income or capital of the trust are beneficiaries that hold fixed interests in the trust, and

(ii) any of the following applies:

(A) there are at least 150 beneficiaries described in subparagraph (i) under the trust each of whose fixed interests in the trust have at the particular time a total fair market value of at least \$500,

(B) all fixed interests in the trust are listed on a designated stock exchange and in the 30 days immediately preceding the particular time fixed interests in the trust were traded on a designated stock exchange on at least 10 days,

(C) each outstanding fixed interest in the trust

(I) was issued by the trust in exchange for consideration that was not less than 90% of the interest’s proportionate share of the net asset value of the trust’s property at the time of its issuance, or

(II) was acquired in exchange for consideration equal to the fair market value of the interest at the time of its acquisition, or

(D) the trust is governed by

(I) a Roth IRA, within the meaning of section 408A of the Internal Revenue Code of the United States, or

(II) a plan or arrangement that was created after September 21, 2007, that is subject to that Code and that the Minister agrees is substantially similar to a Roth IRA; or

(iii) a trust that is at the particular time a prescribed trust.

“**fixed interest**” at any time of a person or partnership in a trust means an interest of the person or partnership as a beneficiary (in this definition, determined without reference to subsection [248\(25\)](#)) under the trust provided that no amount of the income or capital of the trust to be distributed at any time in respect of any interest in the trust depends on the exercise by any person or partnership of, or the failure by any person or partnership to exercise, any discretionary power, other than a power in respect of which it is reasonable to conclude that

(a) the power is consistent with normal commercial practice;

(b) the power is consistent with terms that would be acceptable to the beneficiaries under the trust if the beneficiaries were dealing with each other at arm’s length; and

(c) the exercise of, or failure to exercise, the power will not materially affect the value of an interest as a beneficiary under the trust relative to the value of other such interests under the trust.