



DEC 23 2014

Mr. James Carman
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Investment Funds Institute of Canada
11 King Street West, 4th Floor
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Dear Mr. Carman:

This letter follows up on several issues included in your October 31, 2014 submission regarding the trust loss restriction event measures (the “recent LRE amendments”) that were included in Bill C-43 (*i.e.*, the *Economic Action Plan 2014 Act, No. 2*, SC 2014, c. 39), which received royal assent on December 16, 2014. These, and related issues, have been the subject of discussions between members of your organization and ourselves. Other stakeholders have expressed an interest in these issues. Accordingly, a copy of this letter will be provided to the Portfolio Management Association of Canada and the CPA/CBA Joint Committee on Taxation, as well as to the Legislative Policy and Regulatory Affairs Branch of the Canada Revenue Agency (CRA).

The recent LRE amendments

The trust loss restriction event rules impose on a trust a series of tax attribute streaming rules if a person becomes a majority-interest beneficiary, or a group of persons becomes a majority-interest group of beneficiaries, of the trust. The recent LRE amendments are intended to ensure that an investment fund is not subject to a trust loss restriction event if certain conditions are met. The conditions, and the exception itself, are set out in new paragraph 251.2(3)(f) of the *Income Tax Act* (the “Act”), with certain defined terms contained in subsection 251.2(1) of the Act. One condition is that the trust be at all relevant times either a mutual fund trust, or a non-discretionary trust that would be a mutual fund trust if a class of units of the trust met the prescribed breadth of ownership conditions under paragraph 4801(b) of the *Income Tax Regulations* (the “Regulations”). An additional condition is that the trust be a portfolio investment fund immediately

before the acquisition of equity in the trust that would otherwise give rise to the LRE.

Loss restriction events on redemptions

Your submission identifies a concern that the exception in paragraph 251.2(3)(f) of the Act does not apply in the case where a person becomes a majority-interest beneficiary, or a group of persons becomes a majority-interest group of beneficiaries, of a trust, because of a redemption of another person's equity in the trust. In tax policy terms, it is intended that the exception apply in this case, if the other conditions of that paragraph are met. Accordingly, we are prepared to recommend to the Minister of Finance an amendment to provide that a person is deemed not to become a majority-interest beneficiary, and a group of persons is deemed not to become a majority-interest group of beneficiaries, as the case may be, of a particular trust solely because of the acquisition or disposition of equity of the particular trust if (i) immediately before the acquisition or disposition the particular trust is an investment fund, and (ii) the acquisition or disposition is not part of a series of transactions or events that includes the particular trust becoming a portfolio investment fund, or ceasing to be an investment fund.

Tax filings for trusts subject to a loss restriction event

If at any time a trust is subject to a loss restriction event, the trust's taxation year that otherwise includes that time is deemed, under subsection 249(4) of the Act, to end immediately before the loss restriction event (the "stub year"). Ordinarily, the filing of the trust's T3 return of income, and its T3 information slips, for the resulting stub year (and payment of the tax on its taxable income for the year) would be due within 90 days from the end of the stub year.¹ The recent LRE amendments include an amendment, in the form of new subsection 251.2(7) of the Act, which extends these deadlines, so that the above tax requirements must be met within 90 days after the trust's ordinary tax year.² However, the stub year tax filings and any tax owing for the year remain due on or before the extended deadlines, and a failure to meet those requirements may subject the trust to interest and penalties under the tax rules.

Your submission requests that the extended deadlines provided for under subsection 251.2(7) of the Act be made available in respect of certain other tax filings that are due at a time determined by reference to the end of a trust's

¹ The payment of Part I tax on the trust's taxable income for a taxation year is due on or before the trust's balance-due day for the year, which is the day that is 90 days after the end of the year.

² The ordinary tax year for *inter vivos* trusts would end on December 31st, unless the trust is a mutual fund trust that has made an election under section 132.11 of the Act, in which case the trust's ordinary tax year would end on December 15th.

taxation year. Specifically, you ask that the provision apply in respect of a trust's obligation to send an NR4 return (where the deadline for doing so is determined under subsection 202(8) of the Regulations) and, where the trust is a registered investment, its obligation to send a T3RI return under Part X.2 of the Act.

The tax policy objective of subsection 251.2(7) of the Act is to reduce the compliance and administrative burdens associated with a trust being subject to a loss restriction event by allowing the trust to prepare stub year filings contemporaneous with its tax filings for the ordinary tax year. Consistent with this objective, we are prepared to recommend to the Minister of Finance an amendment to include 202(8) of the Regulations and 204.7(1) of the Act in the list of provisions to which subsection 251.2(7) applies. We will also recommend that subsection 251.2(7) be amended to include a reference to paragraph 132(2.1)(a) and subsection 210.2(5) of the Act. Adding paragraph 132(2.1)(a) to the list of provisions in respect of which subsection 251.2(7) applies will ensure that, in computing interest on a mutual fund trust's capital gains refund for a stub year that arises under subsection 249(4) of the Act, the relevant period will be determined by reference to the later of the day that is 90 days after the trust's ordinary tax year and, in cases where the T3 tax return for the stub year is filed after that day, the day on which the return is filed. Adding subsection 210.2(5) to the list ensures that the T3 Schedule 10 return required in respect of Part XII.2 tax for a trust's stub year continues to be filed with its stub year T3 tax return.

Loss restriction events without changes in a trust's beneficiaries

The trust loss restriction event rules define a majority-interest beneficiary of a trust by reference to the definition of that expression contained in section 251.1 of the Act. The CRA recently confirmed that a person who does not have an interest in the income or capital of a trust is nonetheless a majority-interest beneficiary of the trust (and therefore affiliated with the trust) if the person is affiliated with another person who is a majority-interest beneficiary of the trust.³ We agree with the CRA's interpretation of the definition. However, although this interpretation is not inconsistent with the objectives of the definition as it applies in other contexts, it does not fully conform to the policy objectives of the trust loss restriction event rules. Recognizing this, we are prepared to recommend to the Minister of Finance an amendment to the trust loss restriction event rules to provide that for purposes of those rules a majority-interest beneficiary, of a trust at any time, means a person or partnership that is at that time both a beneficiary (as currently defined

³ CRA document 2014-05384C6-F.

under the trust loss restriction event rules) under the trust and a majority-interest beneficiary (as defined in subsection 251.1(3)) of the trust.⁴

Portfolio investment fund definition

As described above, a condition for the application to a trust of the relief under 251.2(3)(f) of the Act is that the trust be a portfolio investment fund immediately before the transaction that would otherwise give rise to the loss restriction event. Your submission identifies a number of concerns with this condition involving, in general terms, the scope of the definition and the potential administrative burden associated with complying with the condition. These issues remain under our consideration.

Application dates

The recent LRE amendments, which are generally relieving in effect, apply in the first instance retroactively to March 21, 2013. We will recommend to the Minister of Finance that the amendments that are the subject of recommendations described in this letter also apply as of March 21, 2013.

However, Bill C-43 permits a trust to elect to defer the application of the recent LRE amendments to January 1, 2014. The election must be filed, in writing with the CRA, on or before the trust's deadline for filing its T3 tax return for its final 2014 tax year. It is anticipated that an electing trust will include the election with that T3 return.

You submit that a trust that is subject in 2014 to a loss restriction event (determined without reference to Bill C-43) should also be provided with the option of electing for the recent LRE amendments not to apply to that event.

Making such an election available to these trusts would reduce the administrative burden associated with the CRA and affected trusts having to re-process stub year T3 returns (including T3 slips) sent before the recent LRE amendments were publicly announced. In the absence of the election you propose, those returns would, in cases where the recent LRE amendments eliminate the loss restriction event on which the stub year filing is predicated, become unfounded tax filings.

Given this, we are prepared to recommend to the Minister a change to the coming-into-force rule in Bill C-43 for the recent LRE amendments. Specifically, we will recommend that the recent LRE amendments (including as further

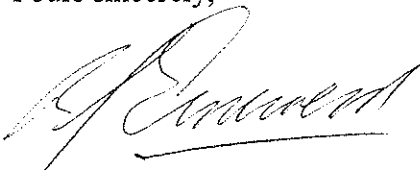
⁴ Some submissions have identified a separate issue involving the possibility of a trust becoming subject to a loss restriction event in the case where an individual becomes a beneficiary of the trust because of the individual's birth or because the individual becomes a spouse or common-law partner of a beneficiary. This issue, which remains under our consideration, does not involve investment trusts (which are provided relief under paragraph 251.2(3)(f) of the Act).

amended pursuant to the recommendations we have indicated, in this letter, we will make) apply as of March 21, 2013, unless

- a trust elects in writing - and files the election with the CRA on or before the trust's filing-due date for its last 2014 taxation year - to have the recent LRE amendments come into force in respect of the trust on the first day of the trust's first 2014 tax year, in which case the amendments would be deemed to apply to the trust only as of that day; or
- a trust elects in writing - and files the election with the CRA on or before the trust's filing-due date for its last 2014 taxation year - to have the recent LRE amendments come into force in respect of the trust on the first day of the trust's first 2015 tax year, in which case the amendments would be deemed to apply to the trust only as of that day.

While we cannot offer any assurance that either the Minister of Finance or Parliament will agree with our recommendations described in this letter, we hope that this statement of our intentions is helpful.

Yours sincerely,



Brian Ernewein
General Director – Legislation
Tax Policy Branch

- c. CPA/CBA Joint Committee on Taxation
Portfolio Management Association of Canada
Legislative Policy and Regulatory Affairs Branch of the Canada Revenue Agency (CRA)