



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

October 21, 2008

Carl Cooper
Office of Associate Chief Counsel -International
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC
20224

Dear Mr. Cooper:

Re: Canadian Tax Free Savings Accounts

I am writing on behalf of the members of the Investment Industry Association of Canada (IIAC) to express our members' concerns over the Qualified Intermediary (QI) documentation and reporting requirements of a new investment vehicle announced by the Canadian Minister of Finance in his federal budget on February 26, 2008 and passed in law on June 18, 2008 - the Tax Free Savings Account (TFSA).

Highlights of the TFSA Legislation:

- Effective January 1, 2009
- Available to Canadian resident individuals. No joint or spousal plans are allowed.
- Registered with and reported to the Canada Revenue Agency (CRA) under the individual's Social Insurance Number (SIN).
- Qualified arrangements structured as:
 - A deposit with an eligible issuer (e.g. banks, credit unions, etc.)
 - An annuity contract with a licensed annuity provider; or
 - A trust with an issuer that is a corporation licensed or otherwise authorized in Canada to carry on the business of offering its services as a trustee to the public. These trusts are subject to investment restrictions prescribed by regulations to the Income Tax Act of Canada.
- Contribution limit of \$5000 per year [indexed after 2009]. Excess contributions are subject to penalty tax.
- Contributions are not tax deductible.
- Income and gains earned in the plan and withdrawals from the plan are not subject to Canadian income tax.
- Income and gains earned in the plan are subject to the applicable foreign non resident withholding tax
- Losses are not deductible.
- Interest on funds borrowed to invest in a TFSA is not tax deductible.

As noted above, TFSAs can be structured as deposits, annuity contracts or trusts. In the case of the first two options, the individual holds the investment directly and such arrangements would clearly be accounts for individuals. However, arrangements offered by Canadian brokers will be structured as trusts. This is the only option that offers a wide range of investment choice, including U.S. Securities. Brokers will engage the services of a Canadian trust company to act as trustee and issuer of their plans. The issuer must submit a specimen TFSA agreement to the CRA for approval. Individual trusts would then be opened under the approved specimen plan and registered with CRA under the individual's social insurance number (SIN). Each TFSA account agreement is signed by the individual account holder. The trust primarily provides a means of segregating the assets of the TFSA from the individual's other assets for purposes of ensuring overall compliance with the Canadian tax requirements of the arrangement. The trustee will enter into an agreement with the broker to delegate many of the trustee's responsibilities to the broker. The trustee is generally performing what is commonly referred to as a "bare trustee" role and has minimal active day-to-day involvement with these accounts or the account holders. The account holders deal directly with the broker.

Due to the 'self-directed' structure of the trust, the vehicle may be seen as a grantor trust for U.S. tax purpose. As a grantor trust, the QI would be required to document the account with a W-8IMY in the name of the trust, a withholding statement and appropriate QI documentation from the account holder. Given that the trustee is likely to complete Form W-8IMY for each TFSA under a particular specimen plan, the only variable information on the form would be the name of the trust on Line 1. Similarly, the withholding statement provides little additional information, given that the QI (as broker), and not the trustee, is the one that gathers the QI documentation directly from the account holder. **We feel that the requirements for the Form W-8IMY and withholding statements for these arrangements are unnecessary and create an unreasonable burden for QIs offering TFSAs structured as trusts.**

With respect to documenting the account holder, the QI may obtain either a Form W-8BEN or appropriate KYC documentation as listed in the Canadian Attachment to the QI Agreement. If the account holder is to be regarded as the grantor of a foreign grantor trust and, as such, an indirect account holder for QI purposes, KYC documentation must be renewed every three years. **We feel that the requirement to renew KYC documentation every three years is an unnecessary and unreasonable requirement given that the account holder does in fact have a direct relationship with the QI and the QI must apply the required KYC procedures for account opening and client identification.**

Under the ordinary terms of the QI Agreement, the QI would not be permitted to include U.S. reportable amounts paid to a TFSA in their pooled reporting, but instead would be required to issue individual 1042-S slips to each TFSA account holder. Alternatively, the QI and the trustee can enter into an agreement to apply the provisions of Section 4A.01 of the QI Agreement to all documented TFSA accounts for account holders that are not U.S. non exempt recipients. This would allow the QI to include these accounts in pooled reporting, resulting in the same reporting as would apply if the accounts were treated as accounts for individuals. **Given that the QI will have all account holder documentation and there can only be one participant for each account, we feel it should be unnecessary for the QI and the trustee to enter into an agreement as set**

out in Section 4A.01 of the QI Agreement and to subject these accounts to the additional procedures as outlined in the IRS QI Frequently Asked Questions.

We believe that given the legislative restrictions of the product, and the regulatory obligations already in place, it is both practical and logical to treat such accounts as accounts for individuals for QI purposes. Given the limited amount of time that the Canadian financial community has been given to prepare application processes and system changes in order to offer TFSAs beginning January 1, 2009 and the large volumes anticipated, we would appreciate your consideration of our proposal at your earliest possible convenience.

Should you require any additional information or have questions related to this submission, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "J Rando". The signature is written in a cursive, slightly slanted style.

Jack Rando
Director, Capital Markets
Investment Industry Association of Canada
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