



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

Ian C.W. Russell FCSI
President & Chief Executive Officer

June 3, 2010

Mr. Lalith Kottachchi
Chief, Sales Tax Division
Tax Policy Branch
Department of Finance Canada
Ottawa, ON K1A 0G5

Dear Mr. Kottachchi

The Investment Industry Association met with officials from the Canada Revenue Agency (CRA) on May 5th as part of CRA's consultation process on the proposed amendments by the Department of Finance to the definition of financial services contained in Bill C-9, the *Jobs and Economic Growth Act* ("Bill C-9"). We appreciated the opportunity to discuss their interpretation of the proposed changes in respect of the application of GST/HST on financial services.

Based on these discussions and notwithstanding the stated policy intent, we remain concerned that the wording of the provisions contained in Bill C-9, as currently drafted, will create considerable uncertainty within the financial services industry which will have unintended impact on the consumers of financial services. While we appreciate the efforts of CRA staff to consult with industry on this important matter, the ultimate direction must come from the Department of Finance. In light of your Minister's Statement¹ of March 26th we request that the Department of Finance reaffirm long-standing policy intent, and industry practice, that "arranging for" services performed by financial intermediaries are defined as financial services for the purposes of GST and HST.

Background

The existing definition of a "financial service" extends an exemption from the application of GST and HST for various transactions conducted by our member firms on behalf of their clients. These transactions have been well documented by CRA and are well understood by the industry and our clients.² The definition also provides that the service of "arranging for" these transactions is also to be considered a financial service exempt from tax. For example, the purchase or sale of a security by a brokerage firm on behalf of a client, as well as any of the intermediate "arranging for" services provided to the client leading to the transaction, is considered a "financial service" exempt from GST.

¹ Refer to Minister of Finance Press release dated March 26, 2010 <http://www.fin.gc.ca/n10/10-024-eng.asp>

² Refer to GST/HST Memorandum 17.1.1 <http://www.cra-arc.gc.ca/E/pub/gm/17-1-1/17-1-1-e.pdf>

Concerns

Our concern is that the “arranging for” transaction concept, embedded in the proposed legislation could be interpreted as requiring an investment dealer to break out every service related to a specific transaction, including advice, research, order entry, issuing client confirmations slips, etc. before a determination can be made as to what base service is a financial service that is exempt. At present, the securities transactions that embody these components are exempt from tax. However, proposed paragraphs q(i) and (r.4) to the definition of financial services in Bill C-9 could be interpreted to exclude these facilitatory or preparatory supplies offered by our member firms through their daily course of business where those services are not segregated out from other financial services provided to clients as part of an overall package of financial service. This could subject our members or their clients to additional new tax. CRA has in fact already indicated this interpretation as evidenced by their Notice 250 released in February and reaffirmed at our recent meeting with them.

If the CRA’s proposed interpretation stands, and the proposed amendments do in fact require a segmentation of the full array of services embedded within one client transaction for the purpose of the application of GST/HST, this would not only be a change in existing tax policy which contradicts the Minister’s statement of March 26th but would be difficult to comply with and equally difficult to administer. For example, it is not clear that investment dealers executing client stock trades would not need to document on a trade-by-trade basis the advice and execution component of each transaction to determine if the transaction substantially qualifies as a financial service or if the transaction is predominantly or partially facilitatory in nature and hence subject to tax. Given the unique circumstances surrounding each transaction, such an approach would be unworkable. The legislation should be specific in that a fee charged for a financial service is exempt, notwithstanding that other related and ancillary services are provided and are a necessary component of the financial service but do not comprise the primary value of the service.

Additionally, the proposed coming into force provisions contained within section 55 of Bill C-9 could result in retroactive application of the amendments. If the CRA interpretation is confirmed and there is a resulting change in policy, it would be a material change to long-standing tax policy. Such changes should be effective only after Royal Assent after the conclusion of a thorough consultative process with stakeholders.

We know that our concerns are not new to you and that the Department has assured us that the prescription provisions will allow you to address concerns in the future. However, given the widespread implications of a restrictive application, a prescription approach to remedy concerns will cause major complications in the industry and be very time consuming in its implementation. If a legislative accommodation cannot be found we would request that the industry be able to work with you in developing an administrative approach for CRA that would meet all of our objectives.

Ian C.W. Russell FCSI
President & Chief Executive Officer

Given the large volume of capital market transactions potentially impacted, the industry needs a clear consistent framework for the application of GST/HST. We would appreciate an opportunity to meet with you and discuss how these concerns can be addressed. I will be calling you in the next several days to arrange a mutually convenient time.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ian C.W. Russell". The signature is written in a cursive style with a long horizontal flourish at the end.

c.c.: Lise Potvin, Director , Sales Tax Division