September 15, 2014

Mr. Paul Rochon
Deputy Minister
Finance Canada
140 O'Connor St.
Ottawa, ON K1A 0G5
E-mail: paul.rochon@fin.gc.ca

Dear Mr. Rochon:

Re: Request for Amendment to Section 233.3 of the *Income Tax Act*

The Investment Industry Association of Canada (IIAC) and Chartered Professional Accountants of Canada (CPA Canada) are writing jointly to ask for an amendment to the *Income Tax Act* (the Act) to help alleviate what appears to us to be an impediment to achieving most effectively the appropriate intent of Section 233.3 of the Act – better identifying potential tax evaders – by way of Form T1135 (Foreign Income Verification). We believe that it is important to increase the threshold for foreign asset reporting under Section 233.3 to $250,000 to reflect the passage of time since the $100,000 threshold was introduced and, importantly, to be consistent with other rules discussed below.

Who We Are

The IIAC is the national organization advocating on securities regulatory, tax and other matters on behalf of 160 investment dealers holding 95% of the assets managed by firms regulated by the Investment Industry Regulatory Organization of Canada (IIROC). We work to ensure a smooth and efficient savings-to-investment process serving Canadians, Canada's businesses and governments, and the Canadian economy. The Chartered Professional Accountants of Canada (**CPA Canada)** is the national organization established on the recent unification of the Canadian Institute of Chartered Accountants and the Certified Management Accountants of Canada (CMAs). As of October 1, 2014, the Certified General Accountants of Canada (CGAs) will also merge with CPA Canada. Once unification is complete, CPA Canada will have more than 190,000 professional accountants as members.

Members of both the IIAC and professional accountants have experienced and continue to experience, in light of their efforts to serve their joint clients, significant problems with respect to Form T1135. While under the CRA's purview, the form is the result of a problem that arises due to provisions in the Act*,* which do not take into account the significant differentiating factor between foreign <u>financial</u> and <u>non-financial</u> assets – namely that the Government already receives considerable information on income and proceeds of foreign financial assets held within Canada. Both CPA Canada and the IIAC, individually and jointly, have been, and have every reason to continue, working closely with the CRA to address legitimate concerns regarding Canadians who do not pay their appropriate share of taxes on financial assets.

Background on Nature of Canadian Taxpayers' Foreign Financial Holdings

CPA Canada and the IIAC strongly agree with the 2014 Federal Budget statement that "Canada's tax rules must constantly be reviewed to ensure that they maintain an appropriate balance between the objectives of competitiveness, simplicity, fairness, efficiency and protection of the tax base", which has led the Government to take strong action to combat international tax evasion and aggressive tax avoidance, thereby improving incentives to work, save and invest in Canada.

Canadian securities dealers and trust companies play a key role in Canada's tax system by providing Canadians with tax slips and the CRA with XML reporting on income from and dispositions of specified foreign property. As well, Canada already enjoys the exchange of information with the U.S. on U.S.-domiciled securities, including American Depositary Receipts (ADRs), which are by far the main way Canadians hold issues of non-U.S. foreign securities. Once U.S. banks purchase large lots of foreign company shares and bundle them into groups that are re-issued on U.S. exchanges as what are known as ADRs, they become subject to the American tax regime. Some taxes are withheld on Canadians' income and other proceeds from outside the country, and information on investments where there is no withholding is reported by way of the longstanding automatic Canada-U.S. information-sharing agreement.

New Information Exchanges Should Effectively Address Major Concerns of Tax Evasion

As you know, this year the G20 Finance Ministers endorsed the *Common Reporting Standard for Automatic Exchange of Tax Information* (CRS); all 34 Organization for Economic Co-operation and Development (OECD) member countries – with some non-members – approved the OECD *Declaration on Automatic Exchange of Information in Tax Matters;* and, in July, the OECD released the *Standard for Automatic Exchange of Financial Account Information in Tax Matters*. The CRS requires participating governments to obtain detailed financial account information (including account balances, interest, dividends, and sales proceeds) from their financial institutions and to transition to the annual and automatic exchange of specified data with other jurisdictions. Now 65 jurisdictions have committed to CRS implementation. Over 40 – including lower-tax and higher tax-risk jurisdictions, such as the Cayman Islands – have pledged to achieve automatic information exchanges in 2017. We believe that, while Canada is not one of the 40 early CRS adopters, CRS should provide Canada with the ability to obtain certain information now, such as which jurisdictions have legal and tax regimes that would permit masking of beneficiaries, structures falling within the ambit of *Income Tax Act* subsection 94.1(1) or other causes for concern that the CRA has identified.

Impact of New T1135 Form Requirements

While there are many factors to consider with respect to T1135s, the current financial asset reporting in the new Form T1135 will result in direct and indirect costs for Canadian taxpayers (including the most vulnerable elderly that rely on income-providing assets, the income from which will be reporting on T-slips), their accountants and their financial institutions that are being expected to help them, appear, to our respective members, disproportionate to the benefits that could be received by reporting only on the limited number of jurisdictions that seem to be the cause for concern. This is particularly the case for the small dealers and the small accounting firms that are asked to try to help these taxpayers provide information necessary to complete T1135s (note that making available the information in the manner required by the CRA in Form T1135 is not otherwise of any business value to dealers or accountants).

An estimated two-thirds of IIROC-regulated securities dealers are small businesses. While small businesses are recognized as the creator of 98% of our country's jobs, we believe that the small dealers serving junior resource and other companies on the cusp of growth, that are not yet of the size typically served by large dealers, have a particularly important role to play in Canada's economic development. Moreover, they are closing or being absorbed in alarming numbers, without new replacements, partly attributed to the growing fixed costs of doing business that also present barriers to entry and competition. These fixed costs comprise, among others, tax reporting expenses generally, including work arising from helping clients deal with Form T1135, which the dealers are not required by law to provide.

We have discussed simplifications because obtaining the now-required information leads to increases in time to complete tax returns for the average middle-income client by hours, with a corresponding increase in taxpayer accounting costs, for the approximately 70% who employ one.

The additional burden of T1135 reporting has had some, perhaps small, additional unintended negative result, that is, portfolio managers and investment advisors may reduce clients' foreign holdings, which we believe is not in Canadians' best interests of diversifying financial risk.

Recommendation

While not a full solution, increasing the T1135 cost reporting threshold from \$100,000 to \$250,000 under section 233.3 of the *Income Tax Act* would reduce the number of Canadian taxpayers that would have to report needlessly – people whose income and dispositions are already being reported by registered dealers and trust companies although not by country. As the measure would be relieving for those who most need it and not affect well-off taxpayers, we believe that the threshold increase could and should be included in tax amendments introduced August 29, 2014, on which the Department of Finance has requested comments by September 28,2014.

Additionally, the \$250,000 threshold is consistent with equivalent levels for additional information reporting in Canada and the U.S. Paragraph 10.47 of the "CRA's Guidance on Enhanced Financial Accounts Information

Reporting" states that a financial institution does not have to review a pre-existing entity account with a balance or value equal to or less than USD250,000 on June 30, 2014. In addition, paragraph 8.7 of the CRA Guidance states that a pre-existing individual account that is a cash value insurance contract or an annuity contract with a balance or value of US$250,000 or less on June 30, 2014 is not required to be reported to the CRA. Finally, the amount of $250,000 is consistent with what Canadian registered dealers and others are building systems to support under American requirements to implement the *Foreign Account Tax Compliance Act* (FATCA).

Conclusion

In light of both the negative effects and complications described above, and the fact that, starting in 2017, information from a number of the low-tax countries of securities issuance that present concerns will be sharing information in an automated manner, allowing faster identification of areas of concern, we believe honest Canadian taxpayers will welcome raising the threshold to $250,000. By reducing the number of taxpayers affected, small dealers and accounting practices will avoid additional red tape that the Government has been striving to limit. Please call us if you gave any questions in the meantime and we hope to call shortly to discuss our proposal in more detail with you.

Yours truly,

Barbara Amsden
Managing Director
Investment Industry Association of Canada (IIAC)
416 687-5488/bamsden@iiac.ca

Gabe Hayos
Vice-President, Taxation
Chartered Professional Accountants of Canada
416-204-3404/ghayos@cpacanada.ca

Cc:
Andrew Marsland, Assistant Deputy Minister, Tax Policy Branch, Finance Canada
Brian Ernewein, General Director (Legislation), Tax Policy Branch, Finance Canada
Richard Montroy, Assistant Commissioner, CRA
Ted Gallivan, Assistant Deputy Commissioner, Compliance, CRA
Lisa Anawati, Director General, CRA
Guy Bigonesse, Director – Aggressive Tax Planning Division, CRA
Jennifer Smith, Senior Advisor – International and Large Business Directorate, Compliance Programs, CRA