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

11 King Street West, Suite 1600, Toronto ON M5H 4C7
T 416.364.2754 | F 416.364.4861

www.iiac.ca

Barbara J. Amsden
Managing Director
416.687.5488/bamsden@iiac.ca

December 8, 2014

Mr. Mickey Sarazin
Director General
Canada Revenue Agency (CRA)
Director General's Office
320 Queen Street
Ottawa, Ontario K1A 0L5
Tel: (613) 957-2132 / Fax: (613) 957-2088
E-mail: mickey.sarazin@cra-arc.gc.ca

Dear Mickey:

Re: Taxpayer Communications re Carrying on Business, Keeping Tax Slips, Ensuring Same Surnames

Thank you again for hosting the CRA/Financial Institution Liaison Committee meeting just over a month ago. I am following up on two points discussed, and raise a third one, where we hope that fairly quick progress can be made. All three support the CRA's plain-language commitment and promise to provide taxpayers with complete, accurate and timely information to explain laws and policies that may apply to them and so help them meet their tax obligations. We think all three are important, straightforward and well-timed as we are getting close to the start of tax season. As probably none fall in your bailiwick, I hope you can help connect us with the right person to deal with on each one.

1. The Basics for Investors Who May Be Trading Frequently or Otherwise Carrying on a Business

What our members had asked the CRA to do is to publicize something that can help provide guidance to our members' clients – Canadian taxpayers – regarding the issue of "carrying on a business" within a TFSA. We are concerned that a good number may not be aware of certain provisions of the *Income Tax Act* or interpretations regarding carrying on a business that could have negative consequences for the uninformed. We would like the CRA to expedite development of a one-page summary to address this. The IIAC saw an early draft in January 2014, however, it appeared longer and more technical than what our experience with investors would suggest is needed.

Economic and technological developments in the past 30 years changed Canada from a country of savers to a nation of investors. As the serious effects of high rates of inflation in the 1970s and early 1980s became known and inflation was brought under control, interest rates correspondingly fell. This and other factors also contributed to declines in defined benefit plans. Both the fall in rates and the reduction in defined pension plans led to more Canadians investing in mutual funds or other capital instruments. At the same time, technology was expanding access to capital markets. Declining interest rates and increased online accessibility to financial information and trading technology led to increasing numbers of people who traded, as well as to an expansion in how, when and how frequently they traded.

The relevant income tax bulletin for taxpayers in this circumstance is IT-479R – Transactions in Securities. It was published in 1984, before the environment changes referred to in the last paragraph. It was archived as of August 1, 2013. We understand archiving has "no effect on the status or reliability of the ITs". The web notice about archiving also says that "… they are current up to the effective date stated in each publication." This description suggests that there may be changes since August 1, 2013 of which clients and we are not aware.

Also, while the provisions of IT 479-R may be well-understood by day traders, we believe this will not be true, for example, in the case of retirees who may do some online investing as a hobby. We had been led to understand that work on replacing it as part of the CRA's 'folio' process was not due to begin for some time. We therefore hope that a plain-language clarification of the CRA's intentions can be completed soon. Attachment 1 includes points we think could form part of a one-page information sheet. This may be something where accounting firms could also be helpful in developing and distributing such information.

2. The Basics for Investors Being Prepared for Tax Season

We are working with Revenu Québec (RQ) on a reporting matter that suggests action on the part of CRA as well would be helpful. It seems certain that some Quebeckers, and we must suspect also Canadians from other parts of the country, are not reporting gains (or losses) on dispositions of securities as they do not receive standard "tax receipts" for them and do not recognize that what financial institutions provide (trading summaries including acquisitions and distributions) are to be used for tax purposes. Both Revenu Québec and the CRA recognize that greater clarity on tax slips and other reports provided to clients for tax purposes will be helpful and we are working on this separately. This initiative will be more effective if the CRA (and RQ) contribute to "tax literacy" through a one- or two-page tax fact sheet telling investors that they are responsible for tracking the value of their securities for capital disposition reporting purposes. A rough example of what we are thinking could be included in an information sheet, which we are sharing with RQ, is appended as Attachment 2.

3. Making Reconciliation Easier

As James Carman, IFIC, mentioned in our meeting, a fair amount of time has been spent trying to reconcile differences between dealer and CRA records with respect to TFSAs, where automated reconciliation was intended to speed identification of over-contributions, etc. Matching was to be done based on last name, SIN and date of birth and the CRA has introduced fuzzy logic and may consider other options. There are a few follow-up actions on this point.

One area that can be dealt with easily is simply ensuring that the CRA and financial institution have the same last name on file, as well as birthdate and SIN. This is the third area where we hope the CRA can work with tax professionals and tax preparation software providers. While too late to do this year in a comprehensive way, it would be very helpful if the CRA could amend the T1 form to ask the taxpayer to ensure the surname for CRA and financial institution records is the same. As well, the CRA could notify tax software providers to suggest the addition of pop-ups, and to make adjustments to the pdf and fillable/savable pdf income tax return to ask clients to ensure the surname they have on their return and with their financial institution are identical (or at least to record an alternate surname). If the CRA determines that a taxpayer with an unreconciled TFSA uses a tax preparer, it would also be helpful to use that route to notify taxpayers that their TFSA may be deregistered and the implications of this.

We hope that you can connect us with the appropriate people to work with on these three items so that they can be completed before the tax season "officially" starts in early 2015 or for the following year. If you need any further information, please let me know.

Yours sincerely,

Cc: James Carman, IFIC
Gabe Hayos, CPA Canada

Points to Consider for an Information Sheet for People Possibly "Carrying on a Business"

Do you enjoy trading securities in your spare time?
Learn about possible tax implications …

If you trade a lot, and especially if you trade frequently in your Tax-Free Savings Account (TFSA), this information is for you.

Most Canadians believe if they make a gain when they sell a stock or bond, they pay tax on the gain at a more favourable rate than they do on the same amount earned from their job. While usually the case, this is not always true. If someone spends a lot of time buying and selling securities, it can be considered a business and tax will apply at the higher rate of tax on ordinary income. As an example, Canadian financial institutions usually can't claim capital gains treatment because they 'carry on the business' of buying and selling stocks, bonds, mutual funds and other investments.

Even typical Canadians may have to pay tax at the higher rate applicable to ordinary income, for example, in the case of the "short sale" of shares or if there is no, or a below-market, interest rate on a debt security. Other examples include cases when people are considered to be a "trader or dealer in securities". Sometimes they are "day traders", and pay the full rate of tax on earnings, including gains, from trading.

Are you carrying on a business?

The CRA looks at your trading pattern to see if you are acting like a trader. Factors include:
(a) High transaction frequency – Do you buy and sell securities often?
(b) Brief ownership period – Do you own securities only for a short time?
(c) Good knowledge of securities markets – Do you have knowledge of or experience in capital markets?
(d) Part of ordinary business – Are securities transactions part of your ordinary work?
(e) Extended time spent – Do you spend a lot of time studying the securities markets and researching potential purchases?
(f) Leveraged financing – Do you buy securities primarily on margin or finance them via other forms of debt?
(g) Advertising – Do you advertise or otherwise make it known that you are willing to buy and sell securities?
(h) Speculation – Are the securities you buy considered speculative? Do they *not* pay dividends?
Although none of these factors may alone be enough to prove you are carrying on a business, evidence of several factors could be enough for the CRA to consider you to be doing so.

Why have I never heard of this before?

These rules have been in place for many years with no real changes. What has changed over the last 30 years is the financial marketplace, including improved technology that offers easier access to trading.

Should I be worried?

If you think your investing may meet more than one of the above criteria, you may be considered to be carrying on the business of trading, and therefore may be liable for a higher rate of tax. It is particularly important not to carry on the business of trading in your TFSA, as income earned from carrying on business in a TFSA is subject to tax *[CRA to elaborate].* Talk to a tax professional if you need help.

Attachment 2

Points to Consider for an Information Sheet re Documentation Needed for Tax Returns

Own securities like stocks, bonds, funds or GICs?

What you or your tax preparer need to complete your income tax return

As you gather tax slips to prepare for completing your tax return, what forms of investment income can you expect to receive tax slips from your financial institution for and what do you need to find yourself?

You can find a lot of information on the CRA website (and Revenue Quebec website if you live or lived in Quebec in the tax year), but to make it easier to get your tax return done when it comes to savings and investments, list all your securities and check them off as your tax slips come in.

What you should receive from your financial institution

If you have stocks, bonds, preferred shares, T-bills and deposit accounts …

- **You will receive a T5 – Statement of Investment Income.** T5s must be sent to you by the end of February to report stock and preferred share dividends, and interest on bonds, T-bills, GICs and other accounts of at least $50 per currency. You must report amounts of less than $50 if you do not receive a receipt.

If you have mutual funds or trusts, you will receive a …

- **T3 – Statement of Trust Income Allocations and Designations.** It must be mailed by the end of March to report capital gains and trust and mutual fund income for amounts of at least $100 (you must still report income of less than $100). T3s include details such as expense items and return of capital that should be reflected in the adjusted cost base of the related security.

If you have investment trusts or limited partnerships, you will receive a …

- **T5013 – Statement of Partnership Income.** T5013s must be mailed by the end of March to report income and gains or losses for partnerships, such as real estate investment trusts.

If you sold a security, you will receive a …

- **T5008 – Proceeds of disposition or settlement amounts.** T5008s can be sent individually or you may receive a transaction summary listing all purchases, sales, redemptions, maturities, exchanges and expirations for the calendar year.

What tax-related information do you have to find or keep yourself?

What you won't receive in most cases is a tax slip of capital gains or losses because your financial institution will not know about holdings you have in other financial institutions, if you have made certain tax elections or when certain other events occur. The information you need to calculate the gain or loss on the sale of your securities on Schedule 3 of your income tax return are:

(1) what you sell the securities for,

(2) the adjusted cost base (ACB) – what you paid to buy the security modified to reflect things such as reinvested dividends, return of capital and other things as well as

(3) commissions and other expenses. For more on ACB, *[CRA to elaborate].*

Clients and their tax preparers can make adjustments to information on T5008s or transaction summaries using data from other tax slips (like T3s). You may also need to refer to transaction summaries from past years.