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 Amsden
Managing Director
416.687.5488/bamsden@iiac.ca

July 3, 2014

Mr. Brian Ernewein
General Director, Tax Policy
Finance Canada (Finance)
140 O'Connor Street
Ottawa, Ontario K1A 0G5
Tel. (613) 992-3045/Fax: (613) 996-0660
E-mail: brian.ernewein@fin.gc.ca

Ms. Lisa Anawati
Director General
Canada Revenue Agency (CRA)
344 Slater Street
Ottawa, Ontario K1A 0L5
Tel: (613) 952-7425/Fax: (613) 941-9673
E-mail: lisa.anawati@cra-arc.gc.ca

Dear Brian and Lisa:

Re: Request to Amend *Income Tax Act* Legislation and Administration to Ensure Tax Liability Borne Appropriately re Tax-Free Savings Accounts

For over a year, the Investment Industry Association of Canada (IIAC) has been addressing an issue relating to Tax-Free Savings Accounts (TFSAs) with Finance Canada and the CRA (see attached letters). We appreciate government efforts to consider our concerns. As the issues to be addressed cross department lines, we are taking the liberty of writing you jointly given your departments' responsibilities regarding the *Income Tax Act* (Canada) (the Act) and its administration.

As you know, the IIAC is the national association of investment dealer firms regulated by the Investment Industry Regulatory Organization of Canada (IIROC). The IIAC represents its 160 member firms – over 95% of the industry – on securities, tax and other public policy matters to improve the savings-to-investment process. To this end, the IIAC has worked extensively with Finance and the CRA on registered plan issues over many years so that our members can properly deliver federal tax savings programs to clients – millions of Canadians who hold over $350 billion invested in registered plans with IIROC-regulated dealers – while managing the related costs and risks. Our members support the government's efforts to ensure that registered savings programs are not abused and that all taxpayers pay their fair share of taxes.

Issues

TFSAs are being assessed penalty taxes on the basis that the TFSA has carried on business. The IIAC is concerned that there are insufficient guidelines in place for TFSA holders to be comfortable as to whether they are carrying on business, and is concerned that CRA may look to TFSA issuers should assets within the TFSA be insufficient to cover the penalty taxes. It is even more difficult for TFSA issuers to determine if a TFSA has carried on a business.

TFSAs are also being deregistered on the basis that the TFSA has borrowed money, even if the borrowing occurred for a short period of time (or potentially very small amounts). The IIAC is concerned that inadvertent overdraft positions in a TFSA have led to overly harsh tax consequences for TFSA holders.

***Income Tax Act* Provisions**

(i) Carrying on a Business

Pursuant to subsection 146.2(5) of the Act, if a TFSA carries on a business, it is taxable on income earned from that business. Whether or not a business has been carried on is a question of fact. CRA may be of the view that, should there be insufficient assets within the TFSA to cover any resulting tax liability from a TFSA being reassessed as carrying on a business, the issuer/trustee of the TFSA is jointly liable for such taxes owing. Should the TFSA trustee distribute or transfer any of the TFSA assets without first obtaining a clearance certificate under subsection 159(2), CRA may take the position that the trustee is liable for any shortfall of taxes under subsection 159(3). In addition, CRA may simply take the position that the trustee is liable for any taxes owing by virtue of subsection 104(1).

(ii) Borrowing within a TFSA

Pursuant to paragraph 146.2(2)(f) of the Act, the terms of a TFSA must prohibit it from borrowing. In order to be a "qualifying arrangement" as defined in subsection 146.2(1) of the Act, the TFSA must comply with this condition "at all times throughout the period that begins at the time the arrangement is entered into and that ends at the particular time…". Subsection 146.2(5) provides that a TFSA ceases to be a TFSA if it ceases to be a qualifying arrangement or it is not administered in accordance with the condition that the TFSA prohibit borrowing. As such, CRA auditors have deregistered TFSAs that have been in a debit position for a short period of time, and found any income/gains earned after such time to be taxable to the TFSA holder.

It should be noted that for an RRSP or a RRIF, the consequences are not as severe. An RRSP or RRIF is taxable only on the income earned the year the borrowing is outstanding.

IIAC Comments

(i) Carrying on a Business

It is difficult for the average taxpayer to judge whether or not he or she is carrying on a business. Archived Interpretation Bulletin IT-479R indicated certain criteria to review in determining whether or not this has occurred. In addition, there are a number of reported cases on this issue, such as *HMQ v. Vancouver Art Metal Works*. Certainly, the recent decision of the Tax Court in *Prochuk v. The Queen* is evident of how difficult it is to determine whether or not a high level of trading results in the carrying on of a business. This case was reported on January 16, 2014. The case involves a taxpayer who apparently traded actively within his RRSP, but not outside of his RRSP. In the course of coming to a decision that "… trades within an RRSP are not relevant in deciding whether an individual is in the business of trading", Justice D'Auray also concluded that "A person trading within his RRSP cannot be considered to be operating a business … trading within an RRSP cannot be considered a business". It was further concluded that "… I am satisfied that trading within an RRSP does not amount to carrying on the business of trading." Although it was clearly contemplated by Parliament that an RRSP could carry on a business from subsection 146(6) of the Act, even a judge of the Tax Court of Canada came to a conclusion that no matter the level of trading within an RRSP, a business cannot have been carried on. A TFSA should be considered similar to an RRSP for this purpose. The IIAC questions how the average taxpayer is sufficiently able to determine whether they have carried on a business within their TFSA. The IIAC has asked CRA a number of times since May 2013 to provide guidelines for taxpayers to reference in this regard.

Even more difficult would be for a TFSA issuer/trustee to monitor the trading activity within client TFSAs to be able to come to a factual conclusion on this issue. Technical Interpretation 2011-040239 provided comfort to TFSA issuers that this would not be necessary. That is, it provided comfort that CRA would not be looking to issuers for the tax liability of a registered plan where funds had been distributed without the issuer first obtaining a clearance certificate from CRA. Although it dealt with RRSPs, there is no policy reason preventing this Technical Interpretation from applying equally in the context of TFSAs. The Technical Interpretation provided as follows:

> "Based on a literal interpretation of subsection 159(2) and the definition of "legal representative" in subsection 248(1), the trustee of an RRSP is required, before distribution of the property of the trust, to obtain a clearance certificate, certifying that all amounts for which the annuitant is liable under the Act have been paid or security for the payment thereof has been provided. However, it is recognized that such an interpretation would create economic havoc and unreasonable delays in the distribution of amounts out of RRSPs. The courts would very likely take a contextual and purposive approach to interpreting those provisions; see Canada Trustco Mortgage Co. v. The Queen, [2005] 5 C.T.C. 215, 2005 DTC 5523 (S.C.C), and find that the provisions do not apply to such broad circumstances.

> The existence of an administrative policy providing that subsection 159(2) would only be applied to a trustee of an RRSP in circumstances where the beneficiary was a non-resident would greatly reduce the administrative burden … in the absence of such an administrative policy, the provisions of subsection 159(2) and (3) do not generally apply as against the trustee of an RRSP."

Note that in Technical Interpretation 2011-040553, issued within days of the above-noted Technical Interpretation, CRA merely provided the literal/legal response to the question as to whether a TFSA issuer could be liable for the tax liability of a TFSA trust, without providing the assurance that subsection 159(2) would not generally be used in this context.

As such, the IIAC requests easily followed guidelines from CRA that TFSA holders can follow when placing trades within TFSAs so that they are not considered to be carrying on a business in the view of CRA.

In addition, the IIAC requests comfort that TFSA trustees will not be liable for any shortfall in taxes should funds within a TFSA be insufficient to cover off any tax liability arising by virtue of a TFSA being found to have carried on a business (in some cases, the TFSA could have been closed by the time the assessment from CRA is issued).

This comfort could be achieved either through legislative amendment, or published CRA administrative policy. The IIAC's view is that a similar issue was recognized when the Prohibited Investment Rules were implemented. That is, the Department of Finance recognized the difficulty that registered plan issuers would face in identifying when a property held within a registered plan was prohibited. As such, the penalty taxes involving Prohibited Investments fall to the annuitant/holder of a registered plan, and there is no expectation that issuers will be identifying and reporting Prohibited Investments. The IIAC has concerns that without such comfort, TFSA issuers may hesitate to continue offering TFSAs, or such issuers may require CRA clearance certificates before transferring or distributing funds from such TFSAs.

(ii) Borrowing within a TFSA

A TFSA may inadvertently be placed into a brief overdraft position for a number of reasons. We have identified some of such scenarios below.

- Settlement Mismatch: Accounts may go into a debit position because trade settlement dates may not match precisely.
- NSF Cheque or Debit Bank NSF: A TFSA Holder may inadvertently write an NSF cheque for a TFSA contribution and purchase, or there may be an NSF Debit. The cheque would go NSF, the investment would have been purchased and the account would go into a debit position until the NSF cheque was rectified.

- Portfolio Rebalancing: There may be an automatic portfolio rebalancing where a client is using a particular asset allocation strategy. The system performing the rebalancing may cause a brief overdraft where rounding occurs.
- Non-Negotiable Stock Certificate: A TFSA holder may deposit a physical stock certificate. The holder later decides to sell the shares, and withdraws the proceeds from the TFSA. For various reasons, the financial institution is later informed the certificate was invalid and must cancel the sale.
- Trading Error: A financial institution may inadvertently purchase a larger quantity of an investment than instructed by the client.
- NSF Withdrawal: A withdrawal may be processed before the settlement of a sale.
- Fees: Accounts may go into debit balances due to administrative fees being assessed before a trade settles to cover the fees.

The IIAC's view is that the tax consequences of TFSA deregistration due to a temporary inadvertent overdraft are overly harsh. The unregistered trust is subject to tax in all subsequent years – not merely the year in which the overdraft occurred. In addition, if the funds are subsequently transferred to a TFSA issued by another financial institution before the issue is discovered, it is unclear how such transfer is to be treated for tax purposes. For instance, if it is to be treated as a TFSA contribution, the holder may not have sufficient TFSA contribution room should the account value increase between the time of deregistration and the transfer date.

The IIAC requests relief for its clients from these resulting tax consequences for unplanned overdraft situations.

We are concerned on behalf of our members' clients that the uncertainty surrounding when a business is carried on in a registered plan will cause such clients to be liable for taxes for trading more frequently in securities than CRA may consider appropriate. We are looking for legislative or broad-based administrative relief for the foregoing situation, as well as in the case of brief and small overdrafts. Finally, we would like certainty that trustees or issuers will not be held liable for taxes of underlying TFSA holders. The IIAC looks forward to reviewing these issues with both of you in the interests of avoiding inappropriate outcomes for honest taxpayers and our members that serve them. We will call shortly to see what time may be convenient for you to discuss the matters raised here.

Yours sincerely,

Ms. Alex McLean <alexandra.maclean@fin.gc.ca>
M. Guy Bigonesse <guy.bigonesse@cra-arc.gc.ca>

IIACACCVM
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
Director, Special Projects
416.687.5488/bamsden@iiac.ca

May 7, 2013

Mr. Michael Chun
Manager, ATP Projects Section
International and Large Business Directorate
Canada Revenue Agency (CRA)
344 Slater Street, 5th Floor
Ottawa, ON K1A 0L5
Tel: 613-957-7289/899-8944/Fax: 613-957-1682
E-mail: michael.chun@cra-arc.gc.ca

Re: Request for Meeting on Tax-Free Savings Account (TFSA) Issue

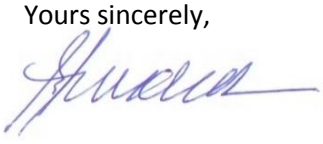
The Investment Industry Association of Canada (the IIAC) would like to request a meeting with you to discuss CRA enquiries regarding certain client TFSAs administered by our investment dealer members.

As the national association of investment dealer firms regulated by the Investment Industry Regulatory Organization of Canada (IIROC), the IIAC represents its 170 member firms on securities, tax and other public policy matters to improve the savings-to-investment process. To this end, the IIAC has worked with the Department of Finance and CRA, since TFSAs were announced in 2008, to deliver TFSAs in accordance with the law, including as amended in 2009. Recently, however, some member firms have noted that the CRA is looking into – as far back as the 2009 tax year – a number of clients' TFSAs that have "large" balances or have exhibited frequent trading. As this now seems to be more of a targeted than random enquiry, we would like to discuss this matter with the CRA so that our members can properly deliver the TFSA program to clients and appropriately manage risk.

As you know, TFSAs can experience strong growth for a number of reasons, including a transfer from a deceased spouse's TFSA or exceptional investment returns from high-risk securities. In many of these latter cases, investors also would have experienced losses on investments.

Given the CRA's commitment to provide taxpayers with complete, accurate, clear and timely information, and to the extent the CRA has a concern that could impact thousands of TFSA holders and the firms that serve these investors, we would like to meet with you and other CRA staff to understand better the background for the CRA's activity, CRA concerns and the implications both for our members' clients and our members' involvement in the TFSA program. I will call shortly to arrange a meeting at the CRA's earliest convenience so our members' customers and member firms can meet CRA expectations with respect to tax law.

Yours sincerely,



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
Director, Special Projects
416.687.5488/bamsden@iiac.ca

May 23, 2013

Mr. Michael Chun
Manager, ATP Projects Section
International and Large Business Directorate
Canada Revenue Agency (CRA)
344 Slater Street, 5th Floor
Ottawa, ON K1A 0L5
Tel: 613-957-7289/899-8944/Fax: 613-957-1682
E-mail: michael.chun@cra-arc.gc.ca

Dear Michael:

Re: Questions with Respect to Tax-Free Savings Account (TFSA) Issues

Further to our May 7th letter, we had hoped for the opportunity to discuss our proposed agenda topics with CRA staff to be able to appreciate better the CRA's concerns with TFSAs as we believe that the queries we have are largely factual and may easily have been addressed verbally. As requested, we are providing the requested list of questions, however, we are almost certain to have further requests in the future, in addition to any that may arise from responses the CRA provides.

The issues under discussion may be particularly complicated because of the agency relationship between trustees and dealers, and the relationship of both custodians and dealers with the same clients. As this may have some bearing on the matters at hand, we would be pleased to elaborate on this relationship and explain some of the particular challenges that parties in the TFSA delivery chain are facing or will encounter.

To move forward as quickly as possible, as our members are already facing both investor concerns (for example, in the case of clients wanting to withdraw money or transfer accounts) and billing by a number of custodians for related work, we would like to meet with you and your colleagues once you have had a chance to review the questions. The purpose would be to ensure our questions are sufficiently defined and to obtain at least the CRA's preliminary responses to each, if only to say certain of the items will require more time to respond to, even at a high level.

We look forward to speaking with you soon.

.

Yours sincerely,

Questions

1. What is/are the CRA's specific issue(s) of concern that has/have led directly to, we understand, the mailing of multiple proposals and assessments to trustees with respect to TFSAs (for example, that they are carrying on business, borrowing on margin, valuation-related, etc.)?

2. TFSA issuers have consistently worked on a collaborative basis with the CRA, and would like to continue this process. Please advise if the CRA has other concerns with how TFSAs are being used, and how TFSA issuers can address such concerns.

3. Has the CRA advised TFSA trustees or administrators of specific broader concerns it has identified with TFSAs in any tax alerts, guidance, consultations or practitioner forums?

4. Since IT-479R, Transactions in Securities, was issued in 1984, there have been significant changes in the financial marketplace including major drops in interest rates, advances in technology allowing for self-service options, and greater taxpayer financial literacy, which has meant that more people buy and sell more frequently from a wider range of investments in the capital markets than before. We recognize that any CRA decision on whether or not a business has been carried on will be based on the facts of a particular taxpayer situation, however, is there information available currently for Canadian taxpayers that would speak to the risks, from a tax perspective, that frequent trading, investment in non-dividend-paying securities, etc. could lead to? We feel a need for clients to have access to plain-language guidance on what is being considered by the CRA to be carrying on business. Can you assist in this regard?

5. To be better prepared for client questions, what are all the practices possible for different situations where a TFSA has been re-assessed for carrying on business (e.g., remove an asset(s))? What type of reporting is required, and would losses be deductible? What is the consequence to a TFSA of borrowing on margin?

6. What is the CRA doing to ensure consistent treatment of TFSA holders with similar fact patterns across the country?

7. How could clearance certificates or other mechanisms be used to allow the transfer of or access to TFSA assets by TFSA holders?

8. What process will the CRA follow to collect payment of assessments where the TFSA/trust assets are insufficient to satisfy the liability?

IIACACCVM
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 Amsden
Director, Special Projects
416.687.5488/bamsden@iiac.ca

July 18, 2013

Ms. Alexandra MacLean
Acting Director, Tax Legislation Division
Finance Canada
140 O'Connor St.
Ottawa, ON K1A 0G5
Tel: (613) 995-0405/Fax: (613) 947-1677
E-mail: alexandra.maclean@fin.gc.ca

Dear Alex:

Re: Request to Amend *Income Tax Act* to Ensure Tax Liability Borne Appropriately

Thank you very much for our teleconference meeting on June 3. As you know, the IIAC is the national association of investment dealer firms regulated by the Investment Industry Regulatory Organization of Canada (IIROC). The IIAC represents its 170 member firms on securities, tax and other public policy matters to improve the savings-to-investment process. To this end, the IIAC has worked extensively with the Department of Finance and Canada Revenue Agency (CRA) on registered plan issues so that our members can properly deliver federal tax savings programs to clients while managing the related costs and risks. Our members help millions of Canadians meet their investment objectives and these clients have invested with IIROC-regulated dealers:

- $280 billion in registered retirement savings plans (RRSPs);
- Over $65 billion in registered retirement income funds (RRIFs);
- $5 billion in registered education savings plans (RESPs); and
- $13 billion in tax-free savings accounts (TFSAs).

Our members strongly support the government's efforts to ensure that registered savings programs are not abused and that all taxpayers pay their fair share of taxes. For a number of reasons, the risks to our members in delivering these tax-advantaged programs have increased, we believe substantially, and for this reason we are writing to you.

Request

We are asking the Department of Finance to introduce legislative amendments to the *Income Tax Act* (ITA) to ensure that liability for taxes where a registered plan either holds a non-qualified investment or carries on business remains, as it should, with either the registered plan or with the annuitant or holder

of any registered plan, as is generally the case in ITA Part XI.01 – Taxes in respect of RRIFs, RRSPs, and TFSAs. In Part XI.01, the only instance when an issuer of a registered plan is liable for penalty taxes otherwise assessed on the holder/annuitant or the registered plan is in the limited circumstances where the issuer extended an advantage to the holder or annuitant [see ITA subsection 207.05(3)].

In the interim, we request a letter of comfort in this regard, given both the amount at risk for our members and their desire not to impede the smooth functioning of these programs for Canadians.

Background

As you know, securities trades in registered accounts are directed by the accounts' annuitants or holders; our member broker-dealers execute their clients' instructions. Not knowing all the facts and circumstances surrounding their clients' affairs, the brokers and the account trustees cannot make a determination as to whether a particular account may be carrying on business. Consequently, any tax liability should remain with the account and the annuitant/holder client.

That said, there have been significant developments in the financial marketplace over the last 30 years that have a bearing on our concern. These include:

1. A significant drop in interest rates necessitating those saving for retirement to move from deposit-type financial products towards more capital market offerings;
2. A major change in the philosophy and practices surrounding workplace retirement benefits due not only to interest rates, but also to the treatment of pension surpluses and employee preferences, leading to a transition from defined benefit plans to ones where risk is shared with or borne by the employee;
3. The significant increase in RRSP contribution limits and introduction of new tax-advantaged savings plans;
4. Advances in technology allowing financial institutions to meet client requests for self-service options; and
5. Greater financial literacy.

Two major results of these developments, since the 1984 publication of IT-479R, Transactions in Securities, are:

1. A much larger proportion of Canadians buy and sell securities more frequently from among a wider range of investments in the capital markets than ever before, increasingly through online means.

2. Low interest rates and stagnant market returns are creating significant pressure for the development of new yield-enhancing investment options that can be hard to value.

These issues are similarly leading to significant changes in securities legislation that affect our members and add considerable challenges. The combination of compliance with securities and tax legislation has

led to a substantive increase in fixed costs for our members in not only absolute, but also relative terms. In the past six years, inflation grew by 12%. Over this same period, in contrast, our largest members' non-salary cost per dollar of revenue almost doubled to 21%. For smaller retail dealers (many of which are small businesses by the Statistics Canada definition), such costs have more than tripled to 39% – 61 cents of every revenue dollar. This has contributed to the fact that over 40% of IIROC dealer firms experienced operating losses in 2012. The outcome is that, while some smaller firms have opened since when the market crash began in earnest, 42 firms have merged with others, been acquired or closed down.

While we know that tax and securities law have different ends, the foregoing information is provided here to show that many of our members cannot absorb the losses that may arise should the CRA demand payment of taxes, which ought to be paid by a registered plan or by an annuitant or holder of a registered plan, from the plan's trustee that requires indemnification in agreements with our members. These indemnity clauses allow the trustee to reclaim any tax liability, which the CRA seeks with respect to a registered plan, from the broker-dealer through which the plan is offered. Moreover, there would be some consequential, although un-estimated, effect on Canada's capital markets, as well as on the choice and availability of registered plans to Canadian investors. The latter are issues that we believe should be of concern to the Department of Finance's Economic and Fiscal Policy, Economic Development and Corporate Finance, and Federal-Provincial Relations and Social Policy Branches.

Legislative References

There is a concern among our member firms that the CRA could take the position that pursuant to section 159 of the ITA, the trustee of a registered plan is jointly liable with the registered plan for taxes arising as a result of a registered plan earning income from a non-qualified investment, inadvertently purchasing a security for a short period of time on margin, or carrying on a business pursuant to subsection 159(1) of the ITA. The CRA discussed this issue in Technical Interpretation Number 2011-040553 (Liability of issuers of TFSAs, September 22, 2011) as follows:

> "A TSFA trust could be liable for tax under Part I on its taxable income pursuant to subsection 146.2(6) where at any time in the taxation year it carried on a business or held one or more properties that were non-qualified investments. With respect to the Part I tax pursuant to subsection 146.2(6), the Crown will look to the trustee for any outstanding liability of the trust pursuant to subsection 104(1). Reference to a trust is, generally, deemed to include a reference to a trustee having ownership or control of the property. As subsection 104(1) equates the trustee with a trust, any liability under the Act in respect of a trust becomes the liability of the trustee, for the purposes established in this subsection.
>
> The definition of "legal representative" of a taxpayer in subsection 248(1) includes a trustee administering, winding up, controlling or otherwise dealing in a representative or fiduciary capacity with the property that belongs or belonged to, or that is or was held for the benefit of, the taxpayer. Based on the definition, an issuer of a TFSA, governed by a trust, is considered to be the legal representative of the TFSA trust. Consequently, the issuer could be held liable for the Part I tax owing by the TFSA trust [of the taxpayer], not only pursuant to subsection 104(1), but also vicariously pursuant to subsection 159(1)."

In addition, where income was earned on a non-qualified investment prior to the repeal of subsection 207.1 of the ITA, our member broker-dealers are worried that the CRA could look to the trustee for collection of such taxes pursuant to subsection 207.2(2) of the ITA. There also is a concern that issuers will start requiring CRA clearance certificates prior to permitting assets to be transferred to a registered plan issued by a third-party carrier, which would lead to problems and additional workload for the registered plan annuitant or holder, the CRA and the broker-dealer. Additionally, a number of trustees have introduced a significant charge to plan sponsors where the CRA has sent an audit notification regarding a particular trust to the trustee and annuitant/holder to recoup the costs of the trustee's legal and administrative work.

This legal and administrative work then also will have to be undertaken by the plan sponsor, at a cost that should be borne by the taxpayer whose activity has occasioned CRA attention. At a time that the government speaks of red tape reduction, we hope that the Department of Finance will amend the legislation to avoid duplicative work and cost for trustees, plan sponsors (our members) and, importantly, taxpayers (our members' clients).

History

As discussed in our call, we thought it possible that the provisions relating to the Crown turning to the trustee for any outstanding liability of the trust under subsection 104(1), and holding the trustee jointly and severally liable according to subsection 159(1), may have arisen due to complex and large family, not-for-profit or other such trusts. Our industry understands the value of such provisions in such situations, where a "legal representative" is in fact often a lawyer and has direct and close responsibility for an individual trust. We have now confirmed that the predecessors to the two referenced subsections existed before 1950.

The first registered plan – the RRSP – was created in 1957 and we surmise that there may have been no exhaustive consideration of the differences between proportionally few, individually unique family/other trusts and the much more homogenous, often smaller and certainly much more numerous registered plan trusts, where in practice the trustee is not the typical "legal representative" described above. The trustees and our member broker-dealers make sure that the trust meets the ITA provisions by withholding appropriate tax, reporting as required, etc., but otherwise do not have the in-depth involvement that the trustee of a major family or other organization would have.

Nor do we believe that our members, trustees, or other financial institutions would have agreed to accept at that time unquantified liability for taxes on what has become millions of accounts, especially when the person for whom the trust was operated may have closed the account before the trustee and issuer/carrier receive a notice to pay the annuitant's/holder's tax debt in the event the annuitant/holder does not. Certainly, in the case of registered plans, compensation received is for account operation rather than customized services (which may attract liability) sought by family and other trusts.

Financial Impact of Proposal for Government

We believe that there should be no untoward financial impact on federal coffers from adopting our recommended solution, as the tax-advantaged programs were designed to serve law-abiding Canadian taxpayers and not to shift the tax burden of others onto those firms that provide a service, helping to reduce the likelihood of Canadians requiring social support from governments in their retirement years.

Conclusion

We would very much appreciate your earliest possible review of our request for the noted tax amendment and – extremely importantly for an interim period – a letter of comfort that our proposed amendment will be made. As you know, we have been making every effort to work with CRA officials and hope to hear from them shortly on a number of technical issues.

That said, we remain concerned that Canadian taxpayers, unaware of the implications of, for example, greater trading and investment in non-dividend-paying investments, remain unfairly at risk. We have asked the CRA to provide greater clarity to Canadian taxpayers via the CRA website or other methods as soon as possible on the CRA position of what constitutes carrying on a business. This is consistent with Part 6 of the CRA's *Taxpayer Bill of Rights*, which states: "You can expect us [CRA] to provide you with complete, accurate and timely information that will explain in plain language the laws and policies that apply to your situation, to help you get your entitlements and meet your obligations" *[emphasis added]*). 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 understand that work on updating the rule, as part of the CRA's 'folio' process, is not due to begin for some time. We hope that a plain-language clarification of the CRA's intentions can be completed sooner.

We know that there are many considerations in your review of the complex area of trusts and that there are other priority issues for the Department of Finance. Given the potential impact of a chill on the market, and for investors and issuers, I will call you shortly to discuss how we might best proceed on this matter of great importance to our members and, we believe, Canadian taxpayers.

Yours sincerely,

Cc: Jason Ward, Department of Finance
Michael Chun, CRA

IIACACCVM
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
Director, Special Projects
416.687.5488/bamsden@iiac.ca

November 22, 2013

Mr. Guy Bigonesse
Director, Aggressive Tax Planning Division
Canada Revenue Agency (CRA)
344 Slater Street
Ottawa, Ontario K1A 0L5
Tel.: 613-941-1537/Fax: 613-941-9673
E-mail: guy.bigonnesse@cra-arc.gc.ca

Dear Mr. Bigonesse:

Re: Request for Meeting with respect to Tax-Free Savings Accounts (TFSAs)

On May 7, 2013 and later this year, the Investment Industry Association of Canada (the IIAC) requested discussions with the CRA to discuss CRA enquiries regarding high-value client TFSAs, administered by our investment dealer members (related correspondence attached). TFSAs can experience apparently strong growth for a number of reasons, including exceptional investment returns from high-risk securities (which can often be followed by significant losses). Our members are concerned by two situations that we would like to discuss with you as soon as possible. These are:

1. ***Cases due to client trading patterns, where clients may not be aware of the rules associated with a "taxpayer's course of conduct indicat[ing] the carrying on of a business":*** As you know, the CRA's commitment to taxpayers is "Complete, accurate, clear, and timely information". Interpretation Bulletin IT-479R, published in 1984, predates significant changes in the number of taxpayers investing in capital markets, the products they can invest in and the trading technology available to them. We believe it is time for, at a minimum, a notice to taxpayers and tax advisors on trading activity that might come under CRA scrutiny.

2. ***A recent case where the CRA has sought re-imbursement of $155,000 in unpaid taxes from a registered plan trustee, which in turn demanded re-payment of this amount from, and under a contract with, its client investment dealer with respect to a taxpayer that has not been the dealer's client for more than two years:*** Assessing tax liabilities of a non-compliant taxpayer against compliant parties in the investment chain is, we believe, contrary to the spirit of the CRA's Taxpayer Bill of Rights. Such actions present exceptional risks for our dealer members and led earlier this year to refusals to transfer or disburse TFSA funds because of uncertainty regarding dealers' potential future unquantifiable tax liability. As you can appreciate, we must have this issue resolved, or find an interim solution that is workable for the CRA, Finance Canada if it would be helpful, investment dealers and the significant majority of taxpayers who are compliant, before tax season begins.

We have been regularly following up on this issue with your office, and appreciate ongoing efforts to obtain an answer to our questions. Most recently, we understand that it was determined that another part of the CRA needed to be involved in discussion as the issues are complex. Our members believe that maintaining the integrity of the tax system is very important, and in fact are key parts of delivering tax slips that enable the CRA to assess compliance with tax law. We believe, however, that while the technical issues are being resolved, the CRA has a responsibility neither to expose taxpayers to tax risks they may be unaware of nor to involve financial institutions that are compliant. As the calendar year-end – when many taxpayers review their finances and make decisions regarding their registered plan investments – is fast approaching, we will call shortly to arrange a meeting in the next two weeks to answer any questions you may have and discuss at least an interim solution.

Yours sincerely,

Cc: Michael Chun
Alexandra MacLean