IIACACCVM
INVESTMENT INDUSTRY ASSOCIATION OF CANADA
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January 15, 2018

Submitted via email to: **mandatorydisclosure@oecd.org**

Dr. Achim Pross
Head of the International Co-operation and Tax Administration Division
Centre for Tax Policy and Administration
Organization for Economic Co-operation and Development
2 rue André Pascal
75775, Paris, Cedex 16
France

Re: Investment Industry Association of Canada's response to the Draft OECD Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Offshore Structures

Dear Sirs and Mesdames:

The Investment Industry Association of Canada (the IIAC) represents 130 IIROC-regulated investment dealer member firms in the Canadian securities industry.[1] We appreciate the opportunity to provide comments on the Draft OECD Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Offshore Structures (the Disclosure Rules). The IIAC and its Members have been very supportive of and involved in the development of the Standard for Automatic Exchange of Financial Account Information in Tax Matters (CRS). We further support the policy goals of the Disclosure Rules as we recognize the importance of preventing tax evasion and money laundering.

Our comments are intended to further the goals of the Disclosure Rules by reducing the uncertainty in the draft rules as to how financial institutions can ensure compliance. While we are unable to provide in-depth commentary on the Disclosure Rules due to the limited time period available to comment, we would like to highlight certain high-level issues.

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[1] The IIAC is the national association representing the investment industry's position on securities regulation, public policy and industry issues on behalf of our 130 IIROC-regulated investment dealer members in the Canadian securities industry. These dealer firms are the key intermediaries in the Canadian capital markets, accounting for the vast majority of financial advisory services, securities trading and underwriting in the public and private markets for government and corporations. For more information visit, **http://www.iiac.ca**

The IIAC supports the recommendations outlined by the Business and Industry Advisory Committee to the OECD (BIAC) and AFME/UK Finance in their January 15, 2018 submissions.[2] In particular, we want to emphasize the importance of their recommendations that:

- an actual knowledge standard be applied; and
- a main purpose test be applied;

Actual Knowledge Standard Should be Applied:

- The proposed standard of "reasonable to conclude" in the CRS Avoidance Arrangements definition should be amended and replaced with an objective standard of actual knowledge. This would align with the standard required in the existing CRS 'Relationship Manager Inquiry'.

- More importantly, given the serious nature of a determination that an arrangement qualifies as a CRS Avoidance Arrangement it should be based on actual facts of which the Financial Institution (FI) has knowledge. We support BIAC's proposed restatement of the standard as "whether it is reasonable to conclude, based upon what the FI knows, whether the arrangement is an attempt to specifically avoid reporting under the CRS".[3]

Main Purpose Test Should be Applied:

- The threshold "has the effect of" in the CRS Avoidance Arrangement definition is overly broad. The IIAC supports the adoption of a "main purpose" or "dominant purpose" test to avoid capturing arrangements that were designed for valid (non-CRS avoidance) purposes. BIAC notes that the definition also includes the term "designed" which indicates a level of intent, however, "has the effect of" captures arrangements where there may not be intent to avoid CRS Reporting.

- We are concerned that normal course transfers of money from non-registered brokerage accounts (CRS Reportable) to registered retirement or savings accounts such as RSPs, RESPs, TFSAs (Canadian plans that are CRS Non-Reportable) could be captured as one of the Disclosure Rules hallmarks as a result of the "has the effect" threshold. The Commentary in the Disclosure Rules at paragraph 19 states that it would not capture a transfer in accordance with instructions from the client, but it would apply "if the bank, in its role as an investment manager, advised the customer to move the funds to another … account in order to escape CRS reporting". Without the main purpose test, an investment manager assisting with retirement preparedness who advises a client to transfer money from their non-registered brokerage account into their registered retirement account could potentially be included in the definition of a CRS Avoidance Arrangement as the

[2] AFME/UK Finance January 15, 2018 submission is available *Response to the Draft OECD Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Offshore Structures*; BIAC January 15, 2018 submission *Response to Public Discussion Draft: Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Offshore Structures*.

[3] See BIAC's January 15, 2018 submission *Response to Public Discussion Draft: Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Offshore Structures*.

transfer would "have the effect of" avoiding CRS reporting, even though that is not the intent or purpose of the advice.

- The Commentary at paragraph 14 states that an arrangement that results in *the same financial account information* being exchanged by the US under a FATCA IGA would not fall within the definition of a CRS Avoidance Arrangement. It is unclear how a FI would be able to determine that the *same financial account information* would be have been reported and exchanged after a transfer to the US occurred. For Canadian FIs this could be particularly problematic as many Canadian clients may have residences in the US and have reasons unrelated to CRS avoidance to transfer money to US accounts or other US FIs. The Disclosure Rules Commentary needs to be clarified to ensure that the transfer of money or assets from an IGA jurisdiction to the US would **not** be a CRS Avoidance Arrangement between a FI and its client, unless the main purpose was to avoid CRS reporting.

The IIAC further supports BIAC's recommendations that:

- penalty protection be provided for reporting FIs (not acting as product developers/promoters) when they make a good faith effort to develop and implement effective policies and procedures; and
- protection from legal actions initiated by clients whose transactions have been reported under the Disclosure Rules be provided for reporting FIs and other tax intermediaries acting in good faith.

We would also like to raise an additional concern regarding the reporting timeline requirements. Reporting is required within 15 working days of the CRS Avoidance Arrangement or Offshore Structure being made available for implementation or of the supply of the Relevant Services. Given the subjectivity of the requirements, the short reporting period imposes significant difficulties on FIs.

We appreciate the opportunity to provide you with these comments and would be pleased to discuss the Disclosure Rules further. If you have any questions with respect to the foregoing, we kindly ask that you contact the undersigned at **awalrath@iiac.ca** or 416-687-5472. Thank you.

Yours sincerely,

"Adrian Walrath"

Assistant Director
Investment Industry Association of Canada