

Tax Policy Branch
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Department of Finance
90 Elgin Street
Ottawa, Ontario
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August 30, 2016

Dear Madames/Sirs,

Department of Finance Legislative Proposals Relating to the Goods and Services Tax/Harmonized Sales Tax of July 22, 2016

We are writing in respect of the legislative proposals (the “Proposals”) relating to the Goods and Services Tax/Harmonized Sales Tax (“GST/HST”) released by your department on July 22, 2016. Our submissions below relate specifically to the amendments to the *Excise Tax Act* (the “ETA”) introducing the concept of a “master pension entity”; more particularly, we request that you consider:

- permitting units or shares of a master pension entity to be held indirectly by pension plans and not only directly; and
- permitting trusts in which pension plans have invested, other than master trusts that have elected to be tax exempt, to qualify as master pension entities.

British Columbia Investment Management Corporation (“bcIMC”), which was created in 1999 by the British Columbia Public Sector Pension Plans Act, currently manages over \$120 billion of capital on behalf of 34 clients within British Columbia’s public sector. bcIMC is the fourth largest fund manager in Canada and invests on behalf of BC’s public sector pensions plans, insurance and benefit funds, government bodies, publicly administered trust funds and government operating funds.

Indirect Ownership of Master Pension Entities

Under the Proposals, a deemed taxable supply can arise where an employer acquires a specified resource or uses an employer resource in respect of a master pension entity. The Proposals also provide relief by permitting pension entities to claim the pension plan rebate for GST/HST payable as a consequence of deemed and actual taxable supplies relating to master pension entities in which they have invested.

A master pension entity is defined under the Proposals as a either corporation described under paragraph 149(1)(o.2) of the *Income Tax Act* (the “ITA”) or a master trust as defined under

paragraph 149(1)(o.4) of the ITA, where shares or units of the master pension entity are owned by a pension entity. This definition requires that the pension entity own shares or units, as the case may be, directly in the master pension entity. The definition of master pension factor continues with the same scheme of requiring shares or units of the master pension entity be held directly by a pension entity.

Corporations described under paragraph 149(1)(o.2) of the ITA include real estate corporations, investment corporations and resource corporations (collectively “pension corporations”) that meet certain criteria, including ownership criteria. Pension corporations are commonly utilized by pension plans for commercial reasons as investment vehicles to hold, in corporate form, investments and real estate. The ITA provides for and contemplates that the shares of the capital stock of pension corporations may be held by one or more pension plans and prescribed persons described in *Income Tax Regulations* (“Regulation”) section 4802. Those prescribed persons include, among others, a trust or corporation established for workers compensation and a trust or corporation all of the shares of which are held by pension plans and/or other prescribed persons.

It is not uncommon for pension investments to be held through more than one tier of ownership for valid commercial and investment reasons. Pension plans may co-invest with other pension plans or other prescribed persons by pooling their capital through trusts or corporations, which may in turn invest in pension corporations. The scheme of paragraph 149(1)(o.2) of the ITA and Regulation 4802 contemplates such co-investment and co-ownership through more than one tier of ownership.

Since the Proposals are intended, in part, to be relieving in permitting pension plans to claim the pension rebate in respect of GST/HST paid by investment vehicles of pension plans, it would be consistent with this objective to extend the application of subsection 261.01(3) of the ITA and the definition of master pension entity to pension corporations in which pension entities hold shares either directly or indirectly through one or more prescribed persons described in Regulation 4802.

We suggest that the definition of master pension entity ought to extend to corporations described under paragraph 149(1)(o.2) of ITA in which pension entities hold shares either directly or through one or more persons described in Regulation 4802. We would submit that in such a circumstance, the appropriate allocation of the deemed GST/HST paid by a pension entity is addressed through the definition of master pension factor so as to ensure that the GST/HST claimed by investing pension plans is appropriately accounted for.

If the definition of master pension entity does not permit the pension plan rebate to take into account GST/HST paid by pension corporations in a tiered ownership structure nor those co-owned with other prescribed persons, the scheme of paragraph 149(1)(o.2) of ITA will be at odds with the definition of master pension entity. This would then put certain pension corporations, organized for valid commercial and investment reasons and in compliance with the ITA requirements, at a disadvantage to those owned directly by pension entities. This may then encourage seemingly unnecessary structuring and planning solely to ensure appropriate access to the pension plan rebate.

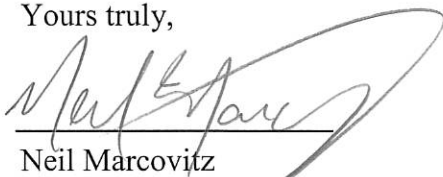
Master Trusts and Master Pension Entities

A master pension entity includes a master trust described under paragraph 149(1)(o.4) of the ITA. A master trust described under that paragraph is a trust whose beneficiaries consist of one or more deferred profit sharing plans, pooled registered pension plans or registered pension plans and that has elected to be qualified as a master trust under the ITA. Meeting the requirements of a master trust ensures that such trust is exempt from taxation under Part I of the ITA.

As mentioned above, pension plans may pool their investments in different legal vehicles including trusts. There are various reasons why a trust in which a pension plan has invested does not elect to be a master trust or may not seek to qualify as a master trust. For example, the trust may distribute all of its income annually and thereby not generally incur income tax liability, thereby obviating the need to elect or qualify as a master trust. Permitting pension entities to claim a rebate for their share of the GST/HST paid by a trust which holds assets of a plan, regardless of the tax status of such trust and regardless of the other participants in that trust, would be consistent with the policy and intent of the Proposals; namely, to permit pension plans to claim a rebate for the GST/HST costs they incur, indirectly, when investing through investment vehicles established for legitimate corporate, governance and investment reasons. As such, limiting master pension entities to only those trusts that qualify as master trusts would seem to be unduly restrictive.

We suggest that the definition of master pension entity be expanded to include any trust in which a pension entity holds units where the trust would be a master trust but for Regulation 4802(1.1)(e) and the filing of an election under paragraph 149(1)(o.4). Such a change would permit the other restrictions applicable to master trusts to remain in place, such as limiting the undertaking of the trust to the making of investments, while providing access to the pension rebate on a proportionate basis to pension entities investing in such trust.

Yours truly,



Neil Marcovitz
Vice President, Tax