



THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

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March 23, 2000

BY COURIER AND FAX ((613) 992-1158)

Mr. Karl Littler
Executive Assistant
Secretary of State, International Financial Institutions
House of Commons
Room 426-N, Centre Block
Ottawa, ON K1A 0A6

Dear Mr. Littler:

Re: Proposed Section 115.2 of the *Income Tax Act* (Canada) - Non-Resident Investment Funds that Engage Canadian Service Providers

We are writing further to this morning's telephone call to follow up on the status of this important issue arising from the proposed amendments to section 115.2 of the *Income Tax Act* as set out in the Notice of Ways and Means Motion tabled on December 7, 1999 (the "Draft Legislation"). Although we recognize that the Department of Finance (the "Department") has been occupied lately with the Budget, we are concerned because of urgent shifts in our industry which threaten to move certain jobs offshore. It is important that we try to bring to a conclusion the details of our agreements in our earlier conference call of December 21, 1999 to enable the bill to be printed with the appropriate changes.

This letter briefly summarizes our communications with you on this issue since early December, 1999 and then addresses certain issues which we understand that Messrs. Purdy and Green of the Tax Policy Branch recently raised.

We were very encouraged by our telephone call with you and officials from the Department on December 21, 1999 that the Department recognized the serious issues this Draft Legislation poses for our industry and expressed a willingness to work with our industry to resolve these issues. Our letters to the Department and our discussions with you expressed our gratitude that the Minister of Finance wishes to encourage the development and expansion of the Canadian investment service industry, but we are concerned that the Draft Legislation does not accomplish these goals for reasons that we and others have advised you. As a result of our concerns, you requested in our December 21, 1999 call that we provide to you proposed amendments to the Draft Legislation that *would* accomplish these goals and address our industry's key concerns.

We appreciated your willingness to address the concerns of our industry and were encouraged by your suggestion that we submit amendments to the Draft Legislation in this way.

We submitted our proposed amendments, as you requested, in our letter to you of January 7, 2000. We enclose an additional copy of these amendments for you. As you will note from the blacklined version of our proposed amendments (which is blacklined against section 115.2 in the Draft Legislation), we felt that only minor amendments were needed to proposed section 115.2 in order to address our concerns.

On February 21, 2000 our public relations consultants, Paul Benoit and Huw Williams of Impact Public Affairs, met with Jim Green and Lawrence Purdy to discuss our proposed amendments to section 115.2. We would like to thank Messrs. Purdy and Green for participating in the meeting with our public relations consultants and for giving us the opportunity to further discuss the serious issues facing the Canadian investment service industry as a result of proposed section 115.2.

It is our understanding that at the meeting, Messrs. Purdy and Green requested that we provide three additional pieces of information, which are set out below.

The 20% Requirement

The proposed rules in section 115.2 offer relief only to “qualified non-resident investment funds.” To be “qualified,” no more than 20% of the total value of any fund may be in the hands of one investor, unless that investor is itself a qualified non-resident investment fund. Messrs. Purdy and Green requested that we provide examples of where a foreign investor would own in excess of a 20% interest in a mutual fund and to comment on whether this ownership level happens frequently enough to justify re-examining this limit.

The nature of the offshore investment market is such that the proposed 20% requirement is unlikely to be satisfied in most cases and so in our view, this limit should be eliminated from the Draft Legislation. The following are examples of situations where this limit would not be met:

- the offshore investment fund market involves very large, sophisticated investors such as institutional investors, substantial pension funds and high net worth individuals, and any one of these types of investors commonly exceed this 20% limit because of the large size of their investment;
- many non-resident funds are specialty funds that have specific investment objectives or trading strategies that appeal to narrow groups of very large investors and, accordingly, the number of individual investors in a particular non-resident fund can be quite small;
- many non-resident funds would not meet this requirement in the start-up phase of the fund;
- the minimum investment requirements for many non-resident funds are substantial and, as a result, there are few potential investors in such funds; and

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- the non-resident fund market is volatile and investors frequently move from one fund to other; while this movement is beyond a fund's control, it could result in the fund failing to satisfy the 20% requirement.

Definition of "Qualified Investment"

Messrs. Purdy and Green also requested that we provide suggestions with regards to the definition of "qualified investments." As we discussed in our letter to you on January 7, 2000, we request that this definition be amended to substantially conform with the version of this definition contained in the draft legislation released by the Minister of Finance on September 10, 1999.

Priorities

Messrs. Purdy and Green requested that we prioritize the changes we requested to proposed section 115.2. As we discussed with you previously, we have only raised top priority issues with you regarding this legislation. We have suggested amendments in connection with only the most serious issues facing our industry as a result of proposed section 115.2.

We would be pleased to discuss these issues further with you at your earliest convenience.

Yours very truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

"ORIGINAL SIGNED BY T. HOCKIN"

Honourable Thomas A. Hockin, P.C.
President and Chief Executive Officer

Enclosure

cc: Lawrence Purdy, Chief, Corporation and International Tax Section, Tax Legislation Div.
Jim Green, Tax Policy Officer, Tax Legislation Div., Tax Policy Branch
Brian Ernewein, Director of Tax Legislation Div., Tax Policy Branch