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Re: Bill C-32: Exemption for Retirement Compensation Arrangements Top-Ups

Dear Mr. McGowan:

The Ontario Bar Association ("OBA") Pensions and Benefits Law Section welcomes the opportunity to make this submission in support of an exemption for (1) retirement compensation arrangements ("RCAs") that supplement or "top-up" registered pension plans ("Top-Up RCAs"), and (2) various other employment-related trusts (including RCAs as a category), from the new information reporting requirements regarding beneficial ownership included with the annual T3 Trust Income Tax and Information Return ("T3 Return").

The submission has been reviewed and endorsed by the Pensions and Benefits Law Section of the Canadian Bar Association ("CBA") and approved by the CBA's Policy Committee as a public statement by the contributing Sections.

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public and we deliver over 325 in-person and online professional development programs to an audience of over 20,000 lawyers, judges, students, and professors.

The CBA is a national association of 40,000 lawyers, Québec notaries, law teachers and students, with a mandate to promote improvements in the law and the administration of justice. The CBA's Pensions and

Benefits Law Section contributes to national policy, reviews developing pensions and benefits legislation and promotes harmonization.

Background

Bill C-32, *An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 3, 2022 and certain provisions of the budget tabled in Parliament on April 7, 2022*, which received royal assent on December 15, 2022, amended the reporting requirements for trusts with a year-end that occurs after December 30, 2023. Specifically, trustees that file a T3 Return must complete Schedule 15 to report beneficial ownership information (“Schedule 15 Reporting Requirements”), unless an exemption applies.

Enhanced trust reporting requirements were originally contemplated in the 2018 Budget, which announced that “[t]o improve the availability of beneficial ownership information, the Government proposes to introduce enhanced income tax reporting requirements for certain trusts to provide additional information on an annual basis”.¹ In support of this initiative, the Budget document explained that “[b]etter information on who owns which legal entities and arrangements in Canada—known as ‘beneficial ownership information’—will help authorities to effectively counter aggressive tax avoidance, tax evasion, money laundering and other criminal activities perpetrated through the misuse of corporate vehicles.”² This rationale was re-affirmed by the Canada Revenue Agency as recently as June 2024.³

Currently, subsection 150(1.2) of the *Income Tax Act* (Canada) (“ITA”) exempts trusts governed by, among other things, registered pension plans (“RPPs”). Presently, there is no exemption applicable to Top-Up RCAs nor for several other employment-related trusts.

Schedule 15 Reporting Requirements: Top-Up RCA Exemption

RPPs are exempt from the Schedule 15 Reporting Requirements based on the view that RPPs are highly regulated under the ITA and administrators already have an obligation to report detailed information to CRA in respect of the RPP. Since the risk of administrators and their beneficiaries not complying with the ITA and tax filing obligations is low, the CRA exempted RPPs from the additional administrative burden (and additional cost) associated with the Schedule 15 Reporting Requirements.

Employers often use Top-Up RCAs to provide supplemental retirement benefits to members of an underlying RPP in excess of tax limits (hence, the RPP and Top-Up RCAs being considered “integrated plans”). Thus, applying the Schedule 15 Reporting Requirements to a Top-up RCA could indirectly apply the Schedule 15 Reporting Requirements to the entire membership of the underlying RPP, which is inconsistent with the current legislative scheme to exempt RPPs from the Schedule 15 Reporting Requirements.

Additionally, Top-Up RCAs may have broad employee participation. Accordingly, it is not always clear whether all employees will qualify for participation in the Top-Up RCA from year to year (e.g., cases of variable compensation such that certain employees may not qualify for benefits under the Top-Up RCA each year). Given CRA’s approach to determining who is a beneficiary for the purposes of the Schedule 15 Reporting Requirements,⁴ all employees who are members of the underlying RPP and their respective

¹ Canada, Department of Finance, Equality + Growth: A Strong Middle Class, Ottawa, 2018, pp 69-70 [online](#).

² *Ibid.*

³ Canada, House of Commons, Standing Committee on Finance, *Evidence*, 44-1, No 146 (June 3, 2024) at 1255 (Ms. Cathy Hawara), [online](#).

⁴ 2023-0968111C6 -- STEP 2023—Q4—Trust reporting—Definition of beneficiary, Date: June 20, 2023: “In essence, a beneficiary of a trust is a person (other than a protector) who has a right to compel the trustee to properly enforce

spouses and beneficiaries are beneficiaries whose information may need to be reported in Schedule 15 as they would have either (i) a current right (as a member of the RCA); or (ii) a contingent right (as their participation in the Top-up RCA is contingent on their earnings reaching the threshold for RCA membership), to benefits under the Top-Up RCA. This application to Top-Up RCAs would again seem to be consistent with the rationale for the exemption that properly applies to RPPs.

Moreover, as for RPPs, applying the Schedule 15 Reporting Requirements to Top-Up RCAs does nothing to advance the stated policy rationale of those requirements, namely improved transparency of beneficial ownership. In this regard, the classes of individuals entitled to benefits under a Top-Up RCA are discernible based on the applicable plan terms. We are not aware of any widespread issue regarding transparency in relation to Top-Up RCA beneficiaries.

Notably, the ITA already recognizes that Top-Up RCAs should be treated similarly to RPPs. For instance, with respect to income splitting, clause 60.03(1)(b)(i)(A) of the ITA specifically contemplates Top-Up RCAs. Further, Top-Up RCAs are also separately recognized in subsection 207.5(1) of the ITA as follows:⁵

“Specified arrangement” means a retirement compensation arrangement of which the primary purpose is to provide annual or more frequent periodic retirement benefits that are paid

(a) As supplemental benefits provided out of or under

(i) A registered pension plan

(ii) A registered retirement savings plan

(iii) A deferred profit sharing plan,

(iv) A pooled registered pension plan, or

(v) Any combination of plans described in paragraphs (i) to (iv)...

Bill C-59, para 56(2)

Recommendation

We recommend that trusts under or governed by a Top-Up RCA (i.e., an RCA that provides supplemental benefits to an RPP) should be exempt from the Schedule 15 Reporting Requirements and added to subsection 150(1.2) of the ITA.

We propose the following language to implement this change:

Paragraph 150(1.2)(n) of the ITA is amended by striking out “or” at the end of subparagraph (x), by replacing “; or” at the end of subparagraph (xi) with “, or” and by adding the following after subparagraph (xi) which states:

(xii) a specified arrangement as defined in subsection 207.5(1); or

the terms of the trust, regardless of whether that person's right to any of the income or capital is immediate, future, contingent, absolute or conditional on the exercise of discretion by any person. ...In our view, a beneficiary, in the ordinary sense, would include a beneficiary whose interest is contingent.”

⁵ This definition was recently added to the ITA per Bill C-59, *An act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023*, in connection with determining “excluded contributions”.

Schedule 15 Reporting Requirements: Exemption for other employment-related trusts

In addition to the recommendation that Top-Up RCAs be exempt from the Schedule 15 Reporting Requirements, we also recommend that certain other employment-related trusts, (including RCAs as a category) be included in the exemptions under subsection 150(1.2) of the ITA. Subsection 150(1.2) currently exempts several employment-related trusts, including trusts prescribed to be master trusts, employee life and health trusts ("ELHTs"), and trusts governed by deferred profit sharing plans, pooled registered pension plans, registered pension plans, registered retirement income funds, registered retirement savings plans, employee profit sharing plans, and registered supplementary unemployment benefit plans.

Employment-related trusts contemplated by the ITA

However, several other employment-related trusts are explicitly contemplated under the ITA, which are not exempted under subsection 150(1.2). These include employee benefit plans, employee trusts, vacation pay trusts, foreign retirement arrangements, retirement compensation arrangements, and unregistered supplementary unemployment benefit plans.

In the case of employment-related trusts that are included in subsection 150(1.2), it seems that the exemption may be based, in part, on a view that there are sufficient safeguards in place to ensure that the risk of the funds or their beneficiaries not complying with their tax filing obligations is low, such that the administrative burden and additional cost of Schedule 15 Reporting Requirements would not result in a material improvement to the effectiveness of the tax system.

This can be illustrated by considering the example of a multi-employer ELHT, such as a sector-wide ELHT providing benefits to unionized trades workers. This type of ELHT may cover tens of thousands of union members, each of whom would be a beneficiary of the trust, along with their spouses and dependents, where applicable. In such cases, the administrative burden of imposing the Schedule 15 Reporting Requirements would be substantial, particularly considering that, often, the relevant Boards of Trustees would not otherwise have the necessary information to satisfy the requirement, such as the birthdays, addresses, or social insurance numbers of all beneficiaries.

However, even without the application of Schedule 15 Reporting Requirements, several rules are in place to provide CRA with details about the income and activity of the trust as well as the benefits provided to its beneficiaries, including that:

- the ELHT is required to file its own annual return, which will include details of its income and the full cost of benefits deducted in the year
- the ELHT is required to issue and file T4As in respect of any taxable benefits that it pays to beneficiaries (e.g. benefits caught under paragraph 6(1)(f)), and
- participating employers are required to report contributions that constitute taxable income (e.g. contributions captured under 6(1)(e.1)).

In our view, the same reasoning applies to each of the other employment-related trusts listed above that are contemplated under the ITA—both that the administrative burden of imposing Schedule 15 Reporting Requirements would be substantial *and* that given the reporting requirements already in place, the enhanced reporting would not result in a material improvement to the effectiveness of the tax system.

Other employment-related trusts

In addition to the foregoing, there are other employment-related trusts that are not explicitly contemplated by the ITA, but for which we would submit that the same general reasoning applies. In particular, this includes training funds, strike funds, and stabilization funds. Each of these types of funds are established by unions, or jointly by unions and employer associations, to serve particular labour-related purposes.

Training funds are used to establish training programs and/or training facilities in order to train apprentices in the skilled trades and/or to facilitate ongoing skills development for union members. The beneficiary class could be vast, extending to members of many locals of an International union, although only a small portion may participate in training in a given year. The training provided does not constitute a taxable benefit for members, meaning that the Boards of Trustees would otherwise be unlikely to have the requisite information to meet the Schedule 15 Reporting Requirements. In many cases, such trusts will be established and operated as NPOs, in which case they will file annual NPO returns and be exempted from Schedule 15 Reporting Requirements under subsection 150(1.2). However, in some cases, such funds are not set up as NPOs. In those cases, the Funds nevertheless file annual T3s and remit any applicable tax on their income.

Strike funds are established to provide income support to striking union members. Similar to training funds, the beneficiary class of a strike fund could be vast, although only a small portion of members will receive support in a given year, if at all. Also similar to training funds, the benefits provided to members are non-taxable. As with training funds, if they are not established and operated as NPOs, they file annual T3s and remit any applicable tax on their own income.

Finally, stabilization funds (sometimes also referred to as market recovery funds) are established to provide financial support to unionized employers in cases where support is necessary to facilitate their ability to compete with non-unionized employers operating in the same sector. In the case of stabilization funds, the beneficiary class would include all employers bound to collective agreements with the relevant union, although only a small number of employers may receive support in a given year. As with training and strike funds, if a stabilization fund is not established and operated as an NPO, then it files annual T3s and remits tax on its own income. Additionally, employers are obligated to report any amounts received in their income for the applicable year.

Recommendations

We recommend that employee benefit plans, employee trusts, vacation pay trusts, foreign retirement arrangements, retirement compensation arrangements⁶ and unregistered supplementary unemployment benefit plans, each contemplated under the ITA, be added to the exemptions in subsection 150(1.2). We also recommend that Finance adopt language that exempts training funds, strike funds, and stabilization funds, which are not contemplated under the ITA, from Schedule 15 Reporting Requirements.

Conclusion

The Section appreciates the opportunity to provide this submission. We would welcome the opportunity to arrange a call to discuss any of our comments and recommendations if that would be helpful.

6 This should not eclipse our position on top-up RCAs in particular. Should the Government elect not to exempt all RCAs, top-up RCAs should nevertheless be exempted for the reasons discussed in the first part of the submission above.