



Advancing Standards™

July 15, 2016

Tax Policy Branch
Department of Finance
90 Elgin Street
Ottawa, Ontario
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fin.CRS-NCD.fin@canada.ca

Dear Sirs / Mesdames:

Re: Legislative Proposals Relating to the Implementation of the Organization for Economic Co-Operation and Development ("OECD") Common Reporting Standard ("CRS")

Overview

The Portfolio Management Association of Canada ("**PMAC**"), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to participate in the Department of Finance (Canada) consultation on legislative proposals relating to the implementation of the OECD CRS (the "**Proposed Legislation**").

As background, PMAC represents investment management firms registered to do business in Canada as portfolio managers¹. PMAC members manage investment portfolios for private individuals, foundations, universities and pension plans and the association has grown steadily to comprise over [200 members](#) from across Canada².

General Comments

PMAC is generally in favour of requirements that improve or align Canada's capital markets practices with appropriate international standards. Overall, PMAC is supportive of the Proposed Legislation subject to the specific comments and concerns set out in further detail below.

¹ PMAC Members are primarily registered in the category of "portfolio manager" under provincial securities regulations. See National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("National Instrument 31-102"). Many PMAC Members are also registered as "investment fund managers" and "exempt market dealers".

² PMAC members include both large and small firms managing total assets in excess of \$1 trillion for institutional and private client portfolios. Many of PMAC's members are also registered as investment fund managers that offer a variety of investment fund products to institutional investors and private clients. PMAC's mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by our members. For more information about PMAC and our mandate, please visit our website at: <http://www.portfoliomanagement.org/>.

“Financial Account” definition and implications for portfolio managers

The OECD definition of “financial account” excludes debt and equity interests in investment entities that are investment entities only because they render advice to clients, act on behalf of clients, or manage portfolios for clients provided that the financial assets purchased or managed on behalf of the client are held in the name of the client with another financial institution. PMAC is pleased to see that the proposed Canadian definition of “financial account” in subparagraph 270(1)(a)(iii)³ of the *Income Tax Act* (Canada) will similarly exclude investment advisors and investment managers that do not maintain any financial accounts from the CRS reporting requirements:

“**financial account**” means an account maintained by a financial institution, and
(a) includes

- (i) A depository account,
- (ii) A custodial account,
- (iii) In the case of an investment entity, any equity or debt interest in the financial institution, except that it does not include any debt or equity interest in any entity that is an investment entity solely because it:
 - (A) renders investment advice to, and acts on behalf of, a customer for the purpose of investing, managing or administering financial assets deposited in the name of the customer with a financial institution other than such entity, or
 - (B) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering financial assets deposited in the name of the customer with a financial institution other than such entity⁴. [emphasis added]

We believe that this is the correct lens through which to view the role of portfolio managers in the financial services industry generally. This is because portfolio managers do not *maintain* any financial accounts since they do not hold custody over client accounts or assets.

PMAC is, however, concerned with subparagraph (a)(vi) of the definition of “financial account”:

An account that is a client name account maintained by a person or entity that is authorized under provincial legislation to engage in the business of dealing in securities or any financial instruments, or to provide portfolio management or investment advising services; [emphasis added]

This concept is not part of the OECD definition of financial account and we submit that it is not required in the definition of “financial account” as such accounts are already included in the definition of depository and custodial accounts.

We note that the wording is similar to wording in subsection 263(3) that expands the definition of financial account. This wording is also used in paragraph 265(7)(a) that, together with subsection 265(8), sets out who is responsible for due diligence under Part XVIII of the Act (“**FATCA**”) where multiple financial institutions may be involved in opening and maintaining a “client name account” for a customer. The term “client name account” is not defined in the Act. Pursuant to subsection 265(8), another financial institution is not required to perform due diligence on a “client name account” where the “dealer” (i.e., a financial institution described in paragraph 265(7)(a)) has already performed the due diligence and informed the other financial institution of whether the account is reportable. This reduces the need to perform due diligence on the same account holder twice: once by the dealer and once by the other financial institution. In the context of the business carried on by our members, portfolio managers

³ All references herein are to the *Income Tax Act* (Canada) (the “**Act**”)

⁴ Definition of “financial account” in Proposed Legislation.

would generally be the “dealers” and either registered securities dealers or trust companies would be the “other financial institution.”

However, Part XVIII of the Act does not provide any similar relief with respect to Part XVIII reporting obligations. This relief is instead provided to investment funds and investment fund dealers by way of the administrative guidance issued by the Canada Revenue Agency⁵ (“CRA”). As the CRA guidance does not discuss the typical arrangements between a portfolio manager that advises a client and the other financial institution that executes the financial transactions and has custody of the client’s financial assets, there currently is not a consistent approach to the allocation of reporting responsibilities between these two types of financial institutions.

PMAC is concerned that proposed subparagraph (a)(vi) of the definition of “financial account” may mean that the current confusion and multiplicity of reporting expectations and practices created by virtue of the similar concept under the FATCA rules with respect to reporting obligations of portfolio managers as described above will continue to exist under CRS.

PMAC has and continues to advocate for clarity and consistency that FATCA reporting responsibilities ought to rest with the financial institutions that “maintain” (i.e., custody) financial accounts. PMAC remains concerned that the CRA Guidance with respect to FATCA may not clearly and fully articulate with whom the financial account reporting responsibility lays and, in our view, it is vital for the industry to obtain clear guidance so that the CRA can ensure it receives reporting on financial accounts from an appropriate and single source. The confusion around the reporting responsibilities under FATCA for client name accounts has resulted in inefficiencies and a plurality of approaches that do not further the end goal of effective reporting. We have concerns that the CRA’s FATCA guidance in this respect may be adopted for CRS and create the same confusion and inefficiencies.

We are encouraged to see that debt and equity interests in portfolio managers have been correctly excluded from CRS due diligence and reporting obligations under part of the Proposed Legislation by way of subparagraph (a)(iii) of the definition of “financial account” and believe that similar logic should apply to clarify that portfolio managers do not, in fact, “maintain” client name accounts and should not be subject to the CRS reporting requirement in respect of such accounts.

Portfolio managers do not custody assets for their clients. Client name accounts are, in fact, “maintained” by a third party custodian (as noted above, either a registered securities dealer or a trust company) that has reporting responsibilities for these accounts by virtue of holding legal title to the assets in the client name accounts. A portfolio manager only has an account in so far as it opens a file to collect know-your client information, as required under securities law by virtue of being registered under National Instrument 31-103 – *Registration Requirements and Exemptions* and to monitor account holdings. The client’s account is the custodial account that is held and maintained by the custodian and which contains the assets.

PMAC holds the view that custodians are in the best position to provide reporting of this nature since custodians are able to track and report account balances, dividend, interest, gross proceeds, redemptions and other amounts for client accounts that they maintain. Additionally, custodians already undertake other tax reporting requirements (e.g. T3, T5, and T5008 reporting) and have the necessary human capital and infrastructure to do so. We believe that having custodians be the sole, clearly articulated responsible party for client name account reporting will reduce the regulatory burden and increase efficiency by leveraging the already existing tax reporting expertise that custodians possess.

⁵ See 5.12 to 5.14 of the CRA’s *Guidance on enhanced financial accounts information reporting* publication dated August 28, 2015.

That having been said, PMAC's members recognize the importance of CRS requirements and are agreeable to assist the custodian in identifying reportable accounts and to conduct diligence in accordance with CRS requirements. Accordingly, PMAC does not have any overall concerns with the due diligence responsibilities set out in subsections 277(4) and (5). Rather, PMAC is of the view that paragraph 277(5)(a) should be extended to include the reporting responsibilities in section 271.

We understand that the CRA intends to issue Guidance in respect of CRS later this quarter or next and PMAC intends to make submissions, to the extent necessary, requesting clarity that reporting on portfolio manager client name accounts is the responsibility of custodians.

Additional Comments

PMAC is pleased to see that an additional six months was provided to conduct due diligence on pre-existing accounts for CRS. We believe that this additional time will give financial institutions the time to implement accurate and expeditious processes by which they can comply with CRS requirements.

We believe that the ability for reporting financial institutions to rely on self-certification by individuals and entities, similar to the self-certification permitted under FATCA, is efficient and commendable. PMAC is also supportive of the absence of withholding obligations under the Proposed Legislation.

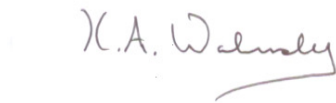
With respect to the definition of "excluded account", PMAC is of the view that tax-free savings accounts ("**TFSAs**") should be excluded accounts under that definition. Similar to other excluded accounts contemplated in the Proposed Legislation, TFSAs are federally-regulated savings products and so we feel should be excluded from the CRS reporting requirements as they are similarly excluded under FATCA.

While we are generally supportive of the Proposed Legislation, we are concerned about the possibility of the duplicative reporting and resultant inefficiencies and confusion that have arisen with client name accounts in the FATCA context also occurring under CRS. We therefore request clarity in the guidance to state that custodians are responsible for CRS reporting for such accounts as custodians are ideally placed and make the most sense to carry out tax reporting functions.

We would be pleased to set up a call to discuss these comments and concerns in more detail. If you have any questions regarding this submission, please do not hesitate to contact Katie Walmsley (kwalmsley@portfoliomanagement.org) at (416) 504-7018.

Yours truly;

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