VIA E-MAIL: Consultation-Legislation@fin.gc.ca

April 5, 2022

Department of Finance Canada
90 Elgin Street,
Ottawa, Ontario
K1A 0G5

Re: Department of Finance consultation on draft tax proposals

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The Portfolio Management Association of Canada (**PMAC**) represents over 300 investment management firm members that collectively manage $3 trillion in assets for pension plans, endowments, individual and group RSPs, and other investments across Canada.

In a submission dated February 25, 2022 to the Minister of Finance on the Pre-Budget Consultations 2022, we asked for a change to the tax regulations for pooled funds through an amendment to Regulation 4801 under the *Income Tax Act* (Canada) (the **Act**), to recognize that pooled funds are widely-held funds that should be afforded the same tax treatment as a Mutual Fund Trust (**MFT**), in order to achieve tax parity across investment funds and fairness to Canadian retirement savers.

As we noted in our previous submission, there is no public policy benefit to this differential treatment. While segregated funds were given MFT status in the 2017 federal budget, pooled funds were left out. Each year, as more and more Canadians enroll in pooled retirement and savings funds, the unfairness grows.

Trust reporting requirement exemption should include pooled funds

The lack of MFT status for pooled funds results in several unfair consequences compared to mutual funds and segregated funds. This inequity includes the impacts of the proposed trust beneficial ownership reporting requirements proposed in previous budgets and now being implemented. We ask that pooled funds be excluded from these requirements, similar to MFTs and segregated funds. We believe that pooled funds may have been unintentionally omitted from the list of excluded funds, as we see no public policy benefit to requiring beneficial ownership reporting for pooled funds but not for MFTs and segregated funds.

PMAC’S REQUESTS

1. **Exclude pooled funds from the trust beneficiary reporting requirements**

   There is no stated policy reason that pooled funds should not be excluded from the beneficial owner reporting requirements on the same basis as MFTs and segregated funds. The requirements were not intended to impact commercial investment fund products, and these entities do not pose a risk of tax avoidance, tax evasion, money laundering or other criminal activities cited as the policy purposes for the proposals. The costs and burden of the reporting requirements are significant.

2. **In the alternative, exempt pooled funds that are registered investments, and/or consist substantially of non-taxable entities, from the reporting requirements**

   These entities are exempt from tax and therefore do not present a risk of tax avoidance or evasion. Many such entities already provide significant information regarding their beneficiaries. In the case of funds established by employers to provide benefits to employees, the trusts may have thousands of beneficiaries. Collecting and reporting this information represents a tremendous burden for these entities and there is no clear policy reason for requiring the enhanced disclosure.

3. **Exempt Non-Qualifying Split Funds (defined below) from the beneficial ownership reporting requirements for those units that are listed on a stock exchange.**

   It will not be possible for a Non-Qualifying Split Fund to determine the beneficial ownership of its units that are listed on a designated stock exchange. For units of trusts traded on stock exchanges, the fund manager does not have visibility into the ultimate beneficial holders of the trust. These funds should be exempted from the reporting requirements.

Discussion

Pooled funds

If the look-through proposed in our earlier submission were adopted, the issue would be resolved, as many pooled funds would qualify as MFTs.

In the absence of a look-through solution, we ask that pooled funds be carved out of the trust beneficiary reporting requirements based on the same rationale applicable to MFTs and segregated funds. Pooled funds are, in essence, the same type of trust vehicle and there is no stated policy reason for distinguishing between them. These entities do not pose a risk of aggressive tax avoidance, tax evasion, money laundering and other criminal activities, the prevention of which are cited as the policy purposes of the proposals.

Our understanding is that the beneficial owner reporting requirements were not intended from a tax policy perspective to impact commercial investment fund products. As it stands, pooled funds have not been carved out of the reporting requirements, and, as such, would be required to report the identity of all trustees, beneficiaries, and settlors of the trust, as well as the identity of each person who has the ability to exert control over trustee decisions regarding the appointment of income or capital of the trust.

We also ask the Department of Finance to confirm that when record keepers hold units of pooled funds on behalf of the ultimate beneficiaries, such pooled funds are not required to report the information of ultimate beneficiaries, but only the information of record keepers.

There is a significant burden associated with compliance with the enhanced reporting, which would adversely impact the ease of doing business in Canada, and increase costs, to the detriment of the many Canadian savers that are invested pooled funds. Pooled fund managers will be required to build and implement systems to collect and report beneficial ownership information; they would also be subject to the proposed monetary penalties for the late filing of T3 returns.

Non-taxable entities

In the alternative to excluding all pooled funds, we suggest that pooled funds that are registered investments, and/or consist substantially of non-taxable entities, as set out in section 149(1) of the Act, (e.g., registered pension plans, foundations, and charities) be excluded from the reporting requirements. Given that they are tax-exempt, these entities do not present a risk of tax avoidance or tax evasion, nor do they pose a risk of money laundering and other criminal activities.

In some cases, the beneficiaries themselves may be exempt from the additional reporting (such as a trust whose beneficiaries are registered pension plans or registered charities). Many non-taxable entities already provide significant information regarding their beneficiaries, and in some cases some of the specific additional information required by the proposals would not be available. In the case of funds established by employers to provide benefits to employees, the trusts may have thousands of beneficiaries. Collecting and reporting this information represents a tremendous burden for these entities and would not serve the proposals' policy goals cited above.

ETFs

We would like to thank the Department of Finance for considering our requests of 2018 and 2020 to have ETFs excluded from the reporting requirements, because ETF managers do not have access to the beneficial ownership information of the ETFs they manage. We support the proposed exemption in new paragraph 150(1.2)(h) for trusts whose units are listed on a designated stock exchange.

However, as drafted, ETF managers will continue to experience compliance hurdles for certain ETFs. Specifically, ETFs: (a) where some units are listed on a designated stock exchange and others are not; and, (b) the ETF does not qualify as an MFT (**Non-Qualifying Split Funds**).

These Non-Qualifying Split Funds will not be exempted from the enhanced trust reporting rules because they cannot take advantage of (i) new paragraph 150(1.2)(f), because they do not qualify as MFTs, or (ii) proposed new paragraph 150(1.2)(h), because not all units are listed on a designated stock exchange.

It will not be possible for a Non-Qualifying Split Fund to determine the beneficial ownership of its units that are listed on a designated stock exchange. For units of trusts traded on stock exchanges, the fund manager does not have visibility into the ultimate beneficial holders of the trust. This is because ETF units are typically held by one registered holder, the Canadian Depository for Securities Limited (**CDS**). To invest in an ETF, an account with a broker-dealer would need to be opened. Thus, CDS intermediates between the fund manager and broker-dealers, who have the ultimate contractual relationship with the underlying beneficial owners of the ETF units.

We therefore request that the Department of Finance exempt Non-Qualifying Split Funds from the beneficial ownership reporting requirements for those units that are listed on a stock exchange.

CONCLUSION

Implementing the look-through recommendation will resolve long-standing issues in the Act that negatively impact savers and retirees. It is in Canadians' best interest for the government to enact measures that strengthen – not weaken – the competitiveness and fair tax treatment of pooled funds to ensure the adequacy of Canadians' retirement savings. We believe the look-through does just that.

In the absence of a look-through, pooled funds and ETFs that are Non-Qualifying Split Funds should be excluded from the proposed trust reporting requirements. The additional burden and cost of reporting for these investment funds is not commensurate with any stated policy objective and will result in costs being passed on to investors.

Thank you for the opportunity to participate in this Consultation. We would be pleased to continue the dialogue on this important issue and discuss the recommendations included in this submission in more detail.

If you have any questions regarding this submission, please do not hesitate to contact Katie Walmsley (kwalmsley@pmac.org) at (416) 560-9419 or Margaret Gunawan (Margaret.gunawan@blackrock.com) at (416) 643-4083.

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

"Katie Walmsley"

Katie Walmsley
President

"Margaret Gunawan"

Margaret Gunawan
Director,
Chair of Industry, Regulation & Tax Committee,

Managing Director – Head of Canada Legal & Compliance,
BlackRock Asset Management Canada Limited