



VIA EMAIL

December 7, 2023

Mr. Trevor McGowan
Associate Assistant Deputy Minister
Tax Policy Branch
Department of Finance Canada

Mr. Andrew Donelle
Senior Director, Deferred Income Plans
Tax Legislation Division
Department of Finance Canada

Dear Trevor & Andrew:

Re: Proposed Draft Legislation – “Designated Plan Trust”

Thank you very much for the past dialogue we have had with the Department of Finance regarding possible solutions to the unequitable tax treatment impacting various pooled fund vehicles widely used by employer sponsored pension plans, employer sponsored saving plans and for other institutional investment purposes.

As a reminder, PMAC represents over 320 asset management firm members that collectively manage \$3 trillion in assets for pension plans, endowments, individual and group RSPs, and other investments across Canada.

Please find attached an appendix with proposed draft legislation, which establishes a new concept of a “designated plan trust.” We believe the establishment of this new concept will provide a solution to the various issues raised in our February 2023 pre-budget submission and various other past submissions to the Department of Finance. As you know, these issues include (i) the inability of the pooled funds to merge on a tax-deferred basis, and (ii) the restriction of plan investments to the Designated Stock Exchange list.

We would be delighted to meet with you in the next few weeks to walk through the details of this proposal. In the meantime, if you have any questions regarding this submission, please do not hesitate to contact Katie Walmsley (kwalmsley@pmac.org) at (416) 560-9419 or Michael Friedman (Michael.friedman@mcmillan.ca).

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

“Katie Walmsley”

Katie Walmsley
President, PMAC

“Margaret Gunawan”

Margaret Gunawan
Board Director, PMAC

Managing Director – General Counsel,
Americas (ex-US) BlackRock Asset
Management Canada Limited

Draft Legislation in respect of “Designated Plan Trusts”

Summary Overview: The proposed draft legislation set out below establishes the new concept of a “designated plan trust”. The proposed amendments closely track the statutory/regulatory language that defines a “mutual fund trust” at subsections 132(6)-(7) and section 248 of the *Income Tax Act* (Canada) (the “ITA”) and *Income Tax Regulations* 4801 and 4803(1). The primary point of difference between the two sets of provisions is that, while a “mutual fund trust” must generally have (i) a class of units that is “qualified for distribution to the public”, and (ii) at least 150 different unitholders, a “designated plan trust” must (i) have at least one “sponsoring unitholder”, which is defined as a “licenced annuities provider” (as defined at subsections 147(1) and 248(1) of the ITA) that has (A) included units of the “designated plan trust” in one or more “segregated funds” (as defined in subsection 138.1(1) of the ITA), and (B) issued “segregated fund policies (as defined in paragraph 138.1(1)(a) of the ITA) with at least 150 beneficiaries in respect of those “segregated funds”. The “sponsoring unitholder(s)” of a “designated plan trust”, together with registered pension plans, must hold at least 80% of the units of the trust (note that this figure has been set at 80% since it is anticipated that annuity-holders of a sponsoring unitholder may want to invest in the “designated plan trust”, directly, via their registered investments, or else potentially as a result of employer matching of contributions).

We expect that the Canada Revenue Agency (the “CRA”) would amend the form of the T3 return to include a field asking whether a trust is a “designated plan trust” and, if so, require the trust to complete a schedule disclosing information required to verify compliance with the conditions to qualify as a “designated plan trust” (such as the identity of its sponsoring unitholder(s), the percentage of trust units that it holds, and the identity of the trustees).

If a trust is a “designated plan trust”:

- (a) units of the “designated plan trust” would become eligible for investment by RRSPs, RRIFs and other types of registered plans. This is accomplished through a minor addition to *Income Tax Regulation* 4900(1).
- (b) it may merge with a mutual fund trust or another “designated plan trust” on a tax-deferred basis. This is accomplished through a minor addition to subsection 132.2(1) of the ITA.
- (c) it will be exempt from alternative minimum tax. This is accomplished through a minor addition to section 127.55 of the ITA.
- (d) it will be exempt from the mark-to-market rules. This is accomplished through a minor addition to subsection 142.2(1) of the ITA.

None of the other attributes of mutual fund trusts will apply to designated plan trusts.

A. DEFINITION OF “DESIGNATED PLAN TRUST”

New Section 132.3

Meaning of designated plan trust

132.3(1) Subject to subsection (4), for the purposes of this section, a trust is a designated plan trust at any time if at that time

- (a) it was a unit trust resident in Canada,
- (b) its only undertaking was
 - (i) the investing of its funds in property (other than real property or an interest in real property or an immovable or a real right in an immovable),
 - (ii) the acquiring, holding, maintaining, improving, leasing or managing of any real property (or interest in real property) or of any immovable (or real right in immovables) that is capital property of the trust, or
 - (iii) any combination of the activities described in subparagraphs (i) and (ii), and
- (c) it complied with prescribed conditions.

Election to be designated plan trust

(2) Where a trust becomes a designated plan trust at any particular time before the 91st day after the end of its first taxation year, and the trust so elects in its return of income for that year, the trust is deemed to have been a designated plan trust from the beginning of that year until the particular time.

Retention of status as designated plan trust

(3) A trust is deemed to be a designated plan trust throughout a calendar year where

- (a) at any time in the year, the trust would, if this section were read without reference to this subsection, have ceased to be a designated plan trust
 - (i) because the condition described in paragraph 108(2)(a) ceased to be satisfied,
 - (ii) because of the application of paragraph (1)(c), or
 - (iii) because the trust ceased to exist;
- (b) the trust was a designated plan trust at the beginning of the year; and
- (c) the trust would, throughout the portion of the year throughout which it was in existence, have been a designated plan trust if
 - (i) in the case where the condition described in paragraph 108(2)(a) was satisfied at any time in the year, that condition were satisfied throughout the year,

(ii) subsection (1) were read without reference to paragraph (c) of that subsection, and

(iii) this section were read without reference to this subsection.

Idem

(4) Where, at any time, it can reasonably be considered that a trust, having regard to all the circumstances, including the terms and conditions of the units of the trust, was established or is maintained primarily for the benefit of non-resident persons, the trust shall be deemed not to be a designated plan trust after that time unless

(a) at that time, all or substantially all of its property consisted of property other than property that would be taxable Canadian property if the definition “taxable Canadian property” in subsection 248(1) were read without reference to paragraph (b) of that definition; or

(b) it has not issued any unit (other than a unit issued to a person as a payment, or in satisfaction of the person’s right to enforce payment, of an amount out of the trust’s income determined before the application of subsection 104(6), or out of the trust’s capital gains) of the trust before that time to a person who, after reasonable inquiry, it had reason to believe was non-resident.

Addition to Section 248

Definitions

248 (1) In this Act,

[...]

“designated plan trust” has the meaning assigned by subsection 132.3(1);

[...]

[remainder of definition and section unchanged]

New Regulation 4804

4804 (1) In applying at any time paragraph 132.3(1)(c) of the Act, the following are prescribed conditions in respect of a trust:

(a) at least one of the beneficiaries of the trust is a sponsoring unitholder;

(b) sponsoring unitholders and registered pension plans hold units of the trust with an aggregate fair market value equal to or greater than 80% of the total fair market value of all issued and outstanding units of the trust;

- (c) no beneficiary of the trust that is not a sponsoring unitholder holds units of the trust with a fair market value equal to or greater than 5% of the total fair market value of all issued and outstanding units of the trust; and
- (d) each of the trustees of the trust is a corporation licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as trustee.

New Regulation 4803(2)

(2) In this Part, “sponsoring unitholder” means, in respect of trust, a beneficiary of the trust that is a licensed annuities provider (as defined in subsection 147(1) of the Act) that

- (a) has included units of the trust in one or more specified groups of properties reported to a relevant authority as a “segregated fund” subject to subsection 138.1(1) of the Act; and
- (b) has issued segregated fund policies (as defined at paragraph 138.1(1)(a) of the Act) with at least 150 beneficiaries in respect of those segregated funds.

B. CONSEQUENCES OF BEING A “DESIGNATED PLAN TRUST”

(I) ELIGIBILITY FOR INVESTMENT BY REGISTERED ACCOUNTS

Addition to Income Tax Regulation 4900(1)

(1) For the purposes of paragraph (d) of the definition “qualified investment” in subsection 146(1) of the Act, paragraph (e) of the definition “qualified investment” in subsection 146.1(1) of the Act, paragraph (c) of the definition “qualified investment” in subsection 146.3(1) of the Act, paragraph (d) of the definition “qualified investment” in subsection 146.4(1) of the Act, paragraph (h) of the definition “qualified investment” in section 204 of the Act and paragraph (c) of the definition “qualified investment” in subsection 207.01(1) of the Act, each of the following investments is prescribed as a qualified investment for a plan trust at a particular time if at that time it is

[...]

(d) a unit of a mutual fund trust;

(d.1) a unit of a designated plan trust;

[...]

(II) ABILITY TO MERGE WITH A MUTUAL FUND TRUST ON A ROLLOVER BASIS

Addition to Subsection 132.2(1)

Definitions re qualifying exchange of mutual funds

132.2 (1) The following definitions apply in this section.

[...]

qualifying exchange means a transfer at any time (in this section referred to as the “transfer time”) if

(a) the transfer is a transfer of all or substantially all of the property (including an exchange of a unit of a mutual fund trust for another unit of that trust) of

(i) a mutual fund corporation (other than a SIFT wind-up corporation) to one or more mutual fund trusts, ~~or~~

(ii) a mutual fund trust to a mutual fund trust,

(iii) a designated plan trust to a mutual fund trust, or

(iv) a designated plan trust to a designated plan trust;

[remainder of definition and section unchanged]

(III) EXCLUSION FROM ALTERNATIVE MINIMUM TAX

Addition to Subsection 127.55

Application of s. 127.5

127.55 Section 127.5 does not apply in respect of

[...]

(f) a taxation year of a trust throughout which the trust is

(i) a related segregated fund trust (within the meaning assigned by paragraph 138.1(1)(a)),

(ii) a mutual fund trust,

(iii) a trust prescribed to be a master trust,~~or~~

(iv) an employee life and health trust,or

(v) a designated plan trust.

(IV) EXCLUSION FROM THE MARK-TO-MARKET RULES

Addition to Subsection 142.2(1)

Definitions

142.2 (1) In this section and sections 142.3 to 142.7,

[...]

“financial institution” at any time means

[...]

but does not include

(c) a corporation that is, at that time,

(i) an investment corporation,

(ii) a mortgage investment corporation,

- (iii) a mutual fund corporation, or
- (iv) a deposit insurance corporation (as defined in subsection 137.1(5)),
- (d) a trust that is a mutual fund trust or a designated plan trust at that time, nor
- (e) a prescribed person or partnership; (*institution financière*)