



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

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VIA FACSIMILE (613) 992-4450

March 29, 2004

Mr. Len Farber
General Director
TP – Assistant Deputy Minister's Office
Tax Policy Branch
Finance Canada
140 O'Connor Street
Ottawa, ON K1A 0G5
Canada

Dear Mr. Farber:

Re: Affiliated Persons-Trusts-Suspended Loss Rules

We are writing to request an amendment to the *Income Tax Act* (Canada) (the "ITA") in order to address an interpretation of the definition of "affiliated persons" taken by the Canada Revenue Agency ("CRA") that, we submit, leads to inappropriate results in the context of commercial trusts as well as in other situations involving trusts with a corporate trustee.

Subsection 40(3.3) of the ITA applies where a trust disposes of a particular capital property and, within a specified time period, the trust or a person affiliated with the trust acquires a substituted property. Where subsection 40(3.3) applies, subsection 40(3.4) provides that the trust's loss, if any, from the disposition is deemed to be nil and may be recognized at a later time contemplated by paragraph 40(3.4)(b).

The position that CRA has taken that causes difficulty is that two or more trusts with the same trustee are to be regarded as affiliated. The position was first taken in 2001 and we have made submissions to CRA requesting that they reconsider their position. While recognizing that their position leads to inappropriate results, CRA has declined to change it on the basis that an amendment to the law is necessary. We understand from discussions with CRA that officials of your department are aware of the position that CRA has taken.

The position taken by CRA leads to a significant number of problems including the following:

1. A single trust company can be the trustee of hundreds of commercial trusts, including mutual fund trusts. All of these trusts will be affiliated for the purposes of the suspended loss rules.
2. Where a trust company is a subsidiary of a financial institution, each of the trusts of which the trust company is a trustee would be affiliated with that financial institution so that capital losses realized by a trust would be affected by transactions that the financial institution carries out for its own account.
3. Investment and compliance problems are created for fund managers since, in applying the suspended loss rules, a manager would have to take into account transactions of other trusts about which the manager has no information.

Also, each of the few remaining trust companies in Canada is the trustee of thousands of testamentary trusts in addition to *inter vivos* trusts. Based on CRA's position, all of these trusts are affiliated.

We can think of no policy reason why two trusts with the same corporate trustee should be regarded as affiliated. We understand that CRA is of the same view. Accordingly, we respectfully request that the ITA be amended in order to provide that:

1. Two trusts would not be regarded as being affiliated by reason only of the fact that they have the same corporate trustee.
2. Two trusts would not be regarded as affiliated because the trustee of one trust is a corporation that is affiliated with a corporation that is the trustee of the second trust.
3. A trust with a corporate trustee would not be regarded as affiliated with the corporate trustee or any corporation affiliated with that corporate trustee.

We further request that such amendment be retroactive to April 26, 1995, the date on which the suspended loss rules applicable to affiliated persons became effective.

Members of our Taxation Working Group would be pleased to discuss this letter with you.

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Please call me if you have any questions with respect to this letter.

Yours very truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

John W. Murray
Vice President, Regulation & Corporate Affairs

cc. Rick Biscaro, (CRA), by fax (613) 957-2088.
Theresa Murphy, (CRA), by fax (613) 957-2088.