



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

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BY E-MAIL: Jeremy.Rudin@fin.gc.ca

July 3, 2008

Mr. Jeremy Rudin
Acting Assistant Deputy Minister
Department of Finance Canada
20th Floor, East Tower
L'Esplanade Laurier Building
140 O'Connor Street
Ottawa, Ontario
K1A 0G5

Dear Mr. Rudin:

**RE: Article 44(8) of Bill C-10 – Proposed amendments to paragraph 248(3) of the
*Income Tax Act (I.T.A.)***

The Investment Funds Institute of Canada (“IFIC”) would like to inform you of its concerns with regard to the proposed amendments to paragraph 248(3) of the *Income Tax Act* seeking to abolish the presumed trust for tax purposes from which a multitude of investment products and plans sold by trust companies doing business in Quebec. For this reason, we are attaching to the present letter an analysis of the impact of the proposed amendments prepared by Louis Rabeau, Esq., of the Mouvement Desjardins and presented to Ms. Michèle Desrosiers of the Department of Justice in March 2008. The IFIC subscribes to the opinions and recommendations set forth in this document.

RRSP and RRIF

The new paragraph 248(3)c) I.T.A. specifically targets the arrangements sold as RRSP trusts or RRIF trusts and has the effect of requiring trust companies doing business in Quebec to put into place, beginning in 2020, real trusts under the meaning of the Civil Code of Quebec (C.C.Q). The principal effects identified will be as follows:

1. in order to create a trust under the C.C.Q., the annuitant must transfer his contributions to a distinct legal estate. Consequently the annuitant will no longer be able to originate a mortgage loan on his RRSP as provided in paragraphs 146(7) and 146(10) I.T.A.;
2. the proposed amendments will bring about the end of the pan-Canadian RRSP and RRIF trusts. Trust companies doing business in Quebec will be required to maintain two types of systems: those intended for Quebec and those intended for the other provinces of Canada;

Mr. Jeremy Rudin, Acting Assistant Deputy Minister, Financial Sector Policy Branch
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3. the use of the C.C.Q. trust will cause uncertainty with regard to the cohabitation of rules applicable to the CRI and FRV of each of the provinces and the civil law trust;
4. to that must be added the uncertainty with regard to the interpretation that the courts will make of the essential elements of the C.C.Q. trust. Remember that in the Thibault decision¹, the Supreme Court concluded that the condition for the transfer of goods to a distinct estate had not been fulfilled due to the fact that the annuitant had the right to make withdrawals from his RRSP. Will the RRSP trust and the RRIF trust have to be immobilized in order to create trusts under civil law?

Other investment products and plans

As mentioned in the Mouvement Desjardins analysis, the proposed amendments to paragraph 248(3) I.T.A. also affect a multitude of investment products and plans that currently benefit from the presumed trust. Mutual funds and the new CELI trust are examples of this. The characteristics of these various investment products and plans are generally irreconcilable with the civil law trust, poorly adapted for use in a commercial context.

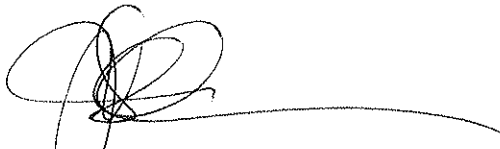
Recommendation

Given the difficulties of interpretation and application on the legal level that will result from the entry into force of the proposed amendments to paragraph 248(3) I.T.A. and the substantial costs that will be engendered by the modification of contracts and the necessary adaptation of trust company systems, IFIC recommends the maintenance of the presumed trust or some alternate amendments to the *Income Tax Act* which would have the same effect.

We are available for an interview should you wish to discuss this subject in greater detail.

Sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Joanne De Laurentiis
President & Chief Executive Officer

¹ *Bank of Nova Scotia v. Thibault*, [2004] 1 R.C.S. 758, 2004 CSC 29