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Robert Demeter
Director General - Tax Legislation Division
Department of Finance, Canada

Via email: Consultation-Legislation@fin.gc.ca

RE: Tax Executives Institute Comments on Bare Trust Reporting Rules

Dear Rob:

Tax Executives Institute, Inc. ("TEI") appreciates the opportunity to highlight our concerns related to the August 12, 2024, proposed amendments to section 150 of the Income Tax Act (the "Act"). While TEI appreciates the proposed amendments, further changes are needed to address the significant administrative and compliance burden associated with these proposed rules. As discussed during our call of July 30, 2024, TEI continues to have significant concerns and encourages the Department of Finance to increase exceptions to the rules, and work with the Canada Revenue Agency ("CRA") and stakeholders to streamline any required reporting.

About TEI

TEI was founded in 1944 to serve the professional needs of in-house tax professionals.[1] Today, the organization has 56 chapters across North and South America, Europe the Middle East & Africa, and Asia, including four chapters in Canada. Our over 6,000 members represent 2,800 of the world's leading companies, many of which either are resident or do business in Canada. Over 15% of TEI's membership comprises tax professionals who work for Canadian businesses in a variety of industries across the country. The following recommendations reflect the views of TEI as a whole but, more particularly, those of our Canadian constituency.

As the preeminent association of in-house tax professionals worldwide, TEI is dedicated to the development of sound tax policy, compliance with and uniform enforcement of tax laws, and minimization of administration and compliance costs to the mutual benefit of government and taxpayers. The diversity, professional training, and global viewpoints of our members enable TEI to bring a balanced and practical perspective to the compliance issues discussed herein.

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[1] TEI is organized under the Not-For-Profit Corporation Law of the State of New York. TEI is exempt from U.S. Federal Income Tax under section 501(c)(6) of the U.S. Internal Revenue Code of 1986.

TEI Comments

Proposed Amendments of August 12, 2024

The August 12, 2024 proposed amendments to the Act indicate to TEI that the Department of Finance has considered comments from stakeholders. We welcome these proposals, but note that even as drafted, the compliance and administrative burden remains high. Regrettably, the exceptions to reporting remain narrow and are unlikely to make a material change to the compliance efforts of our members.

TEI offers the following comments on the proposed changes:

1. Section 150(1.2): The exception for trusts holding assets with a total fair market value not exceeding $50,000 is a welcome addition. TEI suggests that this *de-minimis* threshold be raised to at least $1,000,000, or higher in the case of a public company, or subsidiary thereof..
2. Section 150(1.31): TEI appreciates the deemed trust exceptions in 150(1.31); however, we feel this could be expanded. The new proposed exemption at 150(1.31)(f) is very helpful for public corporations in the oil and gas industry; however the exemption should be expanded to include depreciable property. Resource companies often operate through joint ventures which generally include both *Canadian resource property* ("CRP") and associated depreciable property. TEI suggests 150(1.31)(f) be modified to "an arrangement that includes property that is Canadian resource property" or describe the relevant oil and gas capital cost allowance ("CCA") classes. An exemption for filing bare trust returns that exempts only CRP would not alleviate the reporting requirements unless the exemption is extended to depreciable property that is associated with that CRP.
3. Through the exceptions in 150(1.31), it appears that the Department of Finance recognizes that publicly traded companies and their subsidiary corporations and partnerships are at lower risk for unreported income or assets. TEI recommends a broad exception for all deemed trust arrangements where the beneficiaries are publicly traded companies or their subsidiary corporations or partnerships.
4. As stated in prior TEI submissions on Bare Trust reporting, it is common in real estate investments for the legal title of the property to be held in trust for the beneficial owner for commercial reasons. The income from the property is reported by each beneficial owner in its tax filings. When the nominee is a corporation, which is typically the case, this corporation will already have a filing requirement to file a T2 return. TEI recommends an exception for these arrangements. However, if reporting on these arrangements is still required, the

reporting should be available on a tax return that is already being filed, for example, the beneficiary information could be reported on the T2 return.

5. TEI recommends that section 150(1.2) be further amended to include a former FHSA or TFSA. Although there is generally an exemption from reporting additional information for registered plans, there are situations where the requirement would apply. A trusteed TFSA arrangement ceases to be a TFSA when the last holder of the arrangement dies and is required to file T3 trust returns to report income earned. Similarly, a trusteed FHSA would be required to file a T3 trust return starting from the end of the maximum participation period of the last holder or the end of the year following the year of the death of the last holder. Accordingly, these plans may become subject to the requirement to file a T3 return and provide additional information.

   A trustee of a TFSA or FHSA is required to be 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. As noted in CRA Views Document 2018-0738201I7, the Act imposes significant duties and obligations on TFSA trustees to maintain and exercise key decision-making powers and responsibilities over the trust. In light of these statutory duties and obligations, the central management and control of a TFSA trust will rest with, and be exercised by, the trustee in Canada and a TFSA trust will always be considered resident in Canada for purposes of the Act. Other registered plans are similarly considered by CRA to be resident in Canada for purposes of the Act. Further, the trustees or their agents are required to file annual information reporting for all TFSAs and FHSAs, including those with deceased holders, and file annual T3 income tax returns when required.

   Given the duties and obligations of TFSA and FHSA trustees to report information to CRA and file T3 returns when required, we do not believe the requirement to provide additional information is appropriate for TFSAs and FHSAs. It is very unlikely that these plans would be used for tax avoidance or evasion, money laundering and other criminal activities. Further, the requirement to provide additional information is not consistent with the rules for other registered plans.

   We recommend that subsection 150(1.2) be amended to include a former TFSA and FHSA, so that these trusts will be able to benefit from the exemptions from filing a return as provided in subsection 150(1.1) and will not be required to provide additional information required under Regulation 204.2

<u>Types of Arrangements</u>

TEI members have identified a vast array of common business relationships and arrangements that may constitute bare trusts across the industries in which our members' companies operate. Most

of these arrangements will remain subject to trust reporting under the August 12, 2024, proposals. While this list is not exhaustive, we wish to highlight the following, and ask that the Department of Finance consider expanding the exceptions where required to include these relationships:

1. Joint Ventures: Joint ventures are common in capital intensive industries where there are multiple participants in the development of a project. Joint ventures usually provide for a single participant to act on behalf of other participants as the operator may have expertise in certain types of developments. The operator typically holds legal title to the development property in trust for the other participants who beneficially own their proportionate interests in the joint venture property. In other words, the joint venture operator would likely be considered the bare trustee and may be required to file an annual T3 trust return. In these cases, income, expenses, and outlays are already reported by the beneficial owners of the property in their returns of income. There is no lack of transparency regarding ownership in these structures.

2. Partnerships: Both general and limited partnerships are common structures employed by TEI member companies. At law, a partnership is not considered a legal entity that is separate from its partners and generally cannot hold title or a registered interest in its name. TEI welcomes the changes in proposed section 150(1.31)(d) and recommends this be expanded to include instances where legal title to property is held by any partner for the benefit of the partnership, including a limited partner. Such an expansion would simplify the rules and minimize the number of taxpayers filing unnecessary trust returns.

3. Operatorship of Resources: Most provinces do not allow taxpayers to split legal ownership of resources between multiple parties. As such, many resource properties are legally owned by one party but beneficially owned by multiple other parties. The operator of such properties are typically legal owners and would likely be required to report the bare trust relationship under the new reporting rules. The tax consequences of the interests in these properties are already captured in the tax return of the beneficial owner.

4. Shareholder Registries: Shareholder registries may not always be accurate, as there may be a delay in obtaining up-to-date shareholder information. When dividends are paid, amounts not received by shareholders due to incorrect information are held in trust until such time they can be corrected. Furthermore, corporations may be required to hold funds from dividends in trust for lengthy periods to the extent that the correct recipient cannot be readily identified.

5. Internal Administrative Arrangements: Many internal administrative arrangements may create bare trust relationships. For example, it is common for companies to centralize treasury and banking functions with one entity in a group. Funds may be received or disbursed on behalf of other entities in the group, with funds temporarily held in trust

through this process. The tax consequences of the underlying transactions are reported on the tax returns (T2, T5013, etc) of the relevant entity.

Compliance & Administrative Burden

As we discussed in our telephone call, TEI member companies anticipate that compliance with these rules will be cumbersome, complex and costly for taxpayers. We have identified the following practical considerations:

1. Identification of bare trust arrangements: TEI members will need to first identify all bare trust arrangements within their organizations. Several TEI member companies anticipate they may have upward of 1,000 distinct bare trust arrangements within each of their organizations. While some arrangements may be active and readily identifiable, it is likely that many TEI member companies will have inactive or unintentional bare trusts relationships. This creates significant concerns over ensuring completeness.

2. Determination of appropriate filing level: Once a relationship is identified as a bare trust, a filer will also need to determine the appropriate level at which the bare trust is constituted. For example, a single joint venture agreement may cover the beneficial ownership and operation of several distinct assets. It will need to be determined whether the bare trust exists at the joint venture level or individual asset or property level within the joint venture.

3. Determining the name of the trust: If the arrangement has no specific identifiable name, a filer must determine a meaningful way to clearly identify the trust.

4. Tracking and administration: TEI member companies will need to develop a method to track all potential bare trust arrangements, determine if they are a trust, and if T3 filing is required. Companies will need to develop a system to ensure T3s are prepared, reviewed and filed in a timely manner. In addition, companies will need to track when trust relationships commence and cease, or if there are changes in the party that is required to file (i.e. changes in operatorship are common in some industries). Filers will also need to track the receipt of Notices of Assessment and Reassessment, CRA audit status and statute-barred dates.

5. Third Party Preparers: Should a TEI member engage a third party to prepare the returns, authorization and electronic filing forms will also be required for each trust.

6. My Business Account: TEI member companies will need to obtain and monitor access to My Business for each trust.

Overall, TEI member companies anticipate significant cost and time to fulfill this reporting requirement. In common business relationships and arrangements (with the exception of shareholder registries) this results in additional compliance that does not provide meaningful information. TEI

member companies will yet again stretch already tapped compliance resources to meet this ever-increasing burden.

TEI understands that the primary objectives of these new reporting requirements is to assist in identifying all parties to an arrangement, progress commitments under the Financial Action Task Force and to facilitate risk assessments of taxpayers with a beneficial interest in an arrangement who may not be reporting income in a tax return (T1, T2 or T5013). TEI maintains that any tax outcomes associated with the beneficial ownership interests in common business relationships and arrangements are already reported by member companies in their tax returns. Furthermore, TEI member companies are subject to additional Mandatory Disclosure reporting requirements and as large corporations are generally under continuous audit by the CRA. We submit that information about bare trust arrangements exists and can readily be obtained through the audit process. As such, TEI believes that additional bare trust reporting is not an efficient and effective use of either taxpayer or CRA resources.

Overarching Recommendations

TEI respectfully requests that Finance consider the following:

1. Work with TEI and the CRA on legislative amendments to further streamline and eliminate filing requirements given the significant administrative burden and the in duplicative tax filings for which the beneficial owner of property is already required to include the ownership and income information in their tax filings.

2. Absent further legislative amendments, continue to waive the requirement to file and work with TEI to clarify required information that could be kept on hand and required to be provided to CRA upon request or during the audit process.

TEI appreciates the opportunity to comment on these proposals and to contribute to the development of an administrative process that fulfills international commitments, while recognizing the challenges faced by large Canadian taxpayers. We look forward to further discussing our comments with you. Should you have any questions about TEI's submission, please do not hesitate to contact Sandy Shanks, Chair of TEI's Canadian Income Tax Committee, at 403-478-4473 or

sandy.shanks@conocophillips.com; or Benjamin R. Shreck of TEI's legal staff at 202-464-8353 or bshreck@tei.org.

Respectfully submitted,

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TAX EXECUTIVES INSTITUTE