

10 October 2017

VIA EMAIL: [fin.gsthst2017-tpstvh2017.fin@canada.ca](mailto:fin.gsthst2017-tpstvh2017.fin@canada.ca)

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

Dear Sirs/Madams:

**Re: September 8, 2017 Proposals for Comments concerning the GST/HST and Excise Duty Draft Legislative and Regulatory Proposals (“Proposals”)**

On September 8, 2017, the Department of Finance Canada (“Finance Canada”) released proposed amendments to the *Excise Tax Act* (“ETA”) consisting of new and previously released proposals. CPA Canada supports Finance Canada’s ongoing and continuing efforts to improve and refine the Goods and Services Tax/Harmonized Sales Tax (“GST/HST”) legislation and its associated regulations, and appreciates the opportunity to contribute to this through the public consultation process. Given the complexity and far-reaching implications of the proposed rules affecting limited partnerships, we recommend further consultations with stakeholders.

The Proposals raise a number of issues that are of concern for our members and the citizens and organizations we advise. We previously provided our comments in response to the Finance Canada release of July 22, 2016 in a submission dated September 27, 2016 and our comments specific to the proposed rules affecting “investment limited partnerships” (“ILPs”) in a submission dated November 30, 2016. We welcome the proposals relating to drop shipments which appear to have addressed concerns raised in our submission dated September 27, 2016. The comments below relate to the Proposals affecting ILPs.

**About CPA Canada**

CPA Canada is one of the largest and most respected national accounting organizations in the world, representing more than 210,000 Canadian chartered professional accountants (CPAs) at home and abroad. CPAs work in every sector of the economy. They are the business and accounting leaders that Canadian taxpayers count on to represent their interests with integrity and competence, and to help them comply with Canada’s complex tax laws. CPA Canada also works collaboratively with the Government of Canada, including the Canada Revenue Agency and Finance Canada, with a view to improving the tax system for all Canadians.



## **Investment Limited Partnerships**

It is important to note that some of the denominated ILPs, namely private equity and venture capital ILPs (“PE/VC ILPs”), operate quite differently from other investment vehicles such as mutual funds and segregated funds (“MFs/SFs”). In particular PE/VC ILPs generally:

- hold significant interests in their investments compared to considerably smaller percentage holdings by MFs/SFs;
- hold private investments compared to publicly available investments made by MFs/SFs;
- are more active in their oversight of the business activities of their portfolio companies and will often provide guidance on strategic direction compared to more passive investments by MFs/SFs;
- hold their investments for longer periods of time compared to MFs/SFs; and
- are capitalized by partners otherwise than through means that are publicly available or broadly distributed, unlike in the case of MFs/SFs, including not making them available to retail investors.

As such, these significant differences should be considered for purposes of amending the Proposals. PE/VC ILPs are true partnerships in every sense and distributions to their GPs are entirely consistent with the underlying policy rationale for why 272.1(1) was put into place. The Proposals as drafted will markedly impact the amount of capital available by PE/VC ILPs to invest in innovative and growing portfolio companies. In light of the significant differences in the types and activities of limited partnerships, we recommend that Finance Canada consider the application of the proposed rules as well as the coming into force provisions and the provisions of section 186 of the ETA to ensure the application is equitable.

### **Part 1. Expansion of the “selected listed financial institution” (“SLFI”) rules to include investment limited partnerships**

We generally agree with the tax policy rationale to extend the definition of “investment plans” to include ILPs and to extend the deemed permanent establishment rules to them for purpose of determining their status as SLFIs when they are promoted and represented to the public in competition with other investment vehicles such as mutual funds or segregated funds.

With consideration to the SLFI rules, many “manufacturers” of these various funds use a different general partner (GP) for each fund. The “manufacturer” may in fact be the true manager of the funds. In this case, it would be beneficial to allow flexibility in the rules to allow SLFI group filings where there are different GPs but one common third party manager or that the GPs are related entities.



### Coming into Force

We are concerned with the inequity created as a result of the differing coming into force provisions applicable to SLFI rules for ILPs. For nearly sixteen months, ILPs residing in participating provinces will pay GST/HST (or GST and QST) at higher rates than ILPs resident in non-participating provinces.

We recommend amending the coming into force provisions for the rules applicable to SLFIs to ILPs to permit the early adoption of these rules by electing ILPs to calendar year 2018 (as opposed to 2019 as currently drafted). The amendment to the coming into force provisions should allow for an ILP to elect to adopt the rules in respect of their 2018 fiscal year.

### **Part 2. ILP — proposed deemed supply by GP**

Proposed new subsection 272.1(8) dealing with supplies by a general partner to an investment limited partnership raises a number of concerns and areas that require clarification as follows:

#### Coming into Force

The new rule is proposed to apply to consideration payable on or after the announcement date of September 8, 2017 (“Announcement Date”). We recommend that Finance Canada review the coming into force provisions in light of the different types of and activities of ILPs.

#### Ensure no double taxation

We understand that many GP’s in a partnership structure delegate certain duties to a third party. To ensure there is no double taxation, we recommend that the rules clarify that the fair market value of the management and administrative duties of the GP do not include amounts:

- a. Relating to management and administrative duties delegated to a third party that is billing the ILP directly and which are taxable supplies made by the third party to the ILP;
- b. For which the GP compensation is reduced by any fees billed directly to portfolio company fees as contemplated in the LPA; and
- c. For which the GP bills directly to investors in respect of the management and administration of the investors investment in the ILP.

### **Part 3. ILP Residency Rules**

#### Non-resident ILPs rule

In our submission dated November 30, 2016, we outlined our concerns with the rules regarding the deeming rules for non-resident ILPs outlined in the July 22, 2016 Finance Canada release. We commend Finance Canada for taking into consideration the concerns and comments raised in respect of the non-resident deeming provisions and support the decision to remove these provisions from Proposals.



#### Issues with Residence of ILPs (Proposed subsection 132(6))

We request that Finance Canada consider changing the 95% test to a 90% test consistent with other de minimis thresholds within the ETA. In connection with this, we request that new “prescribed member” definition in the *Financial Services and Financial Institutions (GST/HST) Regulations* to be determined on a 10% test instead of a 5% test.

We recommend that the value of the GP’s interest in the ILP relating to the GP’s role (eg. in providing management and administrative duties) in the ILP be excluded from the determination of the percentage of the value of interest in the ILP held by members of the ILP.

We are also concerned about the effect of proposed subsection 272.1(8) on the general rule to determine the residence of a partnership in paragraph 132(1)(b) of the ETA. We question whether the GP can still be considered to have “management and control” of the partnership for purposes of the application of paragraph 132(1)(b). To confirm that the residence of the GP is still key in determining the residence of a partnership we recommend amendments be made to subsection 132(1)(b) to clarify that it applies notwithstanding subsection 272.1(8).

In addition, we are concerned that the proposed subsection 132(6) could be interpreted as conflicting with existing paragraph 132(1)(b) in determining the residency of an ILP for example in situations where the ILP has 95% of the value of its interests held by non-resident members but has a Canadian resident GP responsible for the management and control of the ILPs activities. We recommend this be clarified so that the ownership of the value of the interest threshold applies notwithstanding paragraph 132(1)(b).

#### **Part 4. Equity Section 186 equivalent rule.**

We have previously raised the issue of expanding the application of the section 186 holding company provisions to include partnerships in comparable situations (e.g. where the entity is engaged exclusively in commercial activities). From a policy perspective, it is understood that organizations involved in similar activities should effectively incur the same incidence of tax, regardless of the legal structure in which the activities are carried out. Therefore, to eliminate the potential inequity between partnerships and corporate entities engaged in similar activities, we recommend that section 186 be expanded to apply to partnerships (including ILPs) that have a controlling interest in an operating business engaged exclusively in commercial activities.

CPA Canada supports the efforts of Finance in coming up with workable solutions to determine the application of GST/HST to limited partnerships and we encourage continued consultations with stakeholders. We would be pleased to work with Finance in the ongoing development of new rules. We thank Finance for the opportunity to provide comments to the proposed legislative and regulatory amendments and we look forward to continued collaboration on efforts to improve and refine the GST/HST legislation.



Yours truly,

A handwritten signature in black ink, appearing to read "Sania".

Sania Ilahi  
Chair, Commodity Tax Committee  
Partner, Tax Services, Ernst & Young LLP

A handwritten signature in blue ink, appearing to read "Bruce Ball".

Bruce Ball, FCPA, FCA  
CPA Canada, Vice President, Taxation

Cc:

- CPA Canada Commodity Tax Committee (CTC)
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