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The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

December 11, 2012

Department of Finance Canada
Tax Policy Branch
140 O'Connor Street
Ottawa, ON K1A 0G5

Attention: Rainer Nowak

Dear Sirs/Mesdames: Re: GST/HST Policy Consultation

The Association of Canadian Pension Management (ACPM) is the informed voice of Canadian pension plan sponsors, administrators and their allied service providers. Established in 1976, the ACPM advocates for an effective and sustainable Canadian retirement income system through a non-profit organization supported by a growing membership and a team of volunteer experts. Our members are drawn from all aspects of the industry from one side of this country to the other. We represent over 300 pension plans consisting of more than 3 million plan members, with total assets under management in excess of $300 billion.

The ACPM promotes its vision for the development of a world- leading retirement income system in Canada by championing the following Guiding Principles:

- Clarity in legislation, regulations and retirement income arrangements;
- Balanced consideration of other stakeholders' interests; and
- Excellence in governance and administration

We appreciated the opportunity to meet with you and your team on June 28 in Toronto. We were pleased to learn that the Department is undertaking a comprehensive review of the application of the GST/HST to financial services, based on first principles, subject to the constraint that any changes be revenue neutral. As requested, this letter sets out our views on the application of the GST/HST to pension plans.

Policy Issues

Pension plans have attained a high profile in recent years. Governments, employers and plan members increasingly recognize the importance of pension plans in ensuring that older Canadians have sufficient income to live adequately in retirement. Government policies specifically encourage the adoption of pension plans, by allowing the deduction of pension plan contributions and the accrual of income within pension funds on a tax-deferred basis. At their heart, pension plans are reservoirs of capital

accumulated during a person's working life, which are consumed by the person (and taxed) in retirement.

Accordingly, pension plans are savings arrangements, and essentially represent deferred consumption. The GST/HST is a consumption tax. The application of the GST/HST to pension plans is inconsistent with that character. The GST/HST, like the income tax, should apply to the consumption that results from the payment of pensions to individuals. GST/HST should not apply to the pension plan itself.

Further, the application of the GST/HST goes against the stated government policy of encouraging retirement savings. It is inconsistent to provide the tax incentives to save while, at the same time, subjecting pension funds to the GST/HST.

The GST/HST rules need to apply in a fair way to a wide variety of circumstances, as pension plans are structured and invested in a wide variety of ways. These circumstances include:

- single (and affiliated) employer pension plans, where the employer is both the sponsor and administrator (fiduciary) of the plan
- multi-employer and jointly sponsored pension plans, where the board of trustees or other governing body is the administrator of the plan, and the employers have no administrative (fiduciary) obligations
- pension plans governed by insurance contracts, both fully insured and held in segregated funds
- master trusts, the sole beneficiaries of which are pension funds
- entities engaged in commercial activities, public sector entities and entities engaged in exempt activities

The current rules do not achieve this requirement.

One might argue that the rebate currently available under section 261.01 to pension plans should be increased to 100% of the tax paid by either the plan or the employer. This would encourage savings and be consistent with the favourable tax treatment afforded pension plans under the *Income Tax Act*. As well, this would put all plans on the same footing (i.e. those employers engaged in commercial activities and those that are engaged in exempt activities). Master Trust structures and other types of pension related plans (e.g. insurance contracts) could be deemed to be pension plans and therefore eligible for the 100% rebate. We recognize, however, that this would not be revenue neutral, particularly if savings plans other than pension plans are included.

Fixing the Existing Rules

We recognize that the application of the GST/HST to financial services generally and to pension plans in particular is a complex matter, which is exacerbated by the different provincial application of the GST/HST. As pension plans are currently viewed as an ultimate consumer of financial services, our greatest concern in any reform of the taxation of financial services is that the final GST/HST paid by pension plans might increase. In our view, the current regime can work, but needs changes that would reduce the burden placed on pension plans and apply on a more even-handed basis. We have raised

these issues with the Department in earlier correspondence. We reiterate them in this letter as the practical implications of the GST/HST for pension plans are significant. These issues are important if, notwithstanding our arguments earlier in this letter, the GST/HST continues to apply to pension plans.

1. Align more closely the data required for HST calculations and the data required for pension plan administration, such as: location of members, distinction between active and other members, and effective date of data. In particular, instead of making provincial allocations based on the residency of pension plan members, who can and do move, the allocation should be based on the location of employment (for active members) and the last location of employment by the relevant employer (for deferred vested members, retirees and their spouses). The principle for this argument is tax predictability – that an entity should be able to predict the tax outcomes of its activities. The entity can decide where to domicile its workplace, but has no control over where its retirees in particular decide to live, and yet this has tax consequences to the pension plan.

2. Exclude from the definition of SLFI those pension plans with 90% or more of their members in a single harmonized province, or in two or more harmonized provinces with rates within two percentage points of each other.

3. Simplify the rules for pension plans by doing away with the double tax that occurs when an employer makes an actual supply to the trust and is also deemed to make a supply of those same expenses at year end by deeming the actual supply to the plan to have been made for no consideration. In that way the employer would only have to report tax on the deemed supply and not on the actual supply.

4. Master Trusts, pension plans provided through insurance contracts and other entities that currently do not fall within the definition of investment plan, should not be treated as SLFIs, unless such entities elect to be treated as such.

5. Raise the threshold to be a “qualifying small investment plan” to $50,000, which would reduce significantly the number of small plans caught by the rules, but should not have a significant impact on tax revenues.

6. Require a pension plan that is not an SLFI to self-assess the provincial portion of the HST only where the acquisition is for consumption or use primarily in the HST provinces.

7. Allow pension plans that are not SLFIs to self-assess tax under 220.08, claim a rebate under section 261.31 and a rebate under section 261.01 all on the same return or, at the very least, for the same time period.

8. Provide guidance and clarification as follows:

   (a) provide guidance on how a pension plan that is not an SLFI is to calculate “the extent (expressed as a percentage) to which it acquires intangible property or services for consumption, use or supply in the participating province” under section 220.08;

(b) clarify whether the requirement to report deemed tax under 172.1(5) includes amounts that have been accrued but have not been paid or become due;

(c) provide guidance on documentation required to support "deemed tax" calculated by employers under subsections 172.1(5) through (7); and

(d) clarify the date for calculating the provincial attribution percentage for defined benefit plans as the current wording of paragraph (C) of the definition of "attribution point"[1] suggests a plan must undertake a costly actuarial study every year. The definition should be amended to eliminate this confusion as follows:

(C) if the investment plan is a pension entity of a defined benefits pension plan, the last day in the particular fiscal year and ***any of*** *the three preceding fiscal years of the investment plan for which calculations of the actuarial liabilities of the plan have been completed or, if no such day exists, September 30 of the particular fiscal year,*

9. Allow employers to elect to forgo claiming input tax credits in respect of pension related activities, in return for being excluded from the requirement to report "deemed tax" under subsections 172.1(5) through (7).

10. Require the attribution point for a defined contribution plan to be the end of the fiscal year so that it aligns with the date for calculating the PVAT liability for the plan and only requires a taxpayer to obtain one set of data not two.

11. Don't proceed with proposed modifications that would shift the onus for making the determination of whether an investee plan must provide information to investor plans. If the modifications are proceeded with, taxpayers should be provided with leniency in the form of reduced penalties over the first few years.

12. Remove from the "deemed supply" rules those activities of an employer that relate to its activities as sponsor; that is, the deemed supply should apply only to plan administrator (fiduciary) functions. Certain administrative functions, such as enrolling employees into a plan, and collecting and remitting contributions, are core functions whether a separate pension administration entity exists or not and should not be subject to tax.

13. All entities which form part of a pension plan structure should be eligible for the 33% rebate. This includes master trusts whose only investors include pension plans, as well as wholly-owned Section 149(1) subsidiaries of pension plans. The 33% rebate should be available to the whole of a pension plan no matter how it has chosen to structure itself and its investments.

Conclusion

Under the current rules, an unjustified burden is imposed on employers with respect to pension plans and pension plan administration. The cost, both in terms of time and actual dollar amounts spent, for an

[1] Part 1, subsection 17(1) of the Draft Regulations Amending Various GST/HST Regulations.

employer to comply with the current regime is significant, and we hope that this committee will opt for a regime that will place the least burden on pension plans.

Thank you again for the opportunity to meet with you. We would be delighted to meet again or answer any additional questions you may have. In particular, we are willing to provide further information on the structure and operation of pension plans and their investment vehicles.

Sincerely,

Bryan D. Hocking
Chief Executive Officer