



August 5, 2015

Miodrag Jovanovic
Director, Personal Income Tax
Tax Policy Branch
Finance Canada
90 Elgin Street
Ottawa, Ontario K1A 0G5

Dear Mr. Jovanovic:

Limiting unintended scope of C-377

I am writing on behalf of Canada's life and health insurance companies to seek amendment of section 149.01 of the *Income Tax Act* to address what we believe are unintended consequences with respect to the scope of Bill C-377, *An Act to amend the Income Tax Act (requirements for labour organizations)*, which received Royal Assent on June 30, 2015.

Established in 1894, the Canadian Life and Health Insurance Association (CLHIA) is a voluntary non-profit association with member companies accounting for 99 per cent of Canada's life and health insurance business. Our member insurers protect over 75% of Canadians through a wide range of life insurance, disability income replacement, supplementary medical benefits and retirement savings and income plans.

The public policy initiative underlying Bill C-377 is to enhance transparency and accountability of labour organizations in recognition of the tax deductibility of membership dues paid to such organizations. As you are no doubt aware, this measure has been the subject of much debate in Parliament over several years, focusing primarily on whether the Bill was within the Government's constitutional authority.

Assuming the Bill withstands anticipated court challenges on constitutional grounds, CLHIA's concern is that the wording appears to extend the scope of reporting obligations to arrangements offered by financial institutions to the broader public, and where any connection to members of a labour organization is entirely incidental.

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While the exemptions in subsection 149.01(6) are helpful, we believe they are incomplete. In our view, the definition of "labour trust" is unduly broad, potentially incorporating retail mutual funds and life insurers' segregated funds, among other arrangements. The apparent effect is that participation of a single member of a labour organization would result in such arrangements falling within the definition of "labour trust"; consequently, such arrangements would then be subject to the reporting requirements with respect to all participants. We base this interpretation on the bolded and underlined wording of that definition in subsection 149.01(1), as follows:

"Labour trust" means a trust or fund in which a labour organization has a legal, beneficial or financial interest or that is established or **maintained** in whole or **in part for the benefit of** a **labour organization**, its **members** or the persons it represents.

In addition, we believe that there is a possible ambiguity in the use of "contractors" in paragraph (3)(viii) and "contractor" in subsection (5). The former context appears to refer to a "worker employed under a limited-duration employment contract" while the latter context suggests a "service provider or agent". "Contractor" does not appear elsewhere in the *Income Tax Act*, while "third party" might be a reasonable proxy for the latter use of contractor, other uses of "third party" within that Act are subject to specific definitions that are not applicable to section 149.01.¹ Thus, some further clarification of the intended meaning would appear to be needed.

Our industry is also concerned that the structure of paragraph 6(b) and the exemptions provided therein are narrower than would be appropriate, given the "exclusive" characterization of the exempted arrangements. This could unreasonably impede the ability of employers and their service providers to meet the evolving needs of employees, or require bifurcation of existing employee benefit arrangements that address multiple needs.

CLHIA believes that the industry's concern can be addressed through three simple amendments.

We recommend that the definition of "labour trust" in subsection 149.01(1) be amended as follows:

"Labour trust" means a trust or fund in which a labour organization has a legal, beneficial or financial interest or that is established or maintained ~~in whole or in part~~ for the exclusive benefit of a labour organization, its members or the persons it represents.

¹ See subsections 74.5(6) and (7), subsection 118.1(13.2), and sections 143.1, 163.2 and 231.2.

We further recommend that the reference to "contractors" in paragraph (3)(viii) be clarified, that the reference to "contractor" in subsection (5) be removed, and the term "third party" be defined for the purposes of section 149.01, in order to avoid reliance on the ordinary meaning of that term.

To provide appropriate flexibility to meet the needs of employee benefit plans in the future, we recommend that paragraph (6)(b) be amended as follows:

(6) Subsection (2) does not apply to

(a) ...

(b) ~~a labour trust~~ the such activities and operations of a labour organization or a labour trust which are related ~~limited exclusively~~ to the administration, management or investments of one or more of the following:

(i) a deferred profit sharing plan,

(ii) an employee life and health trust,

(iii) a group sickness or accident insurance plan,

(iv) a group term life insurance policy,

(v) a private health services plan,

(vi) a registered pension plan, or

(vii) a supplementary unemployment benefit plan or

(viii) another plan for the benefit of a group of employees of one or more employers or members of a labour organization.

We have raised each of these issues in detail with the Bill's sponsor in the House of Commons, and with the House of Commons Standing Committee on Finance, the Standing Senate Committee on Banking, Trade and Commerce and the Standing Senate Committee on Legal and Constitutional Affairs, including via June 6, 2013 testimony before the Standing Senate Committee on Banking, Trade and Commerce. While our concerns were noted and repeatedly referenced in subsequent Debate in the Senate, they have not been addressed through amendment of the Bill. We believe the extensive the debate over the constitutional and labour relations aspects of the Bill may have prevented other reasonable and necessary amendments from being addressed in the final Bill.

CLHIA believes that each of these recommendations better aligns the effect of the Bill with the announced public policy objective. We are hopeful that technical corrections can be addressed quickly, thereby preventing significant expenditures to capture and report data regarding transactions that are we believe are clearly beyond the intended scope of the Bill.

If the Department agrees that the Bill's scope is broader than intended in these areas, we request that the Department issue a comfort letter reflecting an intent to recommend

to the Minister of Finance that correcting amendments to legislation be introduced at the earliest opportunity.

We would be pleased to discuss these proposed amendments with you and your colleagues, and to respond to any questions you might have. Please feel free to contact me at your convenience, by telephone at 416-359-2021 or by email at rsanderson@clhia.ca.

Thank you for your consideration of this matter.

Yours sincerely,

(Original signed by)

Ron Sanderson
Director, Policyholder Taxation and Pensions