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Dear Alex:

Re: Request for Additional Transitional Prohibited Investment Benefit Relief

On behalf of the Investment Industry Association of Canada (IIAC), I would like to request a modification to draft technical tax amendment legislation issued on December 21, 2012 (2012-175). We believe that our recommendation is not contrary to the intent of the legislation, nor would it lead to inappropriate costs to the tax system.

The draft legislation, clause 35, *Transitional prohibited investment benefit – filing rules*, proposes to modify subsection 207.05(4) of the *Income Tax Act* (ITA). This provides transitional relief to taxpayers who file an election from the advantage rules related to the “transitional prohibited investment benefit” if the amount of income or gains earned on the prohibited investment is paid out of the taxpayers’ registered retirement savings plan (RRSP) or income fund (RRIF) in the 90 days after the relevant tax year. We appreciate that the technical amendments envision extending the deadline for filing this election from July 1, 2012 to March 2, 2013 with effect March 23, 2011.

That said, the release of the amendments late last year may have been missed by some. Also, we believe that, under any circumstances, the technical nature of the draft legislation and the fact that it is almost impossible to conceive that legislation will be tabled in Parliament and receive Royal Assent by March 2, 2013, warrants an extension in the relief.

Also, even were the law to be passed with a further extension, and assuming the CRA were to continue publicizing the details of what is required on its website, we believe that honest taxpayers may be disadvantaged inappropriately. Most would not think to check the CRA website as they would not think that they could be offside tax law when private company shares had previously qualified for their RRSP/RRIF. This especially would be the case for investors holding such assets in certificate form and not with an advisor. They may become aware of the issue only once they realize a gain in the RRSP/RRIF when they dispose of shares, by which time it will be too late. Not having made the election, the entire gain will be subject to significant penalty taxes without having taxpayers ever having engaged in any of the activities that are at the root of the anti-avoidance rules.

Recommendation: We recommend that subsection 207.05(4) in clause 35 be amended to have the election be made when income is recognized or a gain is first realized. At the very minimum, the 2013 tax return should be amended so that the taxpayer can clearly see, or their tax professional will be sure to ask, whether the taxpayer needs to file the election. Also, there should be provision for taxpayer relief for a late-filed election, at the very least the first time the penalty tax is triggered, for example, in the cases of Canadians out of the country for extended periods but still holding assets in Canada.

We hope these views are helpful and would be pleased to elaborate on them at your convenience.

Yours sincerely,