June 18, 2008

Mr. Gérard Lalonde
Director
Tax Legislative Division
Tax Policy Branch
Department of Finance
17th Floor, East Tower
140 O'Connor Street
Ottawa, Ontario KIA OG5

Dear Mr. Lalonde:

Specified Investment Flow-through ("SIFT") Conversions

On December 4, 2007, we provided you with our submission on measures to facilitate the conversion of a SIFT trust to a corporation (the "December submission"). Further to our conference call with you and other Department of Finance officials on June 6, 2008, we are writing to provide you with additional comments on this important matter.

In our December submission, we recommended that a provision that parallels subsection 85(3) of the Income Tax Act be added to allow for a tax deferred distribution of shares of a corporation that is wholly-owned by an eligible trust to its unit holders on the wind-up of the trust. We also suggested measures that would facilitate the elimination of subsidiary trusts, all the beneficial interests in which are owned by certain other trusts.

It has come to our attention that there are circumstances where a SIFT conversion that parallels subsection 85(3) may not be workable in practice and that there are important non-tax reasons why the SIFT conversion measures should accommodate a conversion of a SIFT by an exchange of units for shares. The commercial reasons for this were discussed during our conference call.

We are of the view that both types of conversion transactions should be accommodated by SIFT conversion measures and that both approaches should produce the same tax results. We have set out below our further recommendations on certain technical aspects that are relevant to both types of conversion transactions.

Exchange of SIFT Units for Shares

We recommend that a provision similar to section 85.1 be considered to accommodate a tax deferred transfer of units of a publicly listed trust or partnership (whether or not such units are held as capital property) in exchange for shares of a taxable Canadian corporation, without the need to file a joint election.

Elimination of Trusts

We wish to extend our submission regarding an amendment to the definition of "disposition" in subsection 248(1) to accommodate SIFT conversions that result in all the beneficial interests of a former SIFT trust (determined without reference to subsection 248(25)) being held by a taxable Canadian corporation. Such a structure could result from an exchange of trust units for shares under the current provisions of the Income Tax Act or from an exchange of units for shares under a new provision similar to section 85.1. We recommend that new paragraph (o) of the definition of "disposition" as proposed in our December submission, be amended to provide that the following are not a disposition:

> (o) where the property is property of a trust all the beneficial interests in which (determined without regard to subsection 248(25)) are held by a taxpayer that is
>
> > (i) a trust that would be a SIFT trust if the definition of SIFT trust in 122.1(1) were read without reference to the words "(other that a trust that is a real estate investment trust for the taxation year)",
> >
> > (ii) a trust that would have been a trust referred to in (i) on October 31, 2006 had the SIFT trust definition been in force and applied as of that date, or
> >
> > <u>(iii) a corporation that is a taxable Canadian corporation;</u>

and that the cross-references in proposed paragraph (p) be changed to include a reference to "in any of subparagraphs (o)(i) to (o)(iii)".

Transfer of assets by Trust to Corporation

Our December submission suggested that the SIFT conversion rule would apply on an elective basis at any time all or substantially all of the property of the trust was comprised of shares of a taxable Canadian corporation. Trusts which hold other types of property may transfer such property to a wholly-owned corporation in consideration for shares in order to comply with the SIFT Conversion rule. In certain instances, this may result in a capital loss or non-capital loss to the trust, which will disappear on the wind-up of the trust.

We recommend that where a trust transfers its assets to a corporation in consideration for shares and elects to distribute such shares to its unit holders on wind-up (using an 85(3) type rule as suggested in our December submission), the initial transfer of property by the trust to the corporation be deemed not to be a disposition by the trust. Accordingly, the transferee corporation would obtain a carry over of the transferor trust's tax basis in the transferred assets, as described below.

Continuity and carryover of tax attributes

In our December submission, we suggested an amendment to subsection 248(25.1) to ensure the carryover of tax attributes of the trust that is wound-up as part of a SIFT conversion transaction to the transferee trust. We recommend that such a carryover of tax attributes be equally permitted where a SIFT conversion transaction is effected using the proposed 85(3) type rule outlined in our December submission or the proposed 85.1 type rule suggested above.

Accordingly, we would recommend that a rule similar to subsection 248(25.1) be considered to provide that a corporation which owns all the beneficial interests in a trust and to which all the property of the trust is distributed on the wind-up of the trust, is deemed to be the same taxpayer as, and a continuation of, the trust that is wound-up.

In addition, we recommend that a corporation whose shares have been distributed by a trust on its winding-up under the proposed 85(3) type rule be deemed to be the same taxpayer as, and a continuation of, the trust that is wound up.

On our call, you expressed the desire to have a more targeted continuity rule. Such a continuity rule should cover the same matters as apply on a winding-up or amalgamation. In the case of a transfer of assets from a trust to a corporation, especially relevant matters would include: the carry-over of tax attributes of trust property that becomes property of the corporation and the stop-loss rules should not apply; and continuity of 20(1)(e) expenses, reserves, SRED expenses, resource pools, non-capital losses, net capital losses, and investment tax credit accounts. It should be clarified that there is no forgiven amount on the elimination of debt owing between the transferor trust and the transferee corporation and there should be continuity of the treatment to other holders of the trust's debt. It should also be made clear that the resulting corporation is a "taxable Canadian corporation" for the purposes of the Act.

Trusts eligible for SIFT Conversion rule

We wish to clarify that the trusts eligible for the conversion rule outlined in our December submission (and the trusts described in subparagraph (o)(i) of the definition of "disposition" as describe above) include a trust that would be a SIFT trust if the definition of SIFT trust in subsection 122.1(1) were read without reference to the words "(other than a trust that is a real estate investment trust for the taxation year)", regardless of whether the trust would have been a SIFT trust on October 31, 2006.

Similarly, we wish to clarify that the trusts eligible for the conversion rule outlined in our December submission (and the trusts described in subparagraph (o)(ii) of the definition of "disposition" as described above) include a trust that would have been a SIFT trust on October 31, 2006 if the definition of SIFT trust in subsection 122.1(1) were read without reference to the words "(other than a trust that is a real estate investment trust for the taxation year)" and had the SIFT trust definition been in force and applied as of that date, regardless of whether the trust would be or is a SIFT trust at the time of conversion. As a result, the conversion rule would apply to trusts that were SIFTs on October 31, 2006, even if the units of the SIFT were subsequently acquired by a corporation.

Acquisition of control

We wish to extend our submission by recommending that subsection 256(7) be amended to deem control of a corporation not to have been acquired on a unit for share exchange, in circumstances similar to those that would apply in respect of a share for share exchange under paragraph 256(7)(e).

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We thank you for the opportunity of discussing our additional comments with you. As always, we would be pleased to meet with you to the extent any of the issues discussed in this submission and during our conference call require further elaboration.

Yours truly,

Bruce Harris, CA
Chair, Taxation Committee
Canadian Institute of Chartered Accountants

Paul Tamaki
Chair, Taxation Committee
Canadian Bar Association

cc: Brian Ernewein – Department of Finance