Discontinuing CRA Administrative Positions on Health and Welfare Trusts

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PREFACE

The Canadian Bar Association is a national association representing 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the CBA Pensions and Benefits Law Section, with assistance from the Legislation and Law Reform Directorate at the CBA office. The submission has been reviewed by the Law Reform Subcommittee and approved as a public statement of the CBA Pensions and Benefits Law Section.

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Discontinuing CRA Administrative Positions on Health and Welfare Trusts

I. INTRODUCTION

The Canadian Bar Association Pensions and Benefits Law Section (CBA Section) is pleased to comment on the proposal in the 2018 Federal Budget (2018 Budget Proposal) to discontinue Canada Revenue Agency (CRA) administrative positions on health and welfare trusts (HWTs) in favour of the employee life and health trust (ELHT) rules in section 144.1 of the *Income Tax Act* (Canada) (ITA). As part of the 2018 Budget Proposal, comments on transitional issues, both administrative and legislative, were invited prior to June 29, 2018.

The CBA is a national association of over 36,000 members, including lawyers, notaries, legal academics and law students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section contributes to national policy, reviews developing pensions and benefits legislation and promotes harmonization. Our members are involved in all aspects of pensions and benefits law, including counsel who advise plan administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefit consultants, and investment managers and advisors.

II. BACKGROUND

The 2018 Budget Proposal is to discontinue CRA's administrative positions on HWTs found in Income Tax Folio S2-F1-C1 (the Folio). Existing HWTs would be transitioned to ELHTs governed under section 144.1 of the ITA, or terminated. Under the proposal, the CRA will cease to apply its administrative positions regarding HWTs after the end of 2020, and trusts that do not convert to an ELHT (or wind up) will be subject to the normal income tax rules for trusts. The CRA would also not apply its administrative positions for HWTs to trusts established after February 27, 2018.

The CBA Section offers our views on the continuation of HWTs as ELHTs and the tax treatment of HWTs that do not convert to ELHTs. We also address several things in section 144.1 of the ITA that we anticipate will be an obstacle to conversion for certain structures of HWTs, and request clarification on other limited matters.

III. CONTINUATION OF A HWT AS AN ELHT

The CBA Section believes that a HWT should be able to continue as an ELHT without creating a new trust. Creating and moving assets to a new trust would be a complex and costly exercise when the purpose of the transfer is simply compliance with new government policy. In many (perhaps most) cases, these costs would be borne by the trust fund to the detriment of the trust's beneficiaries. In addition, the requirement to create a new trust may well require renegotiating collective agreements. In some collectively bargained multi-employer HWTs, contributions are made to the trust pursuant to hundreds of collective agreements. Many HWTs are also likely to have investments that cannot be liquidated in the short term.

Further, the continuation of a HWT as an ELHT should be a smooth process given that they are substantially similar trust vehicles. In fact, the Folio states that it is possible for a trust to qualify as both a HWT and an ELHT. It is simply a matter of election as to whether the trust operates as an ELHT under section 144.1 of the ITA or as a HWT under the Folio, provided the trust satisfies all the requirements in section 144.1 of the ITA (as discussed in more detail below, certain types of HWTs will not be able to comply with some requirements in section 144.1). In general, with few material differences between the underlying trust agreements of ELHTs and HWTs, relatively few amendments would be required in most cases to reflect the conversion. After the underlying governance documents have been amended, the trust should only need to elect to be treated as an ELHT (rather than as a HWT) in its next annual tax filing.

The CBA Section emphasizes that conversion from a HWT to an ELHT as a result of the 2018 Budget Proposal should be as seamless as possible. HWTs should be permitted to transition to ELHTs without negative tax consequences to participating employees, participating employers or the trust itself, and without the need to establish a new trust or transfer trust assets.

IV. TIMING

Irrespective of the transition rules chosen by the Government, restructuring cannot begin until all plan sponsors, trustees and other interested parties have confirmation of the final rules. Depending on the content of the transition rules (including whether changes are made to section 144.1 of the ITA to address the obstacles to the conversion of certain structures of HWTs), it could take years in some cases to put replacement structures in place. The CBA Section recommends a three-year transition rule from the date the final rules are confirmed, which period could be extended to deal with collective bargaining cycles (e.g. three years from the last renewal date following the date the rules are finalized) and other exceptional circumstances.

V. NON-CONVERTING HWTS

For many reasons, a single employer that currently maintains a HWT may decide that it does not wish to provide group benefits through an ELHT. For example, the terms of the HWT may be such that conversion to an ELHT, if it were even possible given paragraphs 144.1(2)(e) and (f), would still breach paragraph 144.1(3)(b). In that case, and regardless of those reasons, the CBA Section believes that the tax rules should support the winding down of the HWT past a given date.

In particular, the CBA Section proposes that HWTs that do not convert to ELHTs should be "frozen" at a date no later than December 31, 2020 (or a later date when the CRA will no longer apply its administrative positions for HWTs). No new contributions would be made after the freeze date and, from that date onward, the HWT would be allowed to wind-down its operations under the current HWT rules by continuing to make benefit payments to the extent that it can. Once the frozen HWT is no longer capable of supporting benefit payments, any funds remaining would be dealt with under the wind-up provisions of the applicable trust agreement and the current HWT rules set out in the Folio.

In addition, where a HWT either cannot be converted to an ELHT or the sponsor does not wish to convert the HWT to an ELHT, but the HWT's sponsor does wish to settle a new ELHT, it is the CBA Section's view that any assets that remain in the HWT once all benefit obligations have been satisfied should be permitted to be directly transferred into the new ELHT without tax consequences (provided, of course, that the transfer accords with the trusts' constating documents and any applicable collective bargaining agreement). As long as the remaining assets are transferred directly to the ELHT, the HWT should be permitted to deduct the amount transferred in calculating its tax payable on the disposition.

VI. OBSTACLES TO CONVERSION

Section 144.1 of the ITA, setting out the requirements for ELHTs, were designed to accommodate the restructuring of General Motors of Canada Limited and Chrysler Canada Inc. This narrow purpose creates a barrier to conversion for many other structures of HWTs. The ELHT rules under section 144.1 of the ITA will need to be amended to allow for the conversion of the wide array of HWT structures that currently exist. HWTs should not have to go to extraordinary and costly lengths to overhaul their governance structures to comply with rules that were not designed with the diversity of HWT arrangements in mind.

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In the following sections of this submission, the CBA Section identifies barriers to conversion posed by the current ELHT rules.

A. Composition of the Board of Trustees

Paragraph 144.1(2)(i) of the ITA provides as a condition for qualification as an ELHT that "representatives of one or more participating employers do not constitute the majority of the trustees of the trust or otherwise control the trust."

This condition should be examined against the backdrop of trust law, which precludes trustees from preferring anyone's interests over those of the beneficiaries of the trust, including the interests of whoever appointed them. Under the law of trusts, a trustee is not an agent of its appointing party and does not represent the appointing party in any legal sense. This means that no trustee "represents" anyone not a beneficiary of the trust, and to do so would be unlawful.

Despite the law of trusts, paragraph 144.1(2)(i) could be interpreted to mean that at least half of the ELHT trustees must be ***appointed*** by someone other than a participating employer or an employer association. If such interpretation were employed, given the origins of the ELHT rules, it seems fair to surmise that the party other than an employer best placed to appoint these trustees would be one or more trade unions representing the employees participating in the ELHT, as was the case for General Motors of Canada Limited's ELHT. If the intended restriction in paragraph 144.1(2)(i) is on the ***identity of the appointing body***, this interpretation poses a problem for many HWT structures, including:

- Non-collectively bargained multi-employer HWTs where there is no trade union representation of participating employees. In these arrangements, the sponsor of the HWT is typically an employer association, and the employer association appoints all trustees. If not the employer association, who would appoint 50% of the trustees?
- Collectively bargained jointly sponsored multi-employer HWTs where the employer association is, by virtue of the collective bargaining agreement, the only authorized appointing body. These types of HWT arrangements are typically the result of lengthy negotiations among many parties in a complex political environment. It would be a complicated and costly endeavour to change the trust's governance process and/or structure.

- Single employer HWTs where only some of the HWT's participating employees are represented by a trade union, or none are so represented. If there is no union representation, there may be no clear mechanism to provide non-represented employees with the means to suggest candidates and appoint trustees. If there is union representation of some but not all of the HWT membership, it is not clear why a union would appoint half of the trustees, particularly where union represented HWT members are a small minority.

Notably, whether an existing trust can even be amended to restrict the category of persons who may become trustees will depend on the terms of the governing trust agreement, and whether these terms can be changed.

Proposed Solution

The CBA Section members have differing views on an appropriate solution.

Given the law of trusts and the obstacles discussed above, some CBA Section members prefer the approach taken in the Folio, which requires that trustees act independently of the employer but states:

> It is a question of fact whether the trustees act independently of the employer. The fact that all trustees are appointed by the employer or that all trustees are employees is not a conclusive factor in determining whether trustees are independent of the employer.[1]

Some CBA Section members note that this approach achieves the same end as paragraph 144.1(2)(i) of the ITA seeks to achieve (that the trust operates independently of the employer), but takes into account that there may be legitimate reasons for an employer to appoint all the trustees on a board of trustees. They would recommend that the requirement for an ELHT to have no more than 50% employer representative trustees should be removed from paragraph 144.1(2)(i) of the ITA and revised to articulate the concepts set out in the Folio, namely that the funds of the trust (i) must not be under the control of one or more participating employers and (ii) cannot revert to one or more participating employers.

Other CBA Section members believe that the policy rationale for requiring member (or, more correctly, **non-employer**) representation on an ELHT board of trustees in paragraph 144.1(2)(i) is sound, but acknowledge that it could pose an obstacle to the conversion of some HWTs. They would prefer that the principle in paragraph 144.1(2)(i) that at least one-half of the appointees to an ELHT board of trustees are representative of members (i.e. bring a

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1 See sections 1.15, 1.18 and 1.19 of the Folio respecting the requirement for a HWT to operate independently of the employer(s).

'member voice' to the board) be maintained, with clarifications as necessary. For example, it could be clarified that:

- non-employer representative trustees may be employees of a participating employer; and
- a requirement in a collective bargaining agreement or a participation agreement that the applicable employer association is the body that appoints all trustees is not contrary to paragraph 144.1(2)(i).

B. Availability of Multi-Employer Deductibility Rules

Subsection 144.1(6) of the ITA says that a participating employer in a multi-employer ELHT may deduct from its annual income the amount it must contribute to the ELHT, provided the ELHT meets specific requirements. The requirements in paragraphs 144.1(6)(a),(b) and (c) include:

- It is reasonable to expect that (i) at no time in the year will more than 95% of the employees who are beneficiaries of the trust be employed by a single employer or by a related group of employers, and (ii) at least 15 employers will contribute to the trust in respect of the year or at least 10% of the employees who are beneficiaries of the trust will be employed in the year by more than one participating employer and, for the purpose of this condition, all employers who are related to each other are deemed to be a single employer;
- Employers contribute to the trust under a collective bargaining agreement and in accordance with a negotiated contribution formula that does not provide for any variation in contributions determined by reference to the financial experience of the trust; and
- Contributions that are to be made by each employer are determined, in whole or in part, by reference to the number of hours worked by individual employees of the employer or some other measure that is specific to each employee with respect to whom contributions are made to the trust.

The narrow requirements of subsection 144.1(6) exclude other HWT structures, including:

- Collectively bargained multi-employer HWTs that set contributions based on negotiated benefits. In these trusts, the employer(s) and union negotiate and record in the collective agreement the benefits that must be provided to participating employees, with the HWT's board of trustees then determining the contributions that must be paid by the employers to provide the negotiated benefits. This is in contrast to the singular model contemplated by paragraphs 144.1(6)(b) and (c), where contribution levels are collectively bargained and the board of trustees has the subsequent job of determining which benefits can be provided from the HWT based on the negotiated contribution.
- Non-collectively bargained multi-employer HWTs. These HWTs utilize a participation agreement in place of a collective agreement as the

membership is not union represented. As with collectively bargained multi-employer HWTs, the participation agreement may specify either the contribution or the benefits. If it specifies the contributions payable by the employers, the board of trustees is then responsible for determining the benefits payable from the HWT pursuant to such levels of contributions. Alternatively, if the participation agreement specifies the benefits payable from the HWT, the board of trustees is then required to determine what level of contributions from the employers is required to provide such benefits.

- Collectively bargained multi-employer HWTs with fewer than 15 employers or where it is unclear that at least 10% of the employees who are beneficiaries of the HWT will be employed in the year by more than one participating employer.

In each of these three scenarios, once converted to an ELHT, the trust's participating employers would not be able to use subsection 144.1(6) to deduct their contributions to the ELHT from their annual incomes. Rather, they would presumably have to deduct under subsection 144.1(4) of the ITA the portion of the contribution that may "reasonably be regarded as enabling the trust to provide or pay the benefits".

If subsection 144.1(6) does not apply to these types of multi-employer HWTs, two problems arise. First, it is unclear how participating employers, who play no role in administering the trust other than to make required contributions, will determine the annual deduction to which they are entitled. Second, the participating employers in these trusts are unrelated and participate on a risk-share model. The application of subsection 144.1(4) would result in a mismatch between the amount paid into the trust by an employer and the amount of that same employer's deduction (in particular for self-insured long term disability benefits and self-insured medical/dental). These employers would contribute to the ELHT the amount required by the collective bargaining agreement or participation agreement (as the case may be) but the available deduction would relate instead to the actual experience of the employer's participating employees, which would likely vary from year to year. This would not be an equitable arrangement.

For example, consider an ELHT that provides self-insured long term disability benefits and has ten participating employers, where only one of the ten has employees who have gone on long term disability. Although all participating employers contribute to the trust on the same basis, under the current ELHT rules one employer will have deductions far in excess of its contributions, while the other nine employers will have no deductions at all (unless there is some actuarial basis upon which all participating employers are permitted to make a deduction).

In addition, the CBA Section recognizes that the requirements of subsection 144.1(6) are modeled after the requirements for registered pension plans to be specified multi-employer plans (SMEPs). This is an inappropriate basis to gauge multi-employer ELHT deductibility matters. The SMEP rules were designed to deal with pension adjustment calculation issues and not with the array of multi-employer HWT structures in mind (such as, for example, HWTs that collectively bargain benefits rather than contributions).

Proposed Solution

The CBA Section is of the view that subsection 144.1(6) of the ITA should be expanded so the multi-employer deductibility rules apply to all multi-employer ELHTs, including non-collectively bargained ELHTs, collectively bargained ELHTs with negotiated benefits and collectively bargained ELHTs with less than 15 participating employers. In particular, we recommend that subsection 144.1(6) of the ITA be amended to include the following criteria for multi-employer plans:

- It is reasonable to expect that at no time in the year will more than 95% of the employees who are beneficiaries of the trust be employed by a single employer or by a related group of employers;
- Employers contribute to the trust under a collective bargaining agreement or participation agreement and in accordance with (i) a negotiated contribution formula that does not provide for any variation in contributions determined by reference to the financial experience of the trust, or (ii) a negotiated benefit formula under which contributions are set by the trustees based on the current service cost required to provide the negotiated benefits, which contributions do not vary by reference to the financial experience of the trust; and
- Contributions that are to be made by each employer are determined, in whole or in part, by reference to the number of hours worked by individual employees of the employer, percentage of pay, or some other measure specific to each employee with respect to whom contributions are made to the trust.

Alternatively, some CBA Section members believe that in determining a participating employer's deductions under subsection 144.1(4), subsection 144.1(5) of the ITA as currently drafted would apply so that the participating employers may deduct from their annual income the year's current service cost of funding the ELHT (e.g. the year's required contributions), provided the contributions have been determined on an actuarial basis to be the cost incurred by the employer in a taxation year to provide designated employee benefits to beneficiaries for the year, and provided that such contributions are recorded in a report prepared by an independent actuary using accepted actuarial principles and practices.[2]

Accordingly, the CBA Section seeks clarification from the CRA on whether subsection 144.1(5) of the ITA could be applied to avoid the potential mismatch between deductions and contributions.

C. Composition of the ELHT Membership

For some single employer HWTs, another impediment to a seamless transition from a HWT to an ELHT will be the "Key Employee" concept, which is likely to run counter to normal commercial practices where participating employees form part of a highly-paid workforce.

Paragraph 144.1(2)(e) of the ITA requires that there be, in an ELHT, at least one "class of beneficiaries" (i.e., beneficiaries with identical rights) where:

- the class of beneficiaries represents at least 25% of their participating employer's employees; and
- not more than 25% of the class of beneficiaries consists of Key Employees, defined as either
  - (i) specified shareholders of the employer (generally employees who directly or indirectly own 10% or more of the issued shares of the employer), or
  - (ii) employees whose employment income in any two of the five taxation years preceding the year exceed five times the Year's Maximum Pensionable Earnings (YMPE) (since the YMPE is currently $55,900, an employee who is paid more than $279,500 a year would be a Key Employee).

Paragraph 144.1(2)(e) means that:

- There can be more than one class of beneficiaries in an ELHT, so long as one such class of beneficiaries meets the requirements of paragraph 144.1(2)(e) (a Compliant Class).
- Any class of beneficiaries other than the Compliant Class need not meet the requirements of paragraph 144.1(2)(e), and so more than 25% of any such non-Compliant class can be comprised of Key Employees.
- There can be more than one Compliant Class, each with its own bundle of rights.

If the participating employer's workforce, or the portion of the workforce that currently participates in a HWT, is highly paid (i.e., more than 25% of its employees are Key Employees),

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2 Depending on the trust's governance structure, these actuarially determined contributions would be recorded in the collective bargaining agreement or participation agreement, or formally communicated in writing to the participating employers in another manner, such as through a schedule, letter agreement or memorandum of understanding.

it will not be able to replace the HWT with an ELHT unless it can create two classes of beneficiaries, one likely containing the Key Employees, and the other being a Compliant Class. This would require that each class have different rights. Further, paragraph 144.1(2)(f) of the ITA requires that the rights of a participating employer's Key Employees be no more advantageous than those of a Compliant Class. While not entirely clear how one determines whether the rights of one group of employees is more or less advantageous than the rights of another group of employees, presumably the comparison between classes would involve an assessment of the economic and other rights and benefits provided to each class.

Paragraph 144.1(2)(f) means that:

- The rights of any group of beneficiaries other than Key Employees can be more advantageous than the rights of a Compliant Class.[3]
- If a single employer with a highly paid workforce segregates its Key Employees into a different class (to facilitate the creation of a Compliant Class), thereby creating a Compliant Class, since the Key Employees' rights may not be more advantageous than those of a Compliant Class, the non-Compliant Class's rights could be, at best, as advantageous.

The restriction on Key Employees' rights in this way is inconsistent with normal commercial practice. Just like an employer would not limit its most senior and other valuable employees' remuneration to that of more junior and less valuable employees, it is not likely to limit their group benefits in this way either.

In addition, converting a HWT to an ELHT without revisiting the Key Employee limits would mean intruding into Key Employees' terms of employment. To avoid unilaterally breaching the terms of employment, the employer converting a HWT to an ELHT would have to amend its benefits program so any rights it cannot provide to its Key Employees via the ELHT (because their rights are limited to the rights of a Compliant Class), would be provided outside the ELHT via some sort of top-up arrangement. For example, where a wage loss replacement plan might replace 66 2/3% of an employee's salary up to $5,000 per month, a Key Employee's replacement might be 75% up to $10,000 per month. Once the HWT is converted to an ELHT, any period of disability during which a Key Employee will receive group disability insurance benefits through the trust would have to be provided at the lower level.

[3] If a single employer with a highly paid workforce segregates its Key Employees into a different class, and creates not one but two Compliant Classes, query which Compliant Class's rights will serve to limit the Key Employees' rights.

Although it is possible to amend a wage loss replacement plan and a private health services plan to reduce Key Employees' rights to the required level, the same may not be as easily done with life insurance. Consider, for example, where under a group term life insurance policy, an employee's life is insured for an amount equal to salary, while a Key Employee's life is insured for an amount equal to two times salary. In that case it would be difficult to reduce the Key Employee's rights to be now insured at the same level as non-Key Employees. It may also be difficult to replace the lost coverage outside of the ELHT.

The need to hive off elements of a group benefits program for Key Employees and provide them outside of the trust would be inconsistent with the goal of pooling/sharing risk. It may also result in the need for trustees to apply to vary the trust if the terms of the trust are such that the benefits for Key Employees cannot be reduced and do not grant trustees sufficient power to amend the trust agreement accordingly.

Finally, paragraph 144.1(2)(b) requires that, on the wind-up of an ELHT, the ELHT property may not be distributed to Key Employees. Although, given the flow-through nature of ELHTs, any property remaining at wind-up should not amount to the level of registered pension plan surplus, disentitling Key Employees to surplus may result in legal challenges, either at conversion or on the wind-up itself. Because trustees need to be even-handed, if they are not able to justify differing treatment of Key Employees and non-Key Employees, for example, because the terms of the trust do not support it, Key Employees may have recourse against the trustees. If the different treatment is justified, Key Employees may still have recourse against their employer for breach of the terms of their employment, as discussed above.

Proposed Solution

If the Key Employee provisions are not revisited, coverage for the Key Employees will become unnecessarily more difficult to provide. The CBA Section recommends that the Key Employee provisions be reconsidered in light of their current impact on single employer plans with a highly-paid workforce and the complexities of hiving off portions of HWTs to provide benefits for Key Employees. Similarly, the CBA Section is of the view that the ELHT rules should not place trustees in a position likely to result in legal challenge, such as in respect of the trustee duty of even-handedness.

VII. ADDITIONAL CLARIFICATION

The CBA Section believes that guidance from the CRA on the following points would be useful to HWT/ELHT administrators, whether for the purposes of transition or afterwards.

- A number of smaller HWTs have been considering mergers prior to converting to ELHTs, particularly in light of increasing benefit costs and the administrative costs of maintaining the HWTs. From a policy perspective, the transferred beneficiaries would continue to receive eligible benefits under the merged trust, and contributions to the merged trust would continue to be used exclusively to fund eligible benefits to the beneficiaries of the merged trust. Therefore we urge the CRA to clarify that such merger and transfer of assets between HWTs is permissible on a non-taxable basis. Where merger is contemplated, it will typically be more practical for the timing of the merger to be prior to the ELHT conversion. This would avoid the administrative burden and cost of transitioning all of the relevant HWTs to ELHTs.
- The Folio permits non-qualifying benefits to be provided through a HWT if they are accounted for separately. However, it is unclear whether the same may occur through an ELHT. The CBA Section is of the view that, after transition, an ELHT should be able to provide the same benefits to its participating employers that it provided to them as a HWT pursuant to the Folio. This means that HWTs that currently provide non-qualifying benefits should be able to continue to do so as ELHTs, if those benefits continue to be accounted for separately.
- The CBA Section recommends that benefits such as employee assistance programs and counselling benefits should be included among the benefits that can be provided through an ELHT, and that the ELHT rules be amended to explicitly permit these types of benefits.
- Section 144.1 of the ITA currently applies to trusts established after 2009. The CBA Section recommends that this be expanded to trusts established before 2010 to facilitate continuation of a HWT as an ELHT.
- Subparagraph 144.1(2)(d)(i) of the ITA provides that employees of participating employers may be beneficiaries of an ELHT. While the definition of “employee” under subsection 144.1(1) includes former employees of employers, it is not clear that this catches retirees whose former employers no longer participate in the ELHT (the participating employers in many multi-employer HWTs change frequently). A clarification to the definition of “employee” would resolve this technical issue.
- Trustees of multi-employer ELHTs will typically have little ability to ascertain the specific working relationships that exist between participating employers and the persons on whose behalf contributions are made to the trust. For example, it can be next to impossible for a board of trustees or administrator to determine whether a particular individual is an employee, a dependent contractor or an independent contractor. Accordingly, we recommend that the ELHT rules be amended to permit eligible beneficiaries to include individuals on whose behalf contributions are made to the trust pursuant to a contract in place with a participating employer.

- Paragraph 144.1(4)(b) of the ITA provides that contributions that may reasonably be regarded as enabling the trust to provide or pay benefits in a subsequent year are deductible. It would be useful for CRA to provide guidance around what is “reasonable”, particularly in light of the sizeable contingency reserves that are in many HWTs.
- Paragraph 144.1(2)(c) requires that an ELHT be resident in Canada without reference to the non-resident trust rules in section 94 of the ITA. The CBA Section proposes that this requirement be modified to permit an “electing trust” as defined in subsection 94(1) of the ITA to qualify as an ELHT. Such trusts will have to file a Canadian tax return to make an election pursuant to the “electing trust” definition and will thus have demonstrated their willingness to comply with ITA requirements.
- As discussed earlier in this submission under Availability of Multi-Employer Deductibility Rules, the CBA Section seeks clarification as to whether, in determining a participating employer’s deductions under subsection 144.1(4) (particularly for self-insured long term disability benefits and self-insured medical/dental), subsection 144.1(5) of the ITA would apply so as to permit the participating employers to deduct the year’s current service cost of funding the ELHT (e.g. the year’s required contributions), provided such contributions have been determined on an actuarial basis to be the cost incurred by the employer in a taxation year to provide designated employee benefits to beneficiaries for the year, and provided that such contributions are recorded in a report prepared by an independent actuary using accepted actuarial principles and practices.

VIII. CONCLUSION

The CBA Section appreciates the opportunity to comment on the 2018 Budget Proposal to discontinue CRA administrative positions on HWTs in favour of the rules applicable to ELHTs under section 144.1 of the ITA. We trust that our comments are helpful and would be pleased to provide further clarification.