



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

Ian C.W. Russell FCSI
President & Chief Executive Officer

April 21, 2010

Ivan Bastasic, Director
Financial Institutions and Real Property Division
Excise and GST/HST Rulings Directorate
14th Floor, Place de Ville, Tower A
320 Queen Street
Ottawa ON K1A 0L5

Dear Mr. Bastasic:

Re: Proposed Changes to the Definition of Financial Service

The Investment Industry Association of Canada appreciates the opportunity to provide its comments on GST/HST Notice 250 (the “**Notice**”) released in February 2010.

Current System

For many years, investment dealers have relied upon the certainty provided by GST/HST Memoranda 17.1.1 and 17.2, and have built internal procedures and systems to comply with the classifications contained therein. As a result of court decisions published in 2009, the government recognized the importance of providing clarity in the area of discretionary managed accounts. However, the Notice referred to financial services outside the context of the court decisions and caused significant confusion in the industry.

The industry welcomed the Finance Minister’s announcement on March 26, 2010, restating that the new legislation is designed “to confirm...long-standing policy intent and restore the situation that existed prior to the court decisions” and that the government is “not imposing new taxes”.¹ ***We interpret this announcement as confirmation that our industry should***

¹ News Release 2010-024: “Minister of Finance confirms intent of proposed GST changes affecting financial services,” (Department of Finance, March 26, 2010).

maintain reliance upon the classifications contained within Memoranda 17.1.1 and 17.2, and that the status quo that existed prior to last year's court decisions remains intact.

We commend CRA in its efforts to update the Notice to reflect the Department of Finance's policy intent. As part of these efforts, we have provided specific comments below on some of the examples contained in the Notice, and we would be pleased to meet with you on this matter to discuss our concerns.

Specific comments

Investment dealers arranging for the purchase or sale of securities on behalf of a client

Commissions paid to an investment dealer for buying and selling securities on behalf of a client are currently exempt from GST.²

The Notice, however, states that fees paid to an investment manager for accounts managed “**with or without discretionary authority**” are subject to GST. While Example 1 in the Notice makes clear that investment management services provided on a **fully discretionary** basis are not a supply of financial services, and are therefore subject to GST, the inclusion of the phrase “with or without discretion” has caused confusion. The confusion arises as commissions paid on investment products generally could be interpreted as “investment management services without discretionary authority”. Under that interpretation, commissions therefore could be subject to GST, contrary to GST/HST Memoranda 17.1.1 and 17.2.

We ask that further clarification be provided in the Notice to confirm longstanding policy intent that commissions charged by investment dealers continue to be an exempt product or service under the Act.

Investment dealers arranging for the purchase or redemption of mutual funds on behalf of a client

GST/HST Memoranda 17.1.1 and 17.2 also list redemption fees and fees for arranging the purchase of mutual funds as exempt from GST. GST *Policy Statement P-119* extended the GST exemption to mutual fund trailer commissions or fees.³ Example 2 in the Notice, however, implies that given the changes to the definition of “financial services”, trailer fees are now taxable.

² GST/HST Memoranda 17.1.1 item E-6 and GST/HST Memoranda 17.2 item D-3.

³ GST *Policy Statement P-119*, February 22, 1994.

Example 2 is contrary to longstanding policy intent, and according to our interpretation of the Minister's statement on March 26, should be removed from the Notice as it would otherwise constitute new unintended taxes for our industry.

Investment dealers providing underwriting services

Fees paid to an investment dealer with respect to the underwriting of a Financial Instrument are currently exempt from GST, but fees paid for professional advice and research in the course of a contemplated merger or acquisition are taxable.⁴

Example 7 in the Notice has caused confusion and concern that underwriting fees could be interpreted or classified as taxable services, contrary to GST/HST Memoranda 17.1.1.

We ask that further clarification be provided in the Notice to confirm longstanding policy intent and the Minister's statement that underwriting fees charged by investment dealers continue to be an exempt product or service under the Act.

Conclusion

The consultations to determine the application of GST to financial services was an extensive and comprehensive process on the part of the Canadian securities industry and Department of Finance and CRA officials. The GST/HST Memoranda explains taxable and tax-exempt products and services effectively and confirms the position in place since the implementation of GST some 20 years ago.

Given the confusion arising from the Notice, we request an opportunity to meet to confirm our understanding of the aforementioned application of GST to financial services.

Yours truly,



Ian Russell
President & CEO
Investment Industry Association of Canada

Cc: Brian Ernewein, Department of Finance
Jack Rando, IIAC

⁴ GST/HST Memoranda 17.1.1 items E-20 and T-1.