BACKGROUNDER

MODIFICATIONS TO THE PROPOSED FINANCIAL INSTITUTION (FI) RULES FOR THE HARMONIZED SALES TAX (HST)

This backgrounder outlines proposed technical clarifications and other improvements to the changes proposed to the HST rules governing FIs that relate to the calculation of the provincial component of the HST (known as the provincial value-added tax, or PVAT). These rules were initially announced in the Department of Finance news releases dated May 19, 2010 and June 30, 2010. The proposed changes result from comments received as part of the consultations that followed the June 30, 2010 news release.

The backgrounder is divided into three parts:

- The first part outlines proposed changes and clarifications to the proposals contained in the May 19th and June 30th releases that are reflected in the attached draft regulations[1] and draft amendments to the Excise Tax Act (ETA).
- The second part outlines proposed changes and clarifications to the rules contained in the May 19th and June 30th releases for new investment plans[2] or new series of an investment plan (including investment plans created through mergers). These proposed changes are not included in the attached draft regulations or draft amendments to the ETA.
- The third part outlines issues that have been raised during consultations but which require further research, analysis and stakeholder consultations.

PART ONE – PROPOSED CHANGES REFLECTED IN THE ATTACHED DRAFT AMENDMENTS TO THE EXCISE TAX ACT AND REGULATIONS

Specified Investors – Requirement to Provide Information

An investment plan (e.g., a mutual fund trust (MFT)) needs to know the province of residence and value of holdings of its ultimate investors to determine its provincial attribution percentages for purposes of computing the plan's PVAT. This would generally require the investment plan (in this section referred to as the 'investee plan') to 'look through' certain investors, including those who are themselves investment plans (in this section referred to as 'investor plans'), in order to identify the investee plan's ultimate investors and their holdings.

As announced in the May 19th and June 30th releases, the investee plan would be relieved of this 'look-through' requirement where the investor is an individual or a 'specified investor'. Generally, a 'specified investor' would be an investor (other than an individual or a distributed investment plan (e.g., an MFT or a segregated fund of an insurer)) that holds less than $10 million in an investee investment plan.[3]

Given that an investee plan may not reasonably know which of its investor plans meet the 'specified investor' test, and thus whether to request information down to the level of the ultimate investor, proposed modifications would shift the onus for making this determination from the investee plan to the investor plan. This requirement for investors to self-identify as 'specified investors' affects only non-distributed investment plans, (i.e., an investment plan that does not distribute units to the public, such as a trust governed by a pension plan, a benefit plan, a retirement compensation arrangement or a deferred profit sharing plan).

As a result of these changes, the application of the rules would be as follows:

1. If an investor plan, as of the investee plan's attribution date (always September 30th) for a particular year,
   - is a selected listed financial institution (SLFI);
   - is related to an SLFI; or
   - holds, together with related parties, units of the investee plan with a value totalling $10 million or more,

   it would be required to inform the investee plan of its status for the particular year.
2. The investor plan would be required to provide information on its ultimate investors to the investee plan by November 15th or, if the information is requested by the investee plan, the later of November 15th and 45 days after the information was requested.
3. Should the non-distributed investment plan fail to divulge the necessary information to the investee plan, the investor, rather than the investee plan, would be subject to the penalties that are currently provided for under the draft regulations for failure to provide information.

If the investor plan does not inform the investee plan of its status, the investee plan may treat the investor plan as a specified investor for the particular year (unless the investee plan knows, or ought to know, based on information available to it, that the investor plan does not meet one or more of the three conditions in (1) above).

The proposed amendments would apply in respect of any reporting period of an investee plan that ends on or after July 1, 2010.

Treatment of Non-Residents

The June 30th release proposed a 'deemed resident rule' whereby, for purposes of determining an investment plan's provincial attribution percentages, units held by non-residents would be treated as units held by Canadian residents. It was also proposed that input tax credit (ITC) restrictions and other obligations imposed under the ETA such as self-assessment of GST for imported taxable supplies that would generally not apply with respect to non-residents would apply with respect to deemed residents. In addition, the June 30th release provided that investment plans would be able to file an election to opt out of the deemed resident rule.

The attached draft legislation clarifies the proposed scope of the deemed resident rule announced in the June 30th release. Specifically, in the case of a distributed investment plan, the deemed resident rule would provide that:

- All units of the investment plan held by an investor that is a non-resident would be deemed, for purposes of determining the investment plan's provincial attribution percentages, to be held by a resident of Canada but not of any of the participating provinces;
- Any supply made by the investment plan in respect of the units of the investment plan that are held by non-resident investors would, for the purposes of determining an ITC of the investment plan, be deemed to have been made to residents of Canada (as a result, for example, the investment plan could not claim an ITC for making a supply of a financial service to these deemed resident investors);
- No ITC would be claimable by the investment plan in respect of an input except where the input is used directly and exclusively in commercial activities of the investment plan;
- Deemed residents would not be taken into consideration for determining if a distributed investment plan is a 'qualifying taxpayer'[4] under the imported supplies rules contained in Division IV of the ETA; and
- Where the investment plan is determined to be a 'qualifying taxpayer', any outlay made, or expense incurred, in respect of the units of the investment plan that are held by non-resident investors would be deemed to be in respect of Canadian activities of the investment plan (and therefore potentially subject to GST under these imported supplies rules).

As noted above, an investment plan would be able to make an election to opt out of the deemed resident rule. The election could be made on a series-by-series basis and the deemed resident rule, and related restriction on ITCs, would apply only in respect of those series where an election is not in force. However, a further provision would provide that no ITC could be claimed by an investment plan with two or more series in respect of an input of the plan if the input is used in the course of any activity of the investment plan relating to a series in respect of which an election is not in force.

In the case of non-distributed investment plans, the deemed resident rule would apply similarly to the rules for distributed investment plans, except that it would apply in respect of non-resident members of the investment plan (e.g., members of the pension plan) rather than in respect of units held by non-resident investors.

The proposed amendments would apply in respect of any fiscal year of a person that ends on or after July 1, 2010.

Modifications to Real-Time Method

The May 19th and June 30th releases indicated that certain investment plans could elect to use a 'real-time method' in determining their provincial attribution percentages. Under the real-time method, an investment plan could elect to determine its attribution percentage for each participating province based on the location of unit holders determined either on a daily basis or on the first day of each month.

It is proposed that the real-time method be made more flexible in two ways as a result of further comments received following the June 30th release:

- An investment plan that has elected to use the real-time election would also be permitted to determine its attribution percentages on a weekly or quarterly basis; and
- An investment plan would be permitted to request the authorization of the Canada Revenue Agency (CRA) to choose a date other than the first day of the week, month or quarter, as the case may be, to determine its provincial attribution percentages, where there are *bona fide* reasons to justify the alternate date.

The proposed amendments would apply in respect of any reporting period of an investment plan that ends on or after July 1, 2010.

Pension Entities and Qualifying Small Investment Plan Rules

The May 19th and June 30th releases provided that non-distributed investment plans, including pension entities (pension trusts or pension corporations) of registered pension plans, would not be required to comply with SLFI rules for a fiscal year if they are 'qualifying small investment plans' (QSIPs), i.e., if their unrecoverable GST is less than $10,000 in their preceding fiscal year.

For pension entities, this unrecoverable GST calculation was intended to include the GST that the pension entity is deemed to have paid under section 172.1 of the ETA (i.e., GST on taxable supplies made by a participating employer of the pension plan under section 172.1). It is proposed that the section 172.1 deemed tax be included in determining whether the pension entity has less than $10,000 in unrecoverable GST, and thus qualifies as a QSIP.

The proposed amendments would apply for the purpose of determining if an investment plan is a QSIP for a fiscal year of the investment plan beginning after the Announcement Date.

PVAT Rebates for Pension Entities

Rebates in respect of GST payable by an SLFI are deducted when determining the SLFI's PVAT liability under the Special Attribution Method (SAM).[5] Deductible rebates include those payable under section 261.01 of the ETA to SLFIs that are pension entities. This rebate is in respect of both GST actually payable by the pension entity and GST that the pension entity is deemed to have paid under section 172.1 of the ETA. However, there has been uncertainty concerning whether the SAM allows a deduction for section 261.01 rebates in respect of section 172.1 tax as the draft regulations included in the June 30th release did not explicitly refer to rebates in respect of tax under section 172.1. The draft regulations included in this release now specifically provide for this deduction under the SAM.

The proposed amendments would apply in respect of any reporting period of an investment plan that ends on or after July 1, 2010.

Relief from SLFI Rules for Non-Distributed Investment Plans with Substantially All of Its Members in Non-Participating Provinces

The May 19th and June 30th releases provided that a non-distributed investment plan would be an SLFI throughout a reporting period in a fiscal year of the investment plan that ends in a taxation year of the investment plan if, at any time in the taxation year, it has one or more members resident in a participating (i.e., HST) province and one or more members resident in any other province.

It is proposed that the SLFI rules not apply to a non-distributed investment plan throughout a reporting period in a fiscal year of the investment plan that ends in a taxation year of the investment plan if:

- At every point in the taxation year, 10% or less of the total number of members of the plan reside in participating provinces; and
- The value of assets of the investment plan (or in the case of a pension entity of a defined benefit pension plan, the value of actuarial liabilities of the pension plan) that are reasonably attributable to its members resident in participating provinces was less than $100 million in its preceding fiscal year.

It should be noted that a non-distributed investment plan that is not an SLFI is subject to the general HST rules applying to non-SLFIs, including the requirement to self-assess PVAT on goods and services acquired in a non-participating province, which are for consumption or use in a participating province.

The proposed amendments would apply in respect of any reporting period of an investment plan that ends on or after July 1, 2010.

Provincial Investment Plans

The May 19th and June 30th releases provided that, where an investment plan is an SLFI but has created a provincial series where none of the units in the series are qualified for sale outside a particular province, the SAM formula would not be applied to the provincial series and the general self-assessment and rebate rules would apply instead.

It is proposed to provide similar treatment to an investment plan that is not divided into series, where all the units of the investment plan are designed to be available only to investors of a single province. Such a provincial investment plan would be excluded from being an SLFI and, hence from the application of the SAM formula; the general self-assessment and rebate rules would apply instead. To qualify for such treatment, the investment plan would have to meet conditions similar to those applying to provincial series of investment plans as described in the June release.

The proposed amendments would apply in respect of any reporting period of an investment plan that ends on or after July 1, 2010.

Rebate for Investment Plans in Respect of Investors in Non-Participating Provinces

Existing section 261.31 of the ETA allows an investment plan that is not an SLFI to claim a rebate in respect of PVAT payable by the investment plan to the extent that the plan holds or invests funds for the benefit of persons who are resident outside the participating (i.e., HST) provinces.[6] The section 261.31 rebate is currently limited to PVAT payable on 'specified services', which includes any management or administrative service as well as any other service provided to an investment plan by a person who also supplies management or administrative services to the investment plan.

It is now proposed to allow a rebate to be claimed in respect of PVAT payable on all goods and services acquired, imported or brought into a participating province, rather than only in respect of 'specified services'.

The proposed amendments would apply in respect of any rebate that is in respect of tax that became payable or was paid without having become payable on or after July 1, 2010.

Modifications to Consolidated Filing Election

The May 19th and June 30th releases proposed to allow investment plans with the same manager to make a consolidated filing election with that manager which would allow the manager to file a single consolidated GST/HST SLFI return for the investment plans.

It is now proposed to provide additional flexibility by:

- Allowing a new investment plan to join an existing consolidated filing group and to be included in the GST/HST registration of the group at any time; and
- Allowing an investment plan which ceases to exist as a result of a merger, amalgamation or wind-up, to leave a group and/or join another group at any time.

The ability to join or leave a consolidated filing group would be available to all investment plans during any fiscal year of the plan ending on or after July 1, 2010.

The proposed amendments would be deemed to have come into force on July 1, 2010.

Allowing Current Monthly and Quarterly Filers to Elect to be Annual Filers

As a general rule, listed financial institutions (LFIs), such as banks, insurance companies, trust companies and investment plans, are annual filers for GST/HST purposes unless they elect to file monthly or, where they qualify, to file quarterly. However, under the current rules, generally, the election once made cannot be revoked.

It is proposed to amend the ETAto allow LFIs (other than LFIs described in subparagraph 149(1)(*a*)(xi) of the ETA) to revoke an election made to be a monthly or quarterly filer.

The proposed amendment would apply to fiscal years of an LFI commencing after December 31, 2010.

Investment Plans and GST/HST Annual Information Return

Section 273.2 of the ETA provides that FIs with annual revenue over $1 million that are GST/HST registrants are required to file the GST/HST Information Return (GST111) annually. Under the rules proposed in the May 19th and June 30th releases, an investment plan that is an SLFI would be required to become a GST/HST registrant if it were to make any of three reporting elections with its manager (specifically, the reporting entity election, the consolidated filing election or the tax transfer election, as provided in the draft regulations). As a result of making one or more of the above elections, the SLFI would be required to file the GST111.

These investment plans are required to complete the GST494 return for SLFIs, which provides much of the same information. For this reason, it is proposed to exempt investment plans from the requirement to file the GST111 where they are SLFIs.

The proposed amendment would apply in respect of fiscal years of an investment plan ending on or after July 1, 2010.

PART TWO – RULES FOR NEW INVESTMENT PLANS

Attribution Percentage for New Plans or New Series of a Plan Created by Way of Merger[7]

The May 19th release proposed that, where a merger of two or more distributed investment plans or two or more series occurs, the attribution percentage for the new plan/series for a particular province determined as of the date of the merger would apply to the new plan/series for the remainder of the fiscal year in which the merger occurred (referred to as the ‘transitional year’ of the new plan/series).

Greater specificity is now being provided respecting how the attribution percentage determined as of the day of the merger would operate following the merger. Specifically, for a plan that after the merger uses the default ‘preceding year’ method with the September 30th attribution date,[8] different rules would apply depending on whether the merger occurred before, or on or after, September 30th of a particular fiscal year.

- If the merger occurs before September 30th of a particular year to form a new distributed investment plan/series, the attribution percentage determined as of the day of the merger would be used beginning on the day of the merger up until the end of the transitional year (i.e., until December 31st of that year). The attribution percentage for the subsequent fiscal year for the new plan/series would be determined as of September 30th of the transitional year. Special rules would exist for exchange traded funds (ETFs).[9]
- If the merger occurs on or after September 30th of a particular fiscal year, the attribution percentage determined for the new plan/series as of the day of the merger would be used beginning on the day of the merger for the rest of the transitional year and for the subsequent fiscal year. [10]

Regardless of whether the investment plan is a corporation or a trust, the above proposed rules would be supplemented by the amalgamation and winding-up rules that are set out in sections 271 and 272 of the ETA, with necessary modifications to reflect the specific circumstances. For example, any outstanding GST/HST liabilities/ITC entitlements of the predecessor plans would be assumed by the successor plan similar to the rules currently provided in those provisions of the ETA.

Example: As announced in the May 19th release, the attribution percentage for a participating province for a new investment plan/series created by way of merger would be the percentage obtained by adding the percentages for each participating province determined for each predecessor plan/series that merged to create the new plan/series by multiplying A by B, where:

> *A = the attribution percentage for the province that is required to be used by the predecessor plan/series under the draft regulations for the day immediately before the day of the merger; and*
> *B = the proportion of the total value of units of the predecessor plan/series in the new plan/series immediately after the merger.*

Using the above formula, suppose that two series of two mutual fund trusts (MFTs) merge on November 30, 2012 to create a new series of a new MFT. Both of the predecessor series (x and y) account for PVAT under the SLFI rules; therefore, the new merged series (z) would account for PVAT under the SLFI rules as well. Predecessor series x holds a total value of units of $5 million and, as of September 30, 2012, has an attribution percentage for Ontario of 45%. Predecessor series y holds a total value of units of $7 million and, as of September 30, 2012, has an attribution percentage for Ontario of 65%.

The attribution percentage for Ontario for the new series would be calculated as follows:

Predecessor Series X = A x B = 45% x ($5 million / $12 million)[11] = 18.75%

Predecessor Series Y = A x B = 65% x ($7 million / $12 million) = 37.92%

The attribution percentage for series z for Ontario would be equal to the sum of the two percentages (i.e., 18.75% + 37.92% = 56.67%).

As series z is created on or after September 30, 2012, the attribution percentage for Ontario (56.67%) would be used (commencing on the date of the merger, i.e., November 30, 2012) for the rest of the 2012 fiscal year, ending on December 31, 2012, and for 2013. Similar calculations would be made to determine the attribution percentages for other participating provinces.

The proposed amendments would apply in respect of any reporting period of an investment plan that ends on or after July 1, 2010.

Attribution percentage for new funds, or series within a fund, created otherwise than by way of merger

Based on the industry input received since the June 30th release, a new method (referred to as the 'reconciliation method') is being proposed as the default method that new plans/series would use to calculate their provincial attribution percentages for a transitional period.

Specifically, under the proposed new default method, a new investment plan/series would be allowed to estimate its attribution percentages and calculate estimated net tax for the initial period of that plan/series,[12] which would run from the initial distribution date of the plan/series up until its choice of two possible attribution dates:

- the 91st day after its initial distribution date;[13] or
- the last day of the month that includes the 91st day after its initial distribution date.

On the chosen attribution date, the new plan/series would be required to determine its actual attribution percentages for each participating province and calculate its actual net tax for the initial period.[14] It would then reconcile the actual and estimated net tax amounts, and the resulting discrepancy would be added to (if positive), or deducted from (if negative), its net tax for the reporting period that includes the month immediately following the month containing the attribution date of the plan/series.

In all cases, the plan would report the reconciled amount on its GST494 return(s), filed annually within six months after its transitional year-end. In addition, reporting and remittance requirements for the reconciled amounts would depend on the filing frequency of the plan (e.g., annual vs. monthly), and whether it has made a tax transfer election with its manager (which would allow the plan to transfer any positive or negative net tax amounts to its manager). Specifically:

- If the plan is an annual filer that has not made the tax transfer election, the reconciled amount would be remitted (or refunded) with its annual GST494 return;
- If the plan is a monthly filer that has not made the tax transfer election, the reconciled amount would be remitted (or refunded) in conjunction with the filing of its monthly GST34 return for its reporting period that includes the month immediately after the month containing the attribution date of the plan; and
- If the plan has made the tax transfer election, regardless of the filing frequency of the plan, the manager would remit (or be refunded) the reconciled amount and report it on its GST/HST return for its reporting period that includes the month immediately after the month containing the attribution date of the plan/series. In this case, the plan would not remit any tax amount in respect of the reconciled amount as the manager would have already remitted the required amount.

When filing its GST494 return(s), an investment plan that is an SLFI would use its actual attribution percentages and not the estimated percentages. Where the initial distribution date and the attribution date of the new plan/new series straddle two fiscal years (i.e., the initial distribution date falls on or prior to December 31st of a particular year and the attribution date falls in the subsequent fiscal year), the attribution percentages reported on each of its GST494 returns (i.e., GST494 returns for the reporting period(s) ending December 31st of the transitional year and GST494 returns for the reporting period(s) in the subsequent fiscal year) would always be the actual attribution percentages, not the estimates used in the initial period. Further, for a plan that uses the default 'preceding year' method with the September 30th attribution date,[15] different rules would apply depending on whether the new plan/series was created before, or on or after, September 30th of a particular fiscal year.

- Where the attribution date for a new plan/series falls before September 30th of the transitional year, the attribution percentage calculated on the attribution date would only apply until the end of that transitional year. The attribution percentage for the subsequent fiscal year would be determined as of September 30th of the transitional year; and
- Where the attribution date for a new plan/series falls on or after September 30th of the transitional year of the plan/series, the attribution percentage calculated on the attribution date would apply until the end of the transitional year as well as for the subsequent fiscal year.

No changes are being proposed to the other methods proposed in the June 30th release. An investment plan may still elect to use the previously-announced options.

<u>Example</u>: An MFT, which is an annual filer located in Ontario with investors in both participating and non-participating provinces, launches a new series on August 2, 2011 (distribution date). The MFT chooses to have the new series' attribution date fall on the last day of the month which includes the 91st day. As the 91st day falls on October 30, 2011, the attribution date for this new series would be October 31, 2011.

The estimated PVAT liability for this new series for Ontario (based on the estimated attribution percentage used by that series prior to the attribution date) is $1,000. On October 31, 2011 (the attribution date), the MFT determines that its actual PVAT liability for the new series for Ontario is $1,500 for the period prior to the attribution date (based on the actual attribution percentage determined on the attribution date).

Therefore, the MFT would be required to add $500 to its net tax in the reporting period of the MFT that includes the month of November 2011 (the month immediately following the month containing the attribution date of the new series). Assuming that, in this example, the MFT has made a tax transfer election with its fund manager (which is a monthly filer), the fund manager (instead of the MFT) would be required to add the $500 to its net tax for the reporting period that includes the month of November 2011 (i.e., its November return which is due on December 31, 2011).[16]

Since the attribution date of the new series falls after September 30th of the transitional year, the new series would use the attribution percentage for Ontario determined as of the attribution date for the rest of the transitional year as well as the subsequent fiscal year.

The MFT would be required to use the attribution percentage determined as of the attribution date to report its total PVAT liability for the initial period of the transitional year ($1,500) as well as for the rest of the transitional year (in this example, including November and December 2011). This total PVAT liability for the transitional year is reported on the MFT's 2011 GST494 return due six months after the transitional year end. The MFT would be required to use the same attribution percentage determined as of the attribution date to report its total PVAT liability for the subsequent fiscal year (which is reported on its 2012 GST494 return).

Since the fund manager would have already remitted the reconciled amount ($500) on behalf of the MFT (due to the tax transfer election and due to the fact that the fund manager is a monthly filer), the MFT would not have to remit, for the new series, any dollar amount of tax with respect to the reconciliation. It would report the final PVAT amount it owes for the initial period (i.e., the $1,500 amount determined as of the attribution date) as well as the PVAT amount it owes for the rest of the transitional year (i.e., November and December 2011) on its GST494 for 2011.

The proposed amendments would apply in respect of any reporting period of an investment plan that ends on or after July 1, 2010.

PART THREE – ISSUES FOR CONSULTATION

A number of issues that have been raised during consultations require further research, analysis and stakeholder consultations.

This part of the backgrounder proposes consultations in respect of whether SLFI rules should apply to entities that currently do not fall within these SLFI rules but that are similar to investment entities that are subject to them, and if so, what specific rules should apply for purposes of determining the provincial attribution percentages of these entities (for purposes of the SAM formula). Examples of such entities include, but are not limited to:

- Certain investment trusts and partnerships with investors in more than one province;
- Trusts holding assets of pension entities that are SLFIs;
- *De minimis* FIs (as described in paragraphs 149(1)(*b*) or (*c*) of the ETA) with a significant level of

investment activity; and
- Trusts governed by a registered retirement saving plan (RRSP), a registered retirement income fund (RRIF) or a registered education savings plan (RESP) administered on a group rather than individual basis.

It also proposes consultations on the issue of whether SLFI rules should apply to determine the PVAT liability of an SLFI investment plan in respect of taxable inputs that relate to the activities of the investment plan where the inputs are acquired by a third party, such as when an employer pays the expenses of a trust governed by a retirement compensation arrangement.

The Government welcomes submissions on these issues before March 31, 2011.

[1] Any reference to regulations is a reference to the draft *Selected Listed Financial Institution Attribution Method (GST/HST) Regulations.*

[2] All references in this document to 'investment plan' include a segregated fund of an insurer unless the contrary is stated.

[3] In addition, a non-investment plan investor such as a bank, insurer or a non-FI corporation, would be a 'specified investor' if it holds less than $10 million in a series of an investee investment plan. The 'specified investor' rules for non-investment plans would not be affected by the changes proposed in this section.

[4] A 'qualifying taxpayer' is an FI that either (1) is resident in Canada; (2) has a qualifying establishment (as defined in section 217 of the ETA) in Canada; (3) in the case where a majority of the persons having beneficial ownership of the FI's property in Canada are resident in Canada, carries on, engages in or conducts an activity in Canada; or (4), as proposed in the May 19th and June 30th releases, is a non-resident trust where the total value of the assets of the trust in which one or more persons resident in Canada have a beneficial interest is both equal to or greater than $10 million and equal to or greater than 10% of the total value of the assets of the trust.

[5] Generally, SLFIs determine their PVAT liability using the SAM. Tax adjustments, including rebates, are made under element G of the SAM formula, as outlined in the draft regulations.

[6] Under modifications announced in the May 19th and June 30th releases, this rebate would also be available to an investment plan that is an SLFI and that has a provincial series where none of the units in the series are qualified for sale outside a particular province that is not a participating province. The rebate would be available to such a distributed investment plan in respect of PVAT payable on services to the extent that the services relate to the activities of the provincial series.

[7] These proposed rules would apply to all distributed investment plans (including ETFs and segregated fund trusts). For these purposes, segregated funds of an insurer may fall under the merger rules where the insurer 'merges' two segregated funds or two or more series of two or more segregated funds and 'transfers' all of the assets of the predecessor segregated fund/series to the new segregated fund/series; the beneficial owners of the assets of the predecessor segregated funds/series become beneficial owners of the assets of the new segregated fund/series.

[8] These rules apply in a similar manner to investment plans using the current year method (with an additional reconciliation element). These rules would not apply to the real-time or CRA pre-approval methods.

[9] A new ETF or an exchange traded series (ETS) would use an average of two attribution percentages – the attribution percentage determined as of the date of the merger and the attribution percentage determined as of September 30th of its transitional year – for the subsequent year. The requirement that the two attribution percentages used by an ETF be equidistant would not apply for this period.

[10] This rule would also apply to a new ETF or an ETS of an ETF created by way of a merger on or after September 30th of a particular fiscal year. For ETFs, the two points in time requirement described under the May 19th release would be waived for new funds for their transitional year and the following fiscal year if the fund or series' attribution date falls on or after September 30th of the transitional year. Therefore, where a new ETF's attribution date is on November 1st, for example, the attribution percentage determined as of that date can be used for the rest of the transitional fiscal year as well as the subsequent fiscal year.

[11] The $12 million is calculated by adding the total value of units of each of the predecessor series and represents the total value of units of the new series.

[12] For the initial period, the plan could estimate the provincial attribution percentage for the new plan/series using, for example, attribution percentages used by other similar plans or series, general company data, or census population data for the provinces.

[13] This 90-day period is similar to the 90-day period provided for the gross-up method described in the May 19th and June 30th releases.

[14] In addition, as in the case of the gross-up method rules announced in the May 19th release when determining the attribution percentages on the attribution date, look-through rules would not apply for new plans/series created

otherwise than by way of merger unless the plan/series opts to look through all or substantially all of its investors.

[15]These rules apply in a similar manner to investment plans using the current year method (with an additional reconciliation element) that a plan can elect to use as was described in the May 19th and June 30th releases. These rules would not apply to the real-time or CRA pre-approval methods, as described in those releases.

[16]If the MFT had not made the tax transfer election, it would have to remit the reconciled amount of tax for the new series six months after its fiscal year-end (since, in this example, it is an annual filer).

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