



Advancing Standards™

February 14, 2012

Tax Policy Branch  
Department of Finance  
140 O'Connor Street  
Ottawa, Ontario  
K1A 0G5

Dear Sir and Madam:

**Re: Response to Department of Finance Canada - Proposed Tax  
Legislative Proposals for Pooled Registered Pension Plans (PRPPs)**

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The Portfolio Management Association of Canada ("PMAC", formerly the Investment Counsel Association of Canada ("ICAC")), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to submit the following comments regarding consultation package of draft legislative proposals for changes to the *Income Tax Act* and the *Income Tax Regulations* to accommodate PRPPs (the "Proposed Rules"). We note that some of our comments below will reiterate key points communicated at previous round table discussions that PMAC attended (February 22, 2011 and July 4, 2011) and some comments pertain generally to the draft *Pooled Registered Pension Plans Act* (the "draft PRPP Act").

As background, PMAC represents investment management firms registered to do business in Canada as portfolio managers. In addition to this primary registration, some firms will be dually registered as exempt market dealers or other registration categories but generally 70% of their income is derived from portfolio manager registration to be members of PMAC. We have over 150 members from across Canada that are comprised of both large and small firms managing both institutional and private client portfolios. PMAC was established in 1952 and currently represents over 150 investment management firms that manage total assets in excess of \$800 billion (excluding mutual funds assets). Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by Members. Member firms are in the business of managing investments for clients in keeping with each client's needs, objectives and risk tolerances. For more information about PMAC and our mandate, please visit our website at [www.portfoliomangement.org](http://www.portfoliomangement.org).

## General Comments

### *a. Uptake of PRPPs*

PMAC has actively monitored the development of a PRPP framework and continues to support PRPPs as a new retirement savings vehicle vs. enhancements or changes to CPP/QPP. We recognize, however, the key question that needs to be answered by the two senior levels of government in Canada is whether the PRPP option will be voluntary or mandatory. Voluntary employer PRPP participation, as envisioned in the draft legislation, may likely result in minimal actual PRPP uptake. Federal-provincial coordination will be required to enable PRPPs to become part of the resolution to Canada's pension coverage issues. We suggest that the government consider:

- introducing a temporary employer retirement savings tax credit akin to the Home Renovation Tax Credit in order to ensure that the roll out of such a measure would not create an unfair advantage over those employers who were previously offering RPP's (this incentive should be offered to all participating employees in an RPP);
- a transitional exemption for the first contributions into a PRPP to be included in calculating the RRSP limits; and
- introducing an Employer/Employee Retirement Savings Grant, similar to the RESP structure, providing a supplemental matching annual grant invested in the retirement savings vehicle.

We also recommend that the launch of the PRPP program include comprehensive and suitable educational information on employer options for retirement savings to encourage participation.

### *b. Alignment of Tax Rules of PRPPs with Group RRSPs & DC Plans*

A key overriding point of consideration when finalizing the tax rules is whether it is intended for PRPPs to be more advantageous or less so than alternative retirement savings programs that are already available. When finalizing such rules as restricted investment and withdrawal rules, there needs to be clarity as to whether the rules are aligned with or different than other retirement savings program options for employers and the ultimate impact on portability, flexibility for employees. It is our view in general that the rules for PRPPs should be aligned with the positive and more flexible attributes of other plans (i.e. non-locking in features, etc.).

## **1. Objective of Promoting "Low Cost" Plans**

### *a. Cost Impact of GST/HST*

We understand that the Proposed Rules for PRPPs have been designed to be simple and straightforward and to promote low-cost plans (section 26 of the draft PRPP Act). Related to the costs associated with these plans, we continue to oppose the levying of GST/HST on investment management fees given their detrimental impact on pensions and retirements savings. While we applaud the government for exploring lower cost retirement savings options for Canadians versus the more costly alternative to enhancements or changes to CPP/QPP, we ask you to consider as part of offering a lowering of the costs for Canadians to build their retirement savings, the removal of all or a portion of the tax cost (i.e. federal or provincial portion of the tax).

The Department of Finance is well aware of the history of court decisions around the definition of Financial Services in the *Excise Tax Act*. Although PRPPs provide a viable option to enhance Canadians' retirement savings, taxing the administration of those savings is counterproductive. We reiterate our input in past submissions that the recent additional cost burden imposed by HST in harmonized provinces has added significantly to the costs of investment management for Canadians. Our view is that value added taxes are intended to be taxes on consumption, not savings, and therefore management of savings should be tax exempt. We urge the government to consider revising the definition of Financial Service (in *Section 123 Excise Tax Act*) and provide an exemption for discretionary investment management fees. Specifically we recommend complete exemption from GST by including discretionary investment management in the exempt financial services definition.

### *b. Low Cost PRPPs*

PRPPs are intended to allow more people to benefit from the lower investment management costs that result from membership in a larger, pooled pension plan. However, it is not clear what constitutes "low cost". In order to encourage take-up by employers and ultimately, greater pension coverage among Canadians, we believe that the market is best to determine the costs associated with offering PRPPs. We encourage no prescribed cost limits and instead allow for the market to determine the appropriate cost level. We also believe this would facilitate competition and therefore, drive costs down.

## **2. Role of the PRPP Administrator**

### *a. Licensing Requirements*

An eligible PRPP administrator must be authorized under the Pooled Registered Pension Plans Act or similar law of a province to act as an administrator for a

pooled pension plan. Similarly, an administrator will require a licence to administer a PRPP under the PRPP legislation (federal and provincial). We understand such licence will be subject to terms and conditions.

The Proposed Rules and draft PRPP Act contemplate PRPP administrators to meet prescribed requirements. We recommend that the government provide further clarity on the scope of such prescribed requirements. The draft PRPP Act as currently drafted is vague as to the nature of such licensing terms and conditions and implications thereof. For example, will there be a licence review process to permit new PRPP administrators to receive licences and to deny licences. Similarly, how will PRPP administrators be dealt with who are not meeting PRPP value for money standards? Further information on licensing in general and what will be required to reflect the attributes of a desired PRPP administrator will enable a better assessment of how the PRPP will work. We look forward to reviewing the draft regulations in this regard.

#### *b. Liability of Administrator*

Another area where greater clarification could be provided is the scope of liability of the administrator. The draft PRPP Act sets out that an employer is not liable for the acts and omissions of the administrator. However, it is not explicitly stated that the administrator is also not liable for breaches of the employer. Similarly, it is unclear as to how far the administrator can go in delegating its responsibilities and duties under the draft PRPP Act and the administrator's potential liability *vis a vis* the default option made available.

### **3. Restricted Investments**

We understand that PRPPs need not conform to the RRSP "qualified investment" rules, but are subject to investment restrictions intended to prevent administrators from participating in arrangements that could be used to circumvent PRPP contribution limits, or in the case of older individuals, to reduce the value of the PRPP accounts in order to avoid or lower required RPP payments in retirement. In addition, PRPPs must take reasonable precautions to avoid:

- acquiring investments in which a members has a significant interest (more than 10% of a class of shares); and
- concentrating more than 10% of plan assets in one business or non-arm's length group.

PRPPs with fewer than 10 unrelated employers participating must also avoid holding investments in participating employers.

In applying these rules, for example, if you have a public company with a 10% shareholder and that public company becomes an employer under the plan, the shareholder is now a member under the plan and this would constitute a restricted investment. If the administrator then purchased securities of the public

company, then by virtue of the Proposed Rules, the member would have a significant interest in the public company. Presumably, this would mean that administrators would have to know the shareholdings of all of the employees of the employers it let into the plan.

It is our view that the definition of restricted investment is analogous to the definition of prohibited investment for a pension plan. In the latter, there is a carve out for publicly traded securities. We believe the definition of restricted investment should also contain a carve-out for publicly traded securities. The current definition could negatively impact many smaller Canadian publicly traded companies. The conditions applicable to PRPPs, including, the condition that the administrator knew or ought to have known an investment, at any particular time (which is an ongoing test), was a restricted investment, imposes ongoing diligence requirements that may be onerous for smaller companies to comply with. We believe that including this carve-out would assist compliance with the Proposed Rule, reduce costs and clarify due diligence obligations by managers.

#### **4. PRPP Withdrawals**

We note that the locked-in feature of PRPPs may create a disincentive for employees deciding which type of plan to invest in and we believe, compares unfavourably to an RRSP from an employee's perspective. While we understand that members of a PRPP can withdraw an amount (e.g. an over-contribution) from his or her PRPP account, notwithstanding any locking-in provisions contained in pension standards legislation applicable to PRPPs, if the withdrawal is made to reduce the tax that would otherwise be payable under Part X.1 of the *Income Tax Act*, this right is provided only to the extent the member cannot otherwise withdraw funds from plans other than PRPPs (e.g. from non-locked-in RRSPs) to achieve the reduction in tax.

We recommend that the withdrawal rules be harmonized with other registered retirement plans so as to create a leveled-playing field and not de-incentivize participation in PRPPs. Overall, we believe that different rules for defined contribution plans and RRSPs than those of PRPPs will be confusing for employees moving between employers with different plans.

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If you have any questions regarding the comments set out above, please do not hesitate to contact Katie Walmsley at (416) 504-7018 or Julie Cordeiro at (416) 504-1118.

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

Handwritten signature of Katie Walmsley in black ink.

Katie Walmsley  
President, PMAC

Handwritten signature of Scott Mahaffy in black ink.

Scott Mahaffy  
Chair, Industry, Regulation & Tax Committee  
Vice President Legal, McLean Budden Limited

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