THE ASSOCIATION OF GLOBAL CUSTODIANS

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SUBMITTED VIA E-MAIL

Ms. Alexandra MacLean
Director-General, International and Large Business Directorate
The Canada Revenue Agency
344 Slater Street
Ottawa ON K1A 0L5
Canada
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Re: Improvement of Withholding Tax Relief Procedures for Canadian Securities Held Through the Depository Trust Company

Dear Ms. MacLean,

The Tax Committee of the Association of Global Custodians ("AGC" or "Association")[1] is committed to working on behalf of its member organizations to identify opportunities to overcome challenges in the pursuit of equitable tax services to its clients and to ensure its members are meeting the requirements of the local tax authorities. In our review of services provided by The Depository Trust Company (DTC) in its role as a central securities depository for Canadian securities, we have requested the expansion of the current treaty-based tax relief service offered to our clients. We appreciate this opportunity to provide information to the Canadian Revenue Agency (CRA) in support of DTC's pursuit to broaden the procedural process to allow AGC members to elect exempt

[1] The Association is an informal group of 12 member banks that provide securities safekeeping and asset servicing functions to cross-border institutional investors worldwide, including investment funds. In providing global custody services, AGC members routinely seek appropriate withholding tax relief on behalf of custody clients by processing millions of such claims in the aggregate each year, affecting substantial amounts of cross-border portfolio investment flows in and out of countries worldwide.

status for treaty-based investors that are currently missing relief at source opportunities on their Canadian dividends.

Issue:

DTC offers a tax service on Canadian securities. Under the current service, an exemption from withholding tax is provided in certain circumstances and generally only when an entity has been issued a six-digit exemption number by the CRA.

The CRA-issued guidance notes[2] do not necessarily require a foreign tax-exempt entity, other than certain US tax-exempt entities, to obtain a CRA exemption number in order to claim an exemption from withholding to which the entity is entitled (e.g., under the terms of a double taxation treaty ("DTT")). However, under the specific requirements of DTC's tax service, foreign entities that hold Canadian securities through DTC and that are not required by the CRA to obtain a CRA exemption number will not benefit from an exemption from withholding to which they are entitled. Examples include pension funds with tax residency in Switzerland and the United Kingdom, for which the CRA has prescribed alternative procedures and documentation to benefit from exemption pursuant to a DTT.

Additionally, a lack of formal CRA guidance exists with respect to documentation required for non-US entities (other than Swiss or UK pension funds) eligible for exemption from Canadian dividend withholding taxes pursuant to a DTT, although it is clear that the CRA does not issue Exemption Letters or six-digit exemption codes to such entities.[3] In the absence of such guidance, DTC has hesitated to update its tax relief service to provide an opportunity for DTC participants to elect 0% withholding on Canadian dividends paid to eligible investors.

Custodians would like to see an expansion of the CRA's guidance to cover all entities eligible for an exemption, as well as an alignment of DTC's procedures with the CRA

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[2] https://www.canada.ca/en/revenue-agency/services/tax/international-non-residents/payments-non-residents/nr4-part-xiii-tax/part-xiii-withholding-tax/beneficial-ownership-tax-treaty-benefits.html.

[3] Affected entities may include Danish pension funds eligible for an exemption on Canadian dividends under the Canada-Denmark Income and Capital Tax Treaty (1997), French pension funds eligible for an exemption on Canadian dividends under the Canada – France Income and Capital Tax Treaty (1975), Irish pension funds eligible for an exemption on Canadian dividends under the Canada - Ireland Income Tax Treaty (2003), Israeli pension funds eligible for an exemption on Canadian dividends under the Canada - Israel Income Tax Treaty (2016), Luxembourg pension funds eligible for an exemption on Canadian dividends under the Canada - Luxembourg Income and Capital Tax Treaty (1999), Oman pension funds and government funds eligible for an exemption on Canadian dividends under the Canada - Oman Income and Capital Tax Treaty (2004), Swedish pension funds eligible for an exemption on Canadian dividends under the Canada - Sweden Income and Capital Tax Treaty (1996), and UAE governmental entities eligible for an exemption on Canadian dividends under the Canada - United Arab Emirates Income and Capital Tax Treaty (2002).

requirements, so that all such entities are able to secure the exemption, regardless of whether they hold Canadian securities at the Canadian Depositary for Securities (CDS) or DTC.

Background:

An Elective Dividend Service (EDS) is provided by DTC as outlined in DTC's Canada – US TaxInfo Version 4.9.5. (TaxInfo) issued October 20, 2014. The TaxInfo document identifies relief opportunities for United States (US) and Canadian residents with a CRA identification number and for non-US residents from any treaty jurisdiction where the applicable rates of Canadian withholding tax are the same as the rates specified in the United States-Canada Income Tax Convention of 1980. According to TaxInfo, an exemption from the Canadian dividend withholding tax is available to eligible Canadian residents with a valid CRA-issued identification number, eligible US entities with a valid CRA-issued number, and foreign governments, foreign governmental agencies, and international organizations exempt from Canadian non-resident withholding tax by virtue of sovereign immunity that have received a valid CRA-issued identification number. The only investor types that are eligible for exemption through DTC without a CRA-issued identification number are IRA accounts (traditional or Roth) and registered Canadian charities. No other entities are currently eligible for the exemption under the EDS procedure even when a lower dividend withholding tax rate may apply under the applicable Canadian tax treaty. The AGC would like to see additional guidance from the CRA and an amendment to DTC's procedures to enable these other entities access to their exemption through relief at source, notwithstanding the absence of a CRA-issued number.

As a result of the above-mentioned limitations, the EDS service contrasts unfavorably with the relief provisions available to non-US resident investors investing directly in the local market. Even though the CRA's guidance appears to allow all categories of non-resident investors that are eligible for a treaty-based exemption to benefit from that exemption through a zero rate of withholding at source on Canadian securities, and even though that exemption at source is available as a practical matter for Canadian securities held at CDS, no comparable relief at source (RAS) service is available for Canadian securities held at DTC by exempt investors.. To compensate for the lack of a RAS process for securities held at DTC by exempt investors, reclaims must be filed on behalf of each investor. Reclaims are a costly processing burden for the CRA as well as being burdensome to treaty-eligible holders of Canadian equities and to the custodians. The variance in tax relief procedures for Canadian securities held at CDS versus securities held at DTC also presents challenges for custodians needing to explain the differences in processing to

clients holding securities both at CDS and at DTC. Issues also arise when fund accounting and cash projection reports generated using withholding tax tables based on the exempt rate do not reconcile with custodial "cash received" reports.

Recommendation:

The AGC members have already implemented the documentation requirements as outlined in Publication T4061(E) Rev. 19, NR4 – Non-Resident Tax Withholding, Remitting, and Reporting – 2019 (Publication T4061) for the purposes of providing treaty relief to investors in the Canadian local market via CDS. Thus, for example, UK and Swiss pension funds eligible for exemptions under their respective treaties with Canada are able to obtain a zero rate of withholding on dividends paid on Canada stock held through CDS by providing the documentation required in CRA's Publication T4061 (including the required letters from those tax administrations). Other non-US pension funds eligible for exemptions under their respective treaties with Canada are able to obtain a zero rate of withholding on dividends paid on Canadian stock held through CDS by providing a letter on the entity's letterhead signed by an authorized official representative of the entity confirming that it fully meets the requirements for exemption on dividend income under the terms of the relevant treaty and undertakes to provide notification promptly should the plan itself, or a particular plan asset held in the account, cease to qualify for the treaty exemption.

The AGC recommends that the same documentation requirements be suitable for the purposes of DTC. For clients required to secure an exemption number, the AGC will continue to provide these numbers through the DTC submission process. The AGC requests that a new 0% election be available at DTC for an exempt investor without the need to provide an exemption number, where CRA procedures do not require or provide for such a number. The AGC members will keep on file, along with the NR301, NR302 and NR303 forms (where applicable), the following documentation from its clients eligible for the exempt rate.

- **Government Entity claiming exemption under a Tax Treaty**[4] - A letter on the entity's letterhead signed by a responsible official confirming:
    - the government entity is the beneficial owner of the income;
    - is considered a resident under the tax treaty, having a the status of the government of a country or political subdivision or local authority thereof;
    - is entitled to treaty benefits;

[4] For example, under the Canada – United Arab Emirates Income and Capital Tax Treaty of 2002, a Government of a Contracting State is eligible for an exemption from the dividend withholding tax.

- meets any other condition necessary under the particular treaty provision; and
- it will provide notification promptly should the entity cease to qualify for the treaty exemption.

This documentation should be renewed every three years in order to confirm that the plan continues to qualify for the exemption.

- **United Kingdom Pension Funds**
  - A letter on the entity's letterhead signed by an authorized official representative of the entity attesting that:
    - it fully qualifies for the exemption on dividends under paragraphs 3 and 4 of Article 10 of the amended Canada - United Kingdom tax treaty;
    - it is generally exempt from tax in the United Kingdom;
    - it does not directly or indirectly own more than 10% of the capital or more than 10% of the voting power of the company paying the dividends;
    - the dividends received are only for the benefit of recognized pension plans and the recognized pension plans provide benefits to individuals, of whom at least 90% are residents of the United Kingdom; and
    - it will undertake to promptly provide notification if it ceases to qualify on any investment held in its account.
  - A letter or (copy of the certificate) issued by Her Majesty's Revenue & Customs ("HMRC") which must:
    - confirm that the recipient meets the criteria in Article 10;
    - in the case of pension plans arranged through an insurance company, confirm that the insurance company administers or manages pension schemes registered under Part 4 of the Finance Act 2004 (United Kingdom) including the schemes listed by the insurance company to which the arrangement applies; and
    - in all other cases, affirm that the pension plan is registered under Part 4 of the Finance Act 2004 (United Kingdom), including pension funds or pension schemes arranged through insurance companies and unit trusts where the unit holders are only pension schemes.

This documentation should be renewed every three years in order to confirm that the plan continues to qualify for the exemption.

- **Swiss Pension Funds**
  - A letter on the entity's letterhead signed by an authorized official representative of the entity confirming:
    - it fully qualifies for the exemption on dividends under paragraph 3 of Article 10 of the amended Canada - Switzerland tax treaty;
    - it is generally exempt from tax in Switzerland;
    - it does not directly or indirectly own more than 10% of the capital or more than 10% of the voting power of the company paying the dividends;
    - the dividends received are only for the benefit of recognized pension plans and the recognized pension plans provide benefits to individuals, of whom at least 90% are residents of Switzerland; and
    - it will undertake to promptly provide notification if it ceases to qualify on any investment held in its account.
  - A letter issued by the Swiss Tax Administration which must:
    - confirm that the recipient meets the criteria in Article 10; and
    - confirm that the pension plan or plans match a pension or retirement plan in Switzerland that Canada recognizes for tax purposes and that is listed on the CRA's website at canada.ca/en/revenue-agency/services/tax/international-non-residents/competent-authority-agreements-notices/memorandum-understanding-between-competent-authorities-canada-switzerland.

  This documentation should be renewed every three years in order to confirm that the plan continues to qualify for the exemption.

- **Pension Funds under Other Tax Treaties**
  - A letter on the entity's letterhead signed by an authorized official representative of the entity confirming:
    - it fully meets the requirements for exemption on dividend income under the terms of the relevant treaty and undertakes to provide notification promptly should the plan itself, or a particular plan asset held in the account, cease to qualify for the treaty exemption.

  This documentation should be renewed every three years in order to confirm that the plan continues to qualify for the exemption.

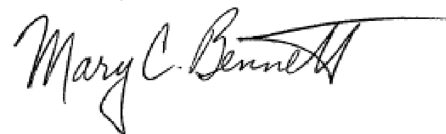
Conclusion:

The AGC recommends (1) the CRA expand its guidance to cover pension funds and government entities in all relevant jurisdictions eligible for exemption from withholding tax under a DTT, and (2) that DTC work with the CRA to update its EDS service to offer

consistent relief procedures to all investors qualifying for an exemption with or without an exemption number. We believe this will benefit all entities involved. DTC will benefit as investors will continue to invest in Canadian securities offered at DTC versus on the Canadian market. The CRA would benefit significantly as paper reclaims will not need to be filed for dividends. Custodians will also benefit in that their clients will not be negatively impacted based on where they purchase their securities. Lastly, the reclaim process in Canada is paper-intensive and costly, and the AGC believes the CRA will agree that reclaims are not a good solution, whereas a simple change to add a 0% rate without the requirement of a CRA identification number should not be difficult to institute. The CRA will also benefit from having more comprehensive guidance and establishing a standard for tax documentation in an expanding treaty network.

The AGC has been in discussion with DTC regarding our recommendations for improving its tax relief service for Canadian securities, and we understand discussions are underway between DTC and the CRA on how CRA guidance and DTC procedures can best be improved and coordinated to ensure that all eligible investors are able to elect a 0% rate on the Canadian securities they hold through DTC. The AGC appreciates any efforts the two organizations can make to reach early solutions to the problems outlined above, and we would be happy to meet with appropriate officials or respond to any questions you may have about our recommendations.

Sincerely,



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cc: Mr. Geoff Trueman, Assistant Commissioner, Legislative Policy and Regulatory Affairs, CRA (geoff.trueman@cra-arc.gc.ca)

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