

2 October 2020

Indirect Tax Alert

News from EY Americas Tax

Canada: Distributed Investment Plans required to request certain investor information by 15 October 2020

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Executive summary

A Distributed Investment Plan (DIP) that is a selected listed financial institution (SLFI) is required to make a written request to obtain certain information from its investors by 15 October 2020. The information provided by the investors is used to calculate the DIP's provincial attribution percentage (PAP) and the DIP's Goods and Services Tax (GST)/Harmonized Sales Tax (HST)/Quebec Sales Tax (QST) net tax liability/refund. If a DIP does not request this information by 15 October 2020, certain investors may be deemed to be residents of the highest rate province (i.e., 15%) and, as a result, the DIP may have higher tax liabilities or lower refunds.

Detailed discussion

Background

The GST/HST place of supply rules result in the vendors of a DIP generally charging GST/HST based on the place of consumption (such as the address of the trustee for a mutual fund trust). In the absence of any special rules, there would be an incentive for a DIP to locate its contracting addresses in lower GST/HST rate jurisdictions such as Alberta, where the GST/HST is imposed at

a rate of 5%, rather than higher GST/HST rate jurisdictions such as Ontario, where GST/HST applies at a rate of 13%. In order to level the playing field, DIPs that are SLFIs must perform a special calculation to determine their effective rate of GST/HST according to certain investor information, including the investor's residency.

DIPs are thereby required under the Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations (SLFI Regulations) to obtain this information from their investors to properly calculate their GST/HST/QST liabilities.

If a DIP has not requested the required information from its investors by 15 October 2020 and does not have the required information by 31 December 2020, it may have to treat some or all of its investors as being resident of the highest rate province. This may lead to additional GST/HST/QST costs for the DIP. As such, it is recommended that a DIP send the information request to its investors by 15 October 2020. Investors are required to respond within 45 days of receiving the request. Pursuant to subsections 52(12) and (13) of the SLFI Regulations, an investor that fails to respond may be subject to a penalty equal to the lesser of:

- ▶ CA\$10,000¹
- ▶ 0.01% of the total value of the units held by the investor in the DIP

The information required depends on the type of investor and the value of the holdings. In general, a DIP is required to request information from the following investors:

| Investor type | Information required |
|---|---|
| Selected investors | Investor address that determines its province of residence and the number of units held in each series as at 30 September 2020 |
| Qualifying investors | (i) Investor percentage and the number of units held in each series as at 30 September 2020 (ii) Notification that the investor is a "qualifying investor" |
| Securities dealers | (i) Number of units held by the investor in each series as at 30 September 2020 (ii) Number of units held by investors resident in the participating provinces as at 30 September 2020 |
| Institutional investors with \$10,000,000 or more invested in a particular series or unit | Investor percentage and the number of units held in each series as at 30 September 2020 |
| Distributed Investment Plans | Investor percentage and the number of units held in each series as at 30 September 2020 |

Type of investors

Selected investor

Under subsection 52(1) of the SLFI Regulations, a *selected investor* generally includes a person that:

- (i) Is resident in Canada
- (ii) Holds units with a total value of less than \$10,000,000
- (iii) Is not an individual
- (iv) Is not a DIP

This type of investor includes certain corporations, trusts, pension plans and partnerships. If the DIP sends a written request to a selected investor, the investor is required to provide the following information:

- ▶ Its address that determines its province of residency as at 30 September 2020
- ▶ The number of units held by the investor as at 30 September 2020

Qualifying investor

Subsection 52(1) of the SLFI Regulations defines a *qualifying investor* as a person that is an investment plan that:

- (i) Holds units with a total value of less than \$10,000,000
- (ii) Is not a DIP (such as a mutual fund trust, investment limited partnership or investment corporation)
- (iii) Is not a “qualifying small investment plan” under subsection 7(2) of the SLFI Regulations (i.e., generally an investment plan that pays less than \$10,000 per year of the federal component of GST/HST at a rate of 5%)
- (iv) Meets **one** of the following conditions:
 - a. It is a SLFI
 - b. It is a member of an affiliated group and the members together hold units with a total value of \$10,000,000
 - c. It is a member of an affiliated group and at least one member of the affiliated group is a SLFI

This type of investor generally includes pension plans that are a SLFI. A DIP is not required to send an information request to qualifying investors; however, in accordance with subsections 52(9) and (10) of the SLFI Regulations, these investors must provide the required information voluntarily

by 15 November 2020. Given that qualifying investors may not be aware of their obligations to provide this information voluntarily, a DIP should send an information request to qualifying investors requesting the following information for each investor: (i) its “investor percentage” and number of units held in each series as at 30 September 2020; and (ii) confirmation that it is a “qualifying investor.”

Securities dealer

A securities dealer that sells or distributes units of the DIP must provide details on the units held by the investor and the residency of the investors in the participating provinces as at 30 September 2020.

Institutional investors with \$10,000,000 or more invested in a particular series or unit

This type of investor is generally limited to investors that (i) hold \$10,000,000 or more in a particular series; and (ii) are not an individual, specified investor or a DIP. Institutional investors include corporations, banks, insurance companies and lending companies. A DIP that has institutional investors as its unitholders should obtain the investor percentage and the number of units held by the institutional investor as at 30 September 2020.

Distributed Investment Plans

Subsection 1(1) of the SLFI Regulations generally defines a DIP to include mutual fund trusts, mutual fund corporations, segregated funds of an insurer, unit trusts and investment limited partnerships. Regardless of the quantum of the investments held by DIP investors, it is recommended that DIPs obtain the following information for each investor: (i) its investor percentage as at 30 September 2020; and (ii) the number of units held at 30 September 2020.

Endnote

1. Currency references in this Alert are to the CA\$.

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EYG no. 006776-20Gbl

1508-1600216 NY
ED None

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