Welcome Clarification for Plan Administrators on Pension Investment Restrictions

May 10, 2017

The Canada Revenue Agency revisited its position on the application of the quantitative limits applicable under pension laws.

The Canada Revenue Agency ("CRA") recently revisited its position on the application of the quantitative limits applicable under pension laws. The Pension Benefits Standards Act ("PBSA") and many provincial pension benefits statutes limit a pension fund to not more than 10% of the market value in any one investment. In 2007, the CRA indicated that where a pension fund invests indirectly through a pension fund investment corporation, the quantitative limits would apply at the level of the pension fund investment corporation. Pension fund investment corporations are exempt from Part 1 Tax under the Income *Tax Act* (Canada) (the "Tax Act"), provided certain conditions are met. One of these conditions is the requirement that a pension investment corporation make no investments other than investments that a pension fund or plan is permitted to make under the PBSA or provincial pension benefits legislation. The CRA's administrative position caused concern that this exemption would be lost if the pension fund investment corporation exceeded the quantitative limits in respect of its own investments, even if the limits were not exceeded at the pension fund level.

The CRA has reversed its view and has announced that it will apply the quantitative limits at the level of the pension fund, and not at the level of the pension investment corporation, concluding that this is "consistent with the diversification objective of the 10% quantitative limit". The CRA adopted a "textual, contextual and purposive approach" in interpreting the policy intent underpinning the specific investment restriction language used in the *Tax Act*. The CRA also clarified that its position would extend to the similar *Tax Act* investment requirements applicable to pension real estate corporations.

[CRA Technical Interpretation 2013-0508321I7, released December 21, 2016]

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