



Pension Investment
Association of Canada
Association canadienne des
gestionnaires de caisses de retraite



March 16, 2015

The Honourable Joe Oliver
Minister of Finance
House of Commons Centre Block Building – Room 435-S
Ottawa, Ontario K1A 0A6
E-mail: joe.oliver@parl.gc.ca

Dear Minister Oliver:

Re: Income Tax Act Section 253.1

This submission is made by the Pension Investment Association of Canada (PIAC) and the Canadian Association of University Business Officers (CAUBO) in response to the above referenced tax provision, which has an adverse impact on Canadian universities. As section 253.1 is currently written, it may limit the opportunity set of investment options and asset classes and it increases administrative complexity and cost of investment management.

CONTEXT

PIAC has been the national voice for Canadian pension funds since 1977 and its membership has broadened out to include organizations similar to pension funds that are responsible for the fiduciary management of assets for a specific set of beneficiaries, such as workers' compensation boards, endowment funds, and foundations. PIAC's member funds are responsible for the oversight and management of over \$1 trillion in assets on behalf of millions of Canadians.

PIAC's advocacy initiatives support general principles that include prudent management of investments, tax efficient investing, low costs, efficient and effective governance structures, and a level playing field.

Founded in 1937, CAUBO represents the administrative function of over 100 Canadian universities. CAUBO, through its national Treasury and Investment Committee, supports the development and implementation of best practices in investment management and governance across these universities. CAUBO's member institutions

are collectively responsible for the management of \$14 billion in endowment funds and \$39 billion in pension funds.

PROFILE OF CANADIAN UNIVERSITIES

Canadian public universities are institutions that are established by virtue of an Act of a province or by the Crown by virtue of Royal Charter. The investments of these institutions typically include both pension funds and endowment funds or foundations that are managed by the same personnel. As such, there is a high level of overlap in the underlying investment strategies for university pension plans and endowments and important synergies are obtained from economies of scale and management efficiency.

To provide an indication of the number of institutions that could be negatively impacted by section 253.1, from the CAUBO survey report as at December 31, 2013, 66 universities reported on endowments and 55 universities reported on pension assets. These institutions represent the combined values of \$14 billion and \$39 billion cited above for endowments and pension assets, respectively.

INCOME TAX ACT SECTION 253.1

PIAC and CAUBO are requesting that the federal government amend section 253.1 of the Income Tax Act (the "Act") to clarify the ability of Canadian public universities, as registered charities, to invest in limited partnership vehicles as a passive investor.

A registered charity is not permitted to carry on a business other than a "related business" as defined in the Act, which creates a concern due to paragraph 149.1(2) (a) that would permit the Minister to revoke the registration of the charity if it "carries on a business that is not a related business of that charity". The Canada Revenue Agency has taken the position that a registered charity should not invest in any partnership, even as a limited partner (although it is not clear whether this position applies in the case of a partnership that does not carry on business for purposes of the Act).

There are a number of special types of entities that are restricted under the Act from doing anything other than investing their funds, for example, pension fund investment corporations. Prior to the introduction of section 253.1 of the Act, these entities had the concern that if a limited partnership of which they were a limited partner did something beyond investing, these activities would be attributed to them as partners. Section 253.1 has the effect of removing this concern for the types of entities listed in that section, as long as the entity is a limited partner with limited liability protection.

Canadian public universities are not currently included in the list of entities in section 253.1. As indicated above, these institutions are established by virtue of an Act of a province or by the Crown by virtue of Royal Charter. Registered pension plans do not require the protection of section 253.1 because they are not restricted to investing their

funds, and pension fund investment corporations which are so restricted have the protection of section 253.1 of the Act. By their nature, the investment mandates of Canadian public universities are akin to those of some entities already listed in section 253.1 of the Act such as pension fund investment corporations; however, the endowment funds of a public university must, in certain asset classes where limited partnerships are commonly used as investment or fund vehicles, invest in different investment vehicles and strategies than its pension funds. Since these institutions typically invest their funds in strategies alongside their pension funds, this different treatment is not desirable from governance, operational and administrative perspectives.

Given the governance, operational, and administrative considerations outlined above, PIAC and CAUBO are requesting, in regard to section 253.1 of the Act, the addition of paragraph 149.1(2)(a) as it applies to “a university established by or continued by or arising by virtue of an act of a province or by an act of the Crown by virtue of Royal Charter” to the list of provisions at the beginning of section 253.1.

Section 253.1 currently reads as follows:

253.1. Investments in limited partnerships - For the purposes of subparagraph 108(2)(b)(ii), paragraphs 130.1(6)(b), 131(8)(b), 132(6)(b) and 146.1(2.1)(c), subsection 146.2(6), paragraphs 146.4(5)(b) and 149(1)(o.2), the definition “private holding corporation” in subsection 191(1) and regulations made for the purposes of paragraphs 149(1)(o.3) and (o.4), if a trust or corporation holds an interest as a member of a partnership and, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited, the member shall not, solely because of its acquisition and holding of that interest, be considered to carry on any business or other activity of the partnership.

The requested revised version of section 253.1 would read as follows:

253.1. Investments in limited partnerships - For the purposes of subparagraph 108(2)(b)(ii), paragraphs 130.1(6)(b), 131(8)(b), 132(6)(b) and 146.1(2.1)(c), subsection 146.2(6), paragraphs 146.4(5)(b), 149(1)(o.2) and 149.1(2)(a) (as it applies to a university established by or continued by or arising by virtue of an act of a province or by an act of the Crown by virtue of Royal Charter), the definition “private holding corporation” in subsection 191(1) and regulations made for the purposes of paragraphs 149(1)(o.3) and (o.4), if a trust, corporation or university holds an interest as a member of a partnership and, by operation of any law governing the arrangement in respect of the partnership, the liability of the member as a member of the partnership is limited, the member shall not, solely because of its acquisition and holding of that interest, be considered to carry on any business or other activity of the partnership.

CLOSING REMARKS

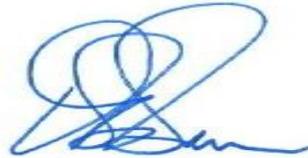
PIAC and CAUBO are requesting a reasonable change that will benefit Canadian public universities by expanding the opportunity set of investment options and asset classes, lowering the cost of investment management and reducing administrative complexity. This is consistent with general principles for prudent management of investments, tax efficient and low cost investing, as well as efficient and effective governance.

Thank you for your consideration of these issues and we look forward to further discussion and progress towards a satisfactory resolution.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Dan Goguen', written in a cursive style.

Dan Goguen
Chair, PIAC

A handwritten signature in blue ink, appearing to be 'David Button', written in a cursive style.

David Button
President, CAUBO

Cc: Alexandra MacLean, Director, Tax Legislation Division, Tax Policy Branch
Email: alexandra.maclea@fin.gc.ca