STEP Canada
ADVISING FAMILIES ACROSS GENERATIONS

September 11th, 2025

Lindsay Gwyer
Director General, Tax Legislation Division
Tax Policy Branch, Department of Finance
90 Elgin Ottawa (ON) K1A 0G5

Via email : Lindsay.gwyer@fin.gc.ca

Dear Ms. Gwyer,

RE: Legislative Amendment Request – EIFEL Excluded Entity Definition and Foreign Personal-Use Trusts

The STEP Canada Tax Technical Committee is writing to raise a concern regarding the application of the "excluded entity" definition in subsection 18.2(1) of the *Income Tax Act* ("the Act") as interpreted by the Canada Revenue Agency (CRA) in its technical interpretation 2025-1056861E5, dated June 30, 2025.

This interpretation addresses a scenario where a Canadian-resident discretionary trust, commonly established for U.S. estate and probate planning purposes, holds a U.S. personal-use property (a cottage) for the benefit of a Canadian family. The CRA concluded that the trust's ownership of the foreign property causes it to fail the "all or substantially all" test in subparagraph (c)(i) of the "excluded entity" definition. Consequently, the entire group of affiliated Canadian corporations—whose operations are otherwise entirely domestic—would be denied the excluded entity status and subject to the EIFEL rules.

We respectfully submit that this outcome is inconsistent with the policy intent of the EIFEL regime and recommend two targeted legislative amendments to address this issue.

1. Adopt a group-level "all or substantially all" test
We recommend that subparagraph (c)(i) be amended to assess whether all or substantially all of the **combined** businesses, undertakings, and activities of the taxpayer and each eligible group entity are carried on in Canada.

This change would prevent an otherwise fully domestic group from losing excluded entity status solely due to the presence of a single-purpose entity - such as a Canadian trust holding a foreign personal-use property - within the group, even where the foreign activity in question is immaterial in the context of the group's overall operations. These entities are often established for non-tax motivated commercial reasons, including estate planning, asset protection, and probate avoidance. Penalizing an entire Canadian group for such minor and incidental foreign activity creates an overly rigid result that we believe is misaligned with the policy intent of the EIFEL regime.

Our recommendation aligns with the explanatory notes accompanying the EIFEL legislation, which emphasize that the test is intended to capture the **aggregate economic activity** of the group, not to disqualify a group based on immaterial foreign activities carried on by a single entity. It is also consistent with the other *de minimis* thresholds that are already present in the definition of excluded entity such as the $5 million threshold for foreign affiliates.

2. Exclude Personal-Use Property from the (c)(i) Test
We further recommend that subparagraph (c)(i) be amended to explicitly exclude from consideration any property that qualifies as "personal-use property" under the Act.

The EIFEL rules are designed to address base erosion and profit shifting through excessive interest deductions. These concerns are not present in the acquisition or use of personal-use property, which by definition is not held for commercial or income-generating purposes. Including such property in the (c)(i) test introduces unnecessary complexity and compliance burdens, and risks capturing taxpayers who pose no risk of base erosion.

We believe these amendments would better align the legislation with its policy objectives and provide much-needed clarity for taxpayers. For further context, we refer you to our original submission to the CRA dated April 21, 2025, the CRA's response dated June 30, 2025, and our follow-up submission to the CRA dated July 15, 2025.

We would be pleased to further discuss our submission with you. Please address any questions to Michael Dodick, Chief Operating Officer, STEP Canada at mdodick@step.ca.

Yours truly,

Richard Niedermayer, KC, TEP
Chair STEP Canada

Kenneth Keung, CA, CPA, CPA (CO), CFP, MTAX, LLB, TEP
Chair STEP Canada Tax Technical Committee

Sébastien Desmarais, LLB, JD (US), LLL, TEP
Deputy Chair STEP Canada Tax Technical Committee