STEP Canada
ADVISING FAMILIES ACROSS GENERATIONS

September 12th, 2025

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Director General, Tax Legislation Division
Tax Policy Branch, Department of Finance
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Via email: consultation-legislation@fin.gc.ca

Dear Ms. Gwyer,

AMENDED STEP Canada Proposed Amendments to Trust Income Tax Reporting contained in August 15th, 2025, Draft Legislation

The STEP Canada Tax Technical Committee (TTC) appreciates the opportunity to provide comments on the Department of Finance's August 15th, 2025, draft legislation concerning enhanced T3 trust reporting requirements. As practitioners dedicated to trust and estate planning, we recognize the importance of transparency and compliance in the administration of trusts. However, we remain concerned that certain aspects of the proposed rules may inadvertently impose disproportionate compliance burdens on taxpayers and their advisors.

1. Inclusion of Canadian life insurance policies as qualifying assets under proposed paragraph 150(1.2) (b.1)

We recommend that the list of qualifying assets under proposed subparagraph 150(1.2)(b.1)(iii) of the *Income Tax Act* ("the Act") be expanded to include a life insurance policy in Canada, and that for the purposes of applying proposed paragraphs 150(1.2)(b) and (b.1) the fair market value of life insurance policies be deemed to be equal to their cash surrender value (CSV).

This recommendation aligns with the submission made by the Conference for Advanced Life Underwriting (CALU), and is grounded in both practical and policy considerations:

- *CSV as a Practical Valuation Metric*: Using the CSV to determine whether a trust exceeds the \$50,000 or \$250,000 threshold under paragraphs 150(1.2) (b) and (b.1), respectively, avoids the uncertainty and complexity of appraising the fair market value of life insurance policies. CSV is an objective, readily available figure that reflects the realizable value of the policy and is already used in various tax contexts.

- *Minimal Taxable Events from Holding Insurance*: In most cases, holding a life insurance policy within a trust does not trigger any taxable events. Reporting should not be required solely due to the presence of such policies, particularly when their CSV is modest. In the event there is a taxable event, such as upon the surrender of the policy where the CSV exceeds the adjusted cost basis, a T5 would be issued by the insurer and the trust would still have to file a T3 under subsection 150(1.1) and/or subsection 204(1) of the Regulations, even if it qualifies as a listed trust under paragraph 150(1.2)(b.1).

- *Quebec-Specific Legal Constraints*: Under Quebec civil law, a trust must be constituted by a formal deed to exist. Testamentary trusts created by Will are valid, but a trust cannot be named as a beneficiary of a life insurance policy unless it is already constituted prior to the death of the insured. As a result, it is more common in Quebec than in other provinces/territories for individuals to structure life insurance ownership through an inter vivos trust from the outset if the intention is for the death benefit to be paid to a trust. Not including life insurance as a qualifying asset under proposed paragraph 150(1.2) (b.1) therefore disproportionately affects Quebec taxpayers who, due to civil law requirements, are more likely to use inter vivos trust to hold life insurance policies.

- *Life Insurance Trust Ownership Structures Necessitated by Non-Tax Objectives*: In some cases, life insurance may be owned in a trust for reasons unrelated to tax planning. For example, to fund buy-sell obligations under a shareholders' agreement, a trust may hold policies on each shareholder's life, with the shareholders contributing to the trust to fund the premiums pro rata in accordance with their ownership interests. In two-shareholder scenarios, sometimes one shareholder holds the policy for the other (thus creating a bare trust) to prevent unilateral cancellation of the policy without the other party's knowledge. Importantly, buy-sell insurance is frequently term life insurance, which has no or negligible cash value. Without a valuation rule for life insurance, a trustee may be required to have a fair market valuation done to determine if an exemption from trust reporting is available given the onerous penalties for non-compliance.

  Another example occasionally encountered is where an aunt or uncle may wish to purchase life insurance for the benefit of their nieces or nephews. Since there is no rollover provision for transfers to nieces or nephews (unlike subsection 148(8), which allows a rollover from parent to child), the only way to achieve a tax-deferred transfer of the policy is to establish a trust for the child's benefit. The trust would own the policy and later transfer it to the child under subsection 107(2) when the child reaches the age of majority. Requiring annual T3 and T3Sch15 reporting for these arrangements, particularly where the value involved is low, would impose compliance obligations that outweigh the informational value to the CRA

Since trusts holding policies with CSVs exceeding $250,000 would still not qualify under paragraph 150(1.2) (b) or subparagraph 150(1.2) (b.1), more complex or high-value planning structures involving life insurance would remain subject to reporting. Our recommendation would merely relieve common estate planning insurance trusts from unnecessary compliance.

2. GRE beneficiary requirement under proposed subparagraph 150(1.2) (b.1) (ii)

We recommend that the condition in proposed paragraph 150(1.2) (b.1) (ii) — which requires that each beneficiary of the trust be either an individual related to each trustee or a graduated rate estate (GRE) of such an individual — be clarified to include "a graduated rate estate if the estate had filed a return for the year".

This clarification would align paragraph 150(1.2) (b.1) (ii) with the language used in proposed paragraph 150(1.2) (j) and would help avoid inadvertent non-compliance by taxpayers who may be unaware of GRE filing requirements.

3. Including court-ordered bankruptcy trusts as a listed trust under paragraph 150(1.2)

We recommend that paragraph 150(1.2) of the "Income Tax Act" be amended to include an exemption for trusts where the legal owner holds property pursuant to a court order, specifically in the context of court-ordered bankruptcies and similar court-supervised insolvency proceedings. Under the current draft legislation, court-ordered bankruptcy trusts do not qualify for any of the listed trust exemptions under paragraph 150(1.2), including 150(1.2) (c) and proposed 150(1.2) (q), because they are not considered trusts established under a statute of Canada or a province. While proposed 150(1.31) (e) exempts court-ordered trusts that are 'bare trusts' from filing, there will likely be court-ordered bankruptcy trusts that are not bare trusts due to independent powers wielded by the trustee. This omission creates significant practical challenges. Bankruptcies often involve hundreds or even thousands of creditors, many of whom may only be identified later in the bankruptcy process. Requiring disclosure under Schedule 15 in such cases is administratively burdensome and may be difficult to comply with accurately at the time of filing.

4. Clarification and expansion of the contingent beneficiary disclosure exemption in proposed amendment to Regulations 204.2(2)

We recommend that the contingent beneficiary disclosure exemption under proposed paragraph 204.2(2) of the Income Tax Regulations for alter ego trusts and joint spousal or common-law partner trusts be clarified and expanded to better reflect the policy intent behind the proposed amendment.

The Department's technical notes explain that this exemption is intended to recognize that such trusts often function as will substitutes, and that contingent beneficiaries may not be aware of their status. In this context, it is reasonable to interpret "contingent beneficiaries" as those who become entitled to trust property only after the death of the life interest beneficiary (in the case of an alter ego trust) or the surviving spouse or common-law partner (in the case of a joint spousal or common-law partner trust).

However, the term "contingent beneficiary" is not defined in the Act, which creates interpretive uncertainty. Depending on the drafting of the trust indenture, it is possible for named beneficiaries with entitlements after the death of a life interest beneficiary to be viewed as having a vested interest, thereby excluding them from the "contingent beneficiary" disclosure exemption. To eliminate such ambiguity, we recommend that the disclosure exemption be reworded to apply to all beneficiaries of a trust described in paragraph 104(4)(a)(iv), other than the individual whose death (or later death) triggers the application of subsection 104(4). The exemption would also cease to apply following such death. This approach would avoid the unnecessary controversy over the meaning of contingent beneficiaries.

Furthermore, other types of trusts, beyond alter ego and joint spousal/common-law partner trusts, are also used as will substitutes. In particular, *inter vivos* spousal or common-law partner trusts are commonly established in blended family situations to protect the interests of children from previous relationships. These trusts serve similar testamentary functions and should be afforded the same privacy protections. We recommend that the exemption be expanded to include spousal or common-law trusts to which subsection 73(1.01) applies, during the lifetime of the settlor.

5. Clarification of "fair market value consideration" in the definition of Settlor under proposed Regulations 204.2(3)

We recommend that the definition of "settlor" under proposed subsection 204.2(3) of the Income Tax Regulations be clarified to ensure that routine payments made by trustees or beneficiaries on behalf of the trust, such as expenses for tax return preparation, do not inadvertently result in those individuals being classified as settlors.

Under the proposed definition, a person or partnership is excluded from being a settlor only if they transferred property to the trust for "fair market value consideration" or pursuant to a legal obligation. However, in practice, trustees or beneficiaries frequently pay trust-related expenses (e.g., accounting fees) on behalf of the trust, which are recorded as payables owed by the trust. These payables are typically non-interest bearing with no formal repayment terms. There is a concern that such payables may not constitute "fair market value consideration" particularly where the trust lacks liquid assets at the time of the payment. As a result, the individual who paid the expense on behalf of the trust could be deemed a settlor under the proposed definition, even if the fair market value of the payable is only nominally less than the amount of the expense paid.

To avoid unintended classification of individuals engaged in routine trust administration as settlors, we propose that the definition be amended to exclude transfers to the trust for fair market value consideration or in exchange for a receivable whose principal amount is not less than fair market value of the property transferred.

6. Inclusion of subsection 149(5) deemed trust as a listed trust under subsection 150(1.2)

We recommend that the reference to "express trust" in the preamble of 150(1.2) be expanded to include a deemed trust under subsection 149(5) of the Act.

As the CRA expressed in technical interpretation 2025-105746 "Application of trust reporting rules to a trust deemed to be created pursuant to subsection 149(5)", a trust deemed to exist under subsection 149(5) cannot benefit from the listed trust exemption since it is not an express trust. Moreover, the CRA has stated that because a 149(5) deemed trust does not have a settlor or beneficiary, only the deemed trustee would be disclosed in the return. This appears to be a compliance burden that lacks any informational value to the CRA. Given that a club, society or association described in paragraph 149(1)(l) is a listed trust under subsection 150(1.2) and is exempt from T3 Schedule 15 reporting, it appears inconsistent from a policy perspective why a 149(5) deemed trust should be treated differently.

7. Clarification of the application of 'listed trust' exception in Regulations 204.2(1) for non-express trusts

We recommend that the language in subsection 204.2(1) of the Income Tax Regulations be clarified to confirm that non-express trusts described in any of paragraphs 150(1.2) (a) to (r) of the Income Tax Act are exempt from the requirement to file T3 Schedule 15.

Subsection 204.2(1) exempts trusts described in paragraphs 150(1.2) (a) to (r) from the Schedule 15 disclosure requirement. However, the preamble to subsection 150(1.2) states that the listed exemptions apply only to express trusts, which creates uncertainty as to whether non-express trusts, such as resulting or constructive trusts, can benefit from the exemptions in subsection 204.2(1) even if they otherwise meet the descriptions under paragraphs 150(1.2) (a) to (r). From a policy perspective, it is difficult to understand why a harsher disclosure requirement should apply to trusts simply because they are not express trust – in fact, the opposite would appear more logical.

We recommend that subsection 204.2(1) be amended to explicitly state that any trust described in paragraphs 150(1.2) (a) to (r) is exempt from the Schedule 15 disclosure requirement, regardless of whether the trust is an express trust or not. This would also address the subsection 149(5) deemed trust issue discussed above.

8. Exclusion for in-trust-for accounts for minor children under proposed subsection 150(1.31)

We recommend that proposed subsection 150(1.31) of the *Income Tax Act* be amended to include an additional exclusion for in-trust-for (ITF) accounts established for minor children at Canadian banks, trust company or credit unions.

Because minors are not legally capable of opening accounts for themselves, adults routinely open ITF accounts on their behalf. These arrangements are informal, often created without legal advice, and rarely accompanied by trust deeds or documentation. Most taxpayers involved are not in a position to determine whether the arrangement constitutes an express trust under common law.

If a particular ITF account constitutes an express trust, it is unlikely to qualify for the exclusion under paragraph 150(1.31) (a) because the minor child is not also the legal owner of the account. Moreover, even if the account meets the criteria of a “listed trust” under paragraphs 150(1.2) (b) or (c), it may still be required to file a T3 return under CRA administrative policy — either because it is a subsection 75(2) trust, has realized a capital disposition, or has income exceeding the CRA's *de minimis* thresholds.

From a policy perspective, the informational value of these accounts to the CRA is negligible. The income earned is typically reported in the adult’s hands, either because the T5 slips are issued under the adult’s SIN or because subsection 75(2) applies to attribute the income to the transferor. Requiring Schedule 15 disclosure for these accounts would impose a compliance burden on ordinary Canadians without advancing the objectives of transparency or tax enforcement. We also note that in the event the ITF is not a trust legally based on the particular facts but is a gift to the child as legal and beneficial owner, then such income likely attribute back to the adult's transferor anyways under subsection 74.1(2).

We recommend that subsection 150(1.31) be amended to exclude any account opened by an adult at a Canadian bank, trust company, or credit union that meets both of the following criteria:
(i) the account was opened for an individual who was under the age of majority at the time the account was opened; and (ii) all income earned in the account for the year is reported by persons otherwise required to do so under the Act.

Such an amendment would reflect the practical realities of custodial banking arrangements for minors and ensure that the reporting regime remains focused on arrangements with genuine tax risk or complexity.

9. Interpretation of "money"

The August 15, 2025, draft legislation refers to “money” in paragraph 150(1.2) (b.1) (iii)(A) for taxation years ending after December 30, 2024, and before December 31, 2025. For taxation years ending after December 30, 2025, the reference is expanded to “money, *including deposits in a Canadian bank, trust company or credit union incorporated under the laws of Canada or of a province*.”

This has raised several concerns:

a) Non-filing in 2023 and 2024 based on presumption that “money” includes bank deposits

Some Canadian express trusts may not have filed T3 returns for 2023 and 2024 on the reasonable presumption that deposits under $50,000 in a Canadian bank account qualified the trust as a “listed trust” under existing subsection 150(1.2). The revised wording for post-2025 years could be interpreted to mean that such deposits were not previously considered “money.”

We believe that interpreting “money” to include bank deposits has always been consistent with the policy intent of the trust reporting rules. We respectfully request that the Department clarify that the additional wording for post-2025 years is intended only to provide greater certainty. Alternatively, we suggest an amendment confirming that, for taxation years ending on or before December 31, 2024, "money" includes deposits in a bank, trust company, or credit union.

b) Uncertainty regarding foreign bank deposits

For taxation years ending after December 30, 2025, it is unclear whether paragraph 150(1.2)(b.1) (iii)(A) includes money deposited in foreign bank accounts. Given that the revised wording uses "including", it would be reasonable to interpret that deposits in foreign banks also qualify. We would appreciate clarification from the Department on this point.

10. Scope of "Canadian bank, trust company or credit union"

The phrase "Canadian bank, trust company or credit union" is used in proposed paragraphs 150(1.2)(b.1) (iii) (A) and (b) for taxation years ending after December 30, 2025. We have also used similar wording in our various recommendations above to be consistent. However, it has come to our attention that the phrase "Canadian bank, trust company or credit union," does not appear to include Canadian wealth management firms.

We note that Canadian wealth management firms represent a significant segment of where Canadians—both individuals and entities—deposit funds. We are unaware of any policy rationale for excluding these institutions from the scope of the trust reporting rules. Accordingly, we recommend that the trust reporting legislation in section 150 to include all Canadian financial institutions wherever this phrase appears.

Thank you for your consideration and should you have any questions please email Michael Dodick, Chief Operating Officer, STEP Canada at mdodick@step.ca

Yours truly,

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