GST/HST Technical Information Bulletin

B-107 **October 2011**

Investment Plans (Including Segregated Funds of an Insurer) and the HST

The information in this bulletin does not replace the law found in the *Excise Tax Act* (the Act) and its regulations. It is provided for your reference. As it may not completely address your particular operation, you may wish to refer to the Act or appropriate regulation, or contact a Canada Revenue Agency (CRA) GST/HST rulings office for more information. A ruling should be requested for certainty in respect of any particular GST/HST matter. Pamphlet RC4405, *GST/HST Rulings – Experts in GST/HST Legislation* explains how to obtain a ruling and lists the GST/HST rulings offices. If you wish to make a technical enquiry on the GST/HST by telephone, please call 1-800-959-8287.

Reference in this publication is made to supplies that are subject to the GST or the HST. The HST applies in the participating provinces at the following rates: 13% in Ontario, New Brunswick, and Newfoundland and Labrador, 15% in Nova Scotia, and 12% in British Columbia. The GST applies in the rest of Canada at the rate of 5%. If you are uncertain as to whether a supply is made in a participating province, you may refer to GST/HST Technical Information Bulletin B-103, *Harmonized Sales Tax – Place of Supply Rules for Determining Whether a Supply is Made in a Province*.

If you are located in Quebec and wish to make a technical enquiry or request a ruling related to the GST/HST, please call 1-877-960-9102.

Table of Contents

La version française de la présente publication est intitulée *Régimes de placement (y compris les fonds réservés d'assureur) et la TVH*.

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This technical information bulletin (bulletin) is based on, and the legislative references in this bulletin are to, the *Excise Tax Act* (the Act) and regulations to the Act, the proposed amendments to the GST/HST legislation (*Excise Tax Act*) and the *Draft Regulations Amending Various GST/HST Regulations*, including the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* (draft SLFI Regulations) and proposed amendments to the *New Harmonized Value-Added Regulations No. 2*, which propose changes to certain GST/HST rules for financial institutions released on January 28, 2011. In general, the draft SLFI Regulations apply in respect of a reporting period of an investment plan that ends on or after July 1, 2010 unless otherwise specified.

The term "province" means a province or territory in Canada. A "participating province" means the province of British Columbia, New Brunswick, Newfoundland and Labrador, Nova Scotia or Ontario; it does not include the Nova Scotia offshore area or the Newfoundland offshore area except to the extent that offshore activities, as defined in subsection 123(1) of the Act, are carried on in that area. British Columbia and Ontario became participating provinces on July 1, 2010.

Any commentary in this notice relating to the draft SLFI Regulations should not be taken as a statement by the CRA that these proposed amendments will be enacted in their current form.

Overview

This bulletin explains the rules for calculating the provincial part of the HST that apply to investment plans (including segregated funds of an insurer) following the introduction of the HST in Ontario and British Columbia. At the time of harmonization with the Atlantic Provinces, the special attribution method (SAM formula) was introduced for use by financial institutions that qualify as a selected listed financial institution (SLFI) to calculate their liability for the provincial part of the HST. That SAM formula continues to apply to investment plans that are SLFIs, however, the draft SLFI Regulations adapt the SAM formula for certain investment plans. The SAM formula and the adaptations to the SAM formula for certain investment plans are explained in this bulletin. The HST rules that apply to investment plans that do not qualify as SLFIs are also briefly explained.

Note that this bulletin does not explain the transitional rules that apply to investment plans introduced as part of the implementation of the HST in Ontario and British Columbia on July 1, 2010.

Investment plan

An investment plan is defined in the Act and in the draft SLFI Regulations. Although the definitions are similar as indicated below the definition of investment plan referred to in subsection 1(1) of the draft SLFI Regulations applies for the purposes of those regulations and the SAM formula under section 225.2 of the Act.

1. Investment plan – as defined in the Act

An investment plan is included as a listed financial institution under subparagraph 149(1)(a)(ix) of the Act. For the purposes of section 149 of the Act, the term "investment plan" is defined in subsection 149(5) as:

(a) a trust governed by

- (i) a registered pension plan,
- (ii) an employees profit sharing plan,
- (iii) a registered supplementary unemployment benefit plan,
- (iv) a registered retirement savings plan,
- (v) a deferred profit sharing plan,
- (vi) a registered education savings plan,
- (vii) a registered retirement income fund,
- (viii) an employee benefit plan,
- (ix) an employee trust,
- (x) a mutual fund trust,
- (xi) a pooled fund trust,
- (xii) a unit trust, or
- (xiii) a retirement compensation arrangement,

as each of those terms is defined for the purposes of the *Income Tax Act* or the *Income Tax Regulations*;

(b) an investment corporation, as that term is defined for the purposes of the *Income Tax Act*;

(c) a mortgage investment corporation, as that term is defined for the purposes of the *Income Tax Act*;

(d) a mutual fund corporation, as that term is defined for the purposes of the *Income tax Act*;

(e) a non-resident owned investment corporation, as that term is defined for the purposes of the *Income Tax Act*;

(f) a corporation exempt from tax under that Act by reason of paragraph 149(1)(o.1) or (o.2) of the *Income Tax Act*; and

(g) a prescribed person, or a person of a prescribed class, but only where the person would be an SLFI for a reporting period in a fiscal year that ends in a taxation year of the person if the person were a listed financial institution included in subparagraph 149(1)(a)(ix) during the taxation year and the preceding taxation year of the person. An employee life and health trust is proposed to be a prescribed person.

2. Investment plan – as defined in the draft SLFI Regulations

Subsection 1(1) of the draft SLFI Regulations defines an investment plan as a person that is:

- an investment plan referred to in subparagraph 149(1)(a)(ix) of the Act, other than a trust governed by a registered retirement savings plan, a registered retirement income fund or a registered education savings plan; or
- a segregated fund of an insurer referred to in subparagraph 149(1)(a)(vi) of the Act.

The term "segregated fund of an insurer" is defined in subsection 123(1) of the Act to mean a specified group of properties that is held in respect of insurance policies all or part of the reserves for which vary in amount depending on the fair market value of the properties. A segregated fund of an insurer is deemed to be a trust and the insurer is deemed to be the trustee of that trust under section 131 of the Act.

This definition of investment plan referred to above is for the purposes of the draft SLFI Regulations and subsection 225.2(2) of the Act.

In addition, subsection 1(2) of the draft SLFI Regulations confirms that, for the purposes of the draft SLFI Regulations, a deferred profit sharing plan, an employee benefit plan, an employee trust, an employees profit sharing plan, an investment corporation, a mortgage investment corporation, a mutual fund corporation, a mutual fund trust, a non-resident-owned investment corporation, a registered disability savings plan, a registered education savings plan, a registered retirement income fund, a registered retirement savings plan, a registered supplementary unemployment benefit plan, a retirement compensation arrangement, a TFSA and a unit trust have the same meanings as in subsection 248(1) of the *Income Tax Act*.

Investment plan categories – draft SLFI Regulations

For the purposes of this document investment plans may be categorized into the following groups for the purposes of the draft SLFI Regulations and subsection 225.2(2) of the Act:

- distributed investment plan
- pension entity
- private investment plan

2.1 Distributed investment plan

Distributed investment plans do not include investment plans that are pension entities or private investment plans.

Subsection 1(1) of the draft SLFI Regulations defines a distributed investment plan as an investment plan that is:

- a mutual fund trust,
- a mutual fund corporation,
- a unit trust,
- a mortgage investment corporation,
- an investment corporation,
- a non-resident-owned investment corporation, or
- a segregated fund of an insurer.

These distributed investment plans referred to above are described in reference to units or a series. Where a unit is described in reference to a series, subsection 1(1) of the draft SLFI Regulations defines a series of a trust to mean a class of units of the trust and a series of a corporation to mean a class of the capital stock of the corporation.

Subsection 1(1) of the draft SLFI Regulations defines a unit as follows:

- a unit in respect of a trust means a unit of the trust;
- a unit in respect of a series of a trust (e.g., a mutual fund trust that is a stratified investment plan) means a unit of the trust of that series;
- a unit in respect of a corporation means a share of the capital stock of the corporation;
- a unit in respect of a series of a corporation (e.g., a mutual fund corporation with more than one series) means a share of the capital stock of the corporation of that series;
- a unit in respect of a segregated fund of an insurer means an interest of a person, other than the insurer, in the segregated fund.

These distributed investment plans may be described as:

- stratified investment plans, or
- non-stratified investment plans

2.1.1 Stratified investment plan

A stratified investment plan is a distributed investment plan, the units of which are issued in two or more series. For example, a balanced fund organized as a mutual fund trust with two series will qualify as a stratified investment plan.

A stratified investment plan could consist of non-exchange-traded series or a mix of exchange-traded and non-exchange-traded series. Therefore, an exchange-traded series and a non-exchange-traded series could be part of the same stratified investment plan. Subsection 1(1) of

the draft SLFI Regulations defines an exchange-traded series of a stratified investment plan as a series of the plan, the units of which are listed or traded on a stock exchange or other public market.

2.1.2 Non-stratified investment plan

A non-stratified investment plan is a distributed investment plan which does not qualify as a stratified investment plan. For example, a mortgage investment corporation with a single class of shares will be classified as a non-stratified investment plan.

A non-stratified investment plan may be an exchange-traded fund. Subsection 1(1) of the draft SLFI Regulations defines exchange-traded fund as a distributed investment plan, any units of which are listed or traded on a stock exchange or other public market.

2.2 Pension entity

A pension entity is an investment plan that is a pension entity for the purposes of subsection 172.1(1) of the Act.

Subsection 172.1(1) of the Act defines a pension entity of a pension plan as a person in respect of the pension plan that is

(a) a person referred to in paragraph (a) of the definition of pension plan;

(b) a corporation referred to in paragraph (b) of that definition; or

(c) a prescribed person.

Section 172.1 of the Act defines a pension plan as a registered pension plan (as defined in subsection 248(1) of the *Income Tax Act*)

(a) that governs a person that is a trust or that is deemed to be a trust for the purposes of the *Income Tax Act*;

(b) in respect of which a corporation is

  (i) incorporated and operated either

    (A) solely for the administration of the registered pension plan, or

    (B) for the administration of the registered pension plan and for no other purpose other than acting as trustee of, or administering, a trust governed by a retirement compensation arrangement (as defined in subsection 248(1) of the *Income Tax Act*), where the terms of the arrangement provide for benefits only in respect of individuals who are provided with benefits under the registered pension plan, and

  (ii) accepted by the Minister, under subparagraph 149(1)(o.1)(ii) of the *Income Tax Act*, as a funding medium for the purpose of the registration of the registered pension plan; or

(c) in respect of which a person is prescribed for the purposes of the definition pension entity (at this time no person is prescribed or proposed to be prescribed for the purposes of this definition).

2.3 Private investment plan

A private investment plan as defined in subsection 1(1) of the draft SLFI Regulations means an investment plan that is:

- an employee life and health trust,
- a trust governed by a deferred profit sharing plan,
- a trust governed by an employee benefit plan,
- a trust governed by an employee trust,
- a trust governed by an employees profit sharing plan,
- a trust governed by a registered supplementary unemployment benefit plan, or
- a trust governed by a retirement compensation arrangement.

All of the plans listed above, except the employee life and health trust, are specifically referred to in subsection 149(5) of the Act (as these terms are defined under the *Income Tax Act* or Regulations). Therefore, if they are included under subsection 149(5) they are listed financial institutions. However, an employee life and health trust is not specifically referred to in subsection 149(5). It is prescribed as a private investment plan where it meets the conditions of paragraph 149(5)(g). Section 10 of the draft SLFI Regulations prescribes an employee life and health trust for the purposes of paragraph 149(5)(g).

2.3.1 Definition of an employee life and health trust

The term "employee life and health trust" is defined in subsection 3(2) of the draft SLFI Regulations as a trust that is established for employees of one or more employers (each referred to in this subsection as a "participating employer") as an employee life and health trust for a taxation year if, throughout the taxation year, it meets the following conditions:

(a) the only objects of the trust are

  (i) to provide designated employee benefits to, or for the benefit of, employees of a participating employer, and

  (ii) to benefit on a pro rata basis any remaining beneficiaries of the trust (excluding key employees) on wind-up;

(b) the trust is resident in Canada for the purposes of the *Income Tax Act*, determined without reference to section 94 of that Act;

(c) each beneficiary of the trust is

  (i) an employee of a participating employer,

  (ii) an individual who is or was related to an employee of a participating employer, or

  (iii) another employee life and health trust;

(d) it cannot reasonably be considered, having regard to all circumstances, that the trust is maintained primarily for the benefit of one or more key employees of a participating employer;

(e) the rights under the trust of each key employee of a participating employer are not more advantageous than the rights of each plan member of a class of beneficiaries under the trust, where

  (i) the plan members of the class represent at least 25% of all of the beneficiaries of the trust who are employees of the participating employer,

(ii) at least 75% of the plan members of the class are not key employees of the participating employer, and

(iii) the rights of each plan member of the class under the trust are identical;

(f) the terms of the trust do not provide any rights to a participating employer or to any person who does not deal at arm's length with a participating employer, as a beneficiary or otherwise, except rights to designated employee benefits;

(g) the trust is administered in accordance with its terms and objects;

(h) the trust has a legal right to enforce payment of contributions to the trust; and

(i) representatives of one or more participating employers do not constitute the majority of the trustees of the trust.

The term "key employee" is defined in subsection 3(1) of the draft SLFI Regulations.

Investment plans that qualify as selected listed financial institutions

In general an investment plan that qualifies as an SLFI uses the SAM formula under subsection 225.2(2) of the Act or the adapted SAM formula under section 51 of the draft SLFI Regulations to compute its liability for the provincial part of the HST (other than for a provincial series of a stratified investment plan). Investment plans that do not qualify as SLFIs follow the general HST and rebate rules (see the section of this bulletin entitled "General HST and rebate rules").

A financial institution is an SLFI throughout a reporting period in a fiscal year that ends in a particular taxation year of the financial institution under proposed subsection 225.2(1) of the Act if the financial institution is:

- a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x) of the Act during the particular taxation year; and
- a prescribed financial institution.

3. Prescribed financial institution

Section 11 of the draft SLFI Regulations describes a prescribed financial institution for the purposes of proposed subsection 225.2(1).

Generally, under section 11, and subject to sections 12 to 14 of the draft SLFI Regulations, an investment plan is a prescribed financial institution throughout a reporting period in a particular fiscal year if at any time in the taxation year it has a permanent establishment, as that term is defined in the draft SLFI Regulations, in a participating province and a permanent establishment in any other province.

Note that if the investment plan is a qualifying small investment plan (QSIP) and it has not elected to be an SLFI under section 15 of the draft SLFI Regulations or has applied under section 16 to not be an SLFI it may not be a prescribed financial institution and not an SLFI (see sections "5. Qualifying small investment plan that is not a selected listed financial institution" and

"6. Qualifying small investment plan that has applied not to be a selected listed financial institution" of this bulletin, which discuss qualifying small investment plans that are not SLFIs).

Permanent establishment in a province – draft SLFI Regulations

A permanent establishment in a province, for the purposes of the draft SLFI Regulations and the SAM formula in subsection 225.2(2), includes an actual permanent establishment defined in subsection 1(1) and a deemed permanent establishment as described in section 4 of the draft SLFI Regulations.

For example, under subsection 1(1) of the draft SLFI Regulations, an investment plan has an actual permanent establishment where:

- in the case of a corporation, it has as a permanent establishment as determined under subsection 400(2) of the *Income Tax Regulations*; and
- in the case of a trust, it has a permanent establishment as determined under subsection 2600(2) of the *Income Tax Regulations*;

Therefore, a mutual fund corporation with an office in British Columbia would have an actual permanent establishment in British Columbia under subsection 1(1) of the draft SLFI Regulations.

In addition, section 4 of the draft SLFI Regulations determines when a financial institution like an investment plan is deemed to have a permanent establishment in a province for the purposes of the draft SLFI Regulations. These deemed permanent establishment rules referred to in section 4 are generally based on the type of investment plan.

For example, under paragraph 4(d), a segregated fund of an insurer is deemed to have a permanent establishment in a province throughout a taxation year of the segregated fund if at any time in the taxation year,

- the insurer is qualified, under the laws of Canada or a province, to sell units of the segregated fund in the province, or
- a person resident in the province (as set out in section 6 of the draft SLFI Regulations; see section "12. Unit holder's province of residence" of this bulletin) holds one or more units in the segregated fund of the insurer.

Similarly, under paragraph 4(e) a distributed investment plan (other than a segregated fund of an insurer) is deemed to have a permanent establishment in a province throughout a taxation year of the financial institution if at any time in the taxation year,

- it is qualified, under the laws of Canada or a province, to sell or distribute units of the distributed investment plan in the province, or
- a person resident in the province holds one or more units in the distributed investment plan.

According to paragraph 4(f) a private investment plan or a pension entity of a pension plan is deemed to have a permanent establishment in a province throughout the taxation year if at any time in the taxation year the private investment plan or pension entity of the pension plan has a plan member resident in the province.

In order to determine whether an investment plan has a permanent establishment in a particular province it may be necessary to determine whether a unit holder resident in Canada is resident in a province. For more information on these rules please refer to the section "12. Unit holder's province of residence" of this bulletin.

As described in section 5 of the draft SLFI Regulations an investment plan has a permanent establishment in a province throughout a taxation year of the investment plan if it has a permanent establishment in the province at any time in the taxation year.

Example

A mutual fund corporation (MFC) that is a non-stratified investment plan has an office in Ontario, and it is qualified under provincial securities law to distribute units through independent mutual fund dealers in Manitoba. In addition to the permanent establishment in Ontario, the MFC is deemed to have a permanent establishment in Manitoba. Therefore, as the MFC is a listed financial institution under subparagraph 149(1)(a)(ix) and it has a permanent establishment in a participating province (effective July 1, 2010) and in another province, the MFC would be an SLFI for the reporting period ending on or after July 1, 2010.

3.1 Prescribed financial institution – qualified small investment plan

An investment plan that is a QSIP for a particular fiscal year is also a prescribed financial institution where it satisfies the permanent establishment requirement in section 11 of the draft SLFI Regulations and the following conditions which are set out in subparagraph 11(b)(i) and (ii) respectively:

- the investment plan:
    - was an SLFI throughout either one of the two fiscal years of the investment plan preceding the particular fiscal year;
    - was not a QSIP for either of the two fiscal years of the investment plan preceding the particular fiscal year; and
    - was not an SLFI throughout the third fiscal year of the investment plan preceding the particular fiscal year; or
- the investment plan has made an election under section 15 to be an SLFI that is in effect throughout the particular fiscal year.

Note that a QSIP that is a prescribed financial institution could apply not to be considered as an SLFI (see section "6. Qualifying small investment plan that has applied not to be a selected listed financial institution" of this bulletin).

3.2 Qualified small investment plan – election to be an SLFI

Where an investment plan satisfies the permanent establishment requirement in paragraph 11(a) of the draft SLFI Regulations (i.e., it has a permanent establishment in a participating province and a permanent establishment in any other province at any time during the taxation year) and is or reasonably expects to be a QSIP for a particular fiscal year, the investment plan may elect under section 15 of the draft SLFI Regulations for the purposes of subparagraph 11(b)(ii) of the draft SLFI Regulations to be an SLFI (a QSIP is defined further in this section for a particular fiscal year without application referred to below). This election cannot be made where an application under section 16 (described in section "6. Qualifying small investment plan that has applied not to be a

selected listed financial institution" of this bulletin) in respect of the fiscal year has been approved by the Minister of National Revenue (the Minister).

The QSIP elects to be an SLFI under section 15 of the draft SLFI Regulations by filing GST/HST Form RC4606, *Election or Revocation For a Qualifying Small Investment Plan to be Treated as a Selected Listed Financial Institution*. While the election is in effect, a QSIP will be treated as an SLFI throughout a reporting period in a particular fiscal year that ends in the taxation year.

As described in subsection 15(3) of the draft SLFI Regulations, the election remains in effect until the earliest of the first day of a fiscal year that ends in the first taxation year of the person in which the person does not meet the permanent establishment requirement in paragraph 11(a) or the first day of a fiscal year in which the person is no longer an investment plan or the day on which the election is revoked (which must be the first day of a fiscal year).

An investment plan that has made an election under subsection 15(1) of the draft SLFI Regulations may revoke the election (as described in subsection 15(4)), effective on the first day of a fiscal year of the investment plan that begins at least three years after the election became effective, by filing Form RC4606 with the Minister not later than the day on which the revocation is to become effective (or any other day that the Minister may allow). However, upon revocation the investment plan would be required to determine if at the point of revocation it is still excluded from the SLFI rules (i.e., that it is not a prescribed financial institution under section 11 of the draft SLFI Regulations).

Definition of a qualifying small investment plan

Investment plans that are pension entities or private investment plans that meet the requirements of section 9 of the draft SLFI Regulations qualify as QSIPs in a particular fiscal year. A distributed investment plan cannot be a QSIP. As described below, the QSIP formula is based on the unrecoverable tax amount defined in subsection 9(1). In addition, as described below, the QSIP formula in subsection 9(2) will differ based on whether it is the first fiscal year of the investment plan.

Under subsection 9(1) of the draft SLFI Regulations, the calculation of the unrecoverable tax amount for the purposes of the QSIP formula is an A – B formula. Generally, under subsection 9(1), the unrecoverable tax amount is the unrecoverable GST as referred to in the (A – B) component of the SAM formula in subsection 225.2(2).

A pension entity is required to include an additional amount in element A in calculating its unrecoverable tax amount for fiscal years that begin after January 28, 2011 (announcement date as referred to in section 20 of Part 7 of the *Draft Regulations Amending Various GST/HST Regulations* released January 28, 2011). In particular, for fiscal years that begin after January 28, 2011, an amount of tax that the pension entity is deemed to have paid under subparagraph 172.1(5)(d)(ii) or (6)(d)(ii) or paragraph 172.1(7)(d) of the Act during the reporting period is included in calculating element A of the pension entity's GST paid by the pension entity to calculate its unrecoverable tax amount under subsection 9(1).

Based on the draft SLFI Regulations the federal component amount of a tax adjustment note issued to a pension entity under either subsection 232.01(3) or 232.02(2) of the Act would not be included in the determination of a pension entity's unrecoverable tax amount under subsection 9(1). However, we understand that the Department of Finance is reviewing subsection 9(1) of the draft SLFI Regulations and considering clarifying the inclusion of the federal component amount of a section 232.01 or 232.02 tax adjustment note issued to a pension entity in the determination of the pension entity's unrecoverable tax amount under subsection 9(1).

QSIP formula – first fiscal year of investment plan

Under paragraph 9(2)(a) of the draft SLFI Regulations a new investment plan (other than a distributed investment plan) is a QSIP in its first fiscal year if the amount determined by the following formula for each reporting period of the investment plan included in the particular fiscal year is equal to or less than $10,000:

$$A \times (365/B)$$

where

A is the unrecoverable tax amount for the reporting period, and

B is the number of days in the reporting period.

QSIP formula – fiscal year other than the first fiscal year of the investment plan

Under paragraph 9(2)(b) of the draft SLFI Regulations if the investment plan is not a new investment plan, it would be a QSIP in a particular fiscal year where the amount determined by the following formula is equal to or less than $10,000:

$$A \times (365/B)$$

where

A is the total of all amounts, each of which is an unrecoverable tax amount for a reporting period of the investment plan included in the fiscal year of the investment plan (in this paragraph referred to as the "preceding fiscal year") that precedes the particular fiscal year, and

B is the number of days in the preceding fiscal year.

Note that a partnership that is a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x) of the Act during the particular taxation year may also be an SLFI because it is a qualifying partnership during the taxation year and a prescribed financial institution under subparagraph 11(a)(ii) of the draft SLFI Regulations. Pursuant to section 2 of the draft SLFI Regulations, a partnership is a "qualifying partnership" during a taxation year of the partnership if, at any time in the taxation year, the partnership has:

(a) a member that has, at any time in the taxation year of the member in which the taxation year of the partnership ends, a permanent establishment in a particular participating province through which a business of the partnership is carried on or that is deemed under section 4 of the draft SLFI Regulations to be a permanent establishment of the member; and

(b) a member (including a member referred to in paragraph (a)) that has, at any time in the taxation year of the member in which the taxation year of the partnership ends, a permanent establishment in a province other than the particular participating province through which a business of the partnership is carried on or that is deemed under section 4 of the draft SLFI Regulations to be a permanent establishment of the member.

An investment plan defined in subsection 1(1) of the draft SLFI Regulations would not generally be a qualifying partnership.

In the Backgrounder released on January 28, 2011, Finance Canada has indicated that consultations are ongoing in respect of whether the SLFI rules should apply to partnerships with investors in more than one province (one of which is a participating province) that would not be SLFIs based on the current draft SLFI Regulations.

Investment plans that are not selected listed financial institutions

Certain investment plans are not SLFIs because they are not prescribed financial institutions under section 11 of the draft SLFI Regulations for the purposes of proposed paragraph 225.2(1)(b) of the Act. As a result, these investment plans would not use the SAM formula to calculate their liability for the provincial part of the HST. These investment plans use the general HST and rebate rules to calculate their net tax and claim rebates (see the section of this bulletin entitled "General HST and rebate rules)".

The following sections provide detailed information on situations where an investment plan is excluded from being a prescribed financial institution.

4. Permanent establishment requirement not met

An investment plan that does not have a permanent establishment (as that term is defined in the draft SLFI Regulations) in a participating province and a permanent establishment in any other province at any time in a taxation year is not an SLFI.

In addition, trusts referred to below may be excluded from the definition of an investment plan in subsection 1(1) for the purposes of the draft SLFI Regulations and section 225.2 of the Act. These trusts are as follows:

- a trust governed by a registered retirement savings plan (RRSPs),
- a trust governed by a registered retirement income fund (RRIFs), or
- a trust governed by a registered education savings plan (RESPs)

as each of these terms is defined in the *Income Tax Act*.

A trust governed by an RRSP, RRIF or RESP is excluded from the definition of investment plan in subsection 1(1) for purposes of the draft SLFI Regulations and section 225.2 of the Act where that trust is not also a unit trust. Where the trust is also a unit trust, it would be an investment plan under subsection 1(1) for the purposes of the draft SLFI Regulations and section 225.2 of the Act.

An RRSP, RRIF or RESP administered on an individual basis is generally not an SLFI because it would not have a permanent establishment in more than one province. As noted in the Backgrounder released on January 28, 2011, Finance Canada has indicated that consultations are ongoing in respect of whether the SLFI rules should apply to investment plans referred to above that are administered on a group basis rather than individual basis and that are currently not SLFIs.

5. Qualifying small investment plan that is not a selected listed financial institution

In general, a QSIP is an investment plan that is a pension entity or a private investment plan with a threshold amount of less than $10,000 based on its unrecoverable tax amount in the preceding taxation year (see the section of this bulletin entitled "Definition of a qualifying small investment plan" under "3.2 Qualified small investment plan – election to be an SLFI").

A QSIP that has a permanent establishment in a participating province and in any other province at any time in the taxation year and does not meet the conditions in subparagraph 11(b)(i) of the draft SLFI Regulations is not an SLFI, provided that it has not elected to be an SLFI under section 15 of the draft SLFI Regulations. As previously discussed, for a particular fiscal year, if a QSIP was an SLFI and not a QSIP in either one of its two immediately preceding fiscal years and not an SLFI throughout the third immediately preceding fiscal year, it is an SLFI (i.e., the conditions in subparagraph 11(b)(i)) unless it has applied under section 16 not to be an SLFI.

6. Qualifying small investment plan that has applied not to be a selected listed financial institution

A QSIP that satisfied the conditions set out in subparagraph 11(b)(i) of the draft SLFI Regulations (described in section 3.2 of this bulletin), which would otherwise be a prescribed financial institution and, therefore an SLFI, could apply to the Minister not to be considered to be an SLFI for the particular fiscal year and the immediately following fiscal year.

Under section 16 of the draft SLFI Regulations, an investment plan may apply to the Minister to not have subparagraph 11(b)(i) of the draft SLFI Regulations apply in determining if the investment plan is an SLFI for any reporting period in a particular fiscal year of the investment plan and for any reporting period in the fiscal year of the investment plan immediately following the particular fiscal year. The investment plan would apply to the Minister by filing GST/HST Form RC4612, *Application to not be Considered a Selected Listed Financial Institution.*

In accordance with subsection 16(3) of the draft SLFI Regulations an investment plan is required to apply to not have subparagraph 11(b)(i) of the draft SLFI Regulations apply by filing Form RC4612 with the Minister on or before the day that is 90 days before:

- the first day of the first fiscal year to which the application applies, or
- any later day that the Minister may allow.

On receiving Form RC4612 for the particular fiscal year and the fiscal year immediately following the particular fiscal year, the Minister must consider the application and, based on the information in the possession of the Minister, if it is reasonable to expect that the investment plan will be a QSIP for those two fiscal years, approve the application or, in any other case, refuse the application. The Minister must notify the investment plan in writing of the decision within 90 days of receipt of the application.

7. Provincial investment plans

Provincial investment plans are not SLFIs when the conditions described in the following paragraphs are met.

7.1 Provincial investment plan (non-stratified)

Section 12 of the draft SLFI Regulations provides that section 11 of the draft SLFI Regulations does not apply in respect of a reporting period in a fiscal year that ends in a taxation year of a non-stratified investment plan that meets all the following conditions throughout the particular fiscal year in respect of a particular province:

- under the laws of Canada or a province, the units of the investment plan are permitted to be sold only in the particular province, but not permitted to be sold or distributed in any other province;
- under the terms of the prospectus, registration statement or other similar document for the investment plan, or under the laws of Canada or a province, the conditions for a person owning or acquiring units of the investment plan include
    - that the person be resident as set out in section 6 of the draft SLFI Regulations in the particular province (see section "12. Unit holder's province of residence" of this bulletin) when the units are acquired, and
    - if the person ceases to be resident in the particular province on a particular day, that the units be sold, transferred or redeemed within a reasonable time after that day; and
- the investment plan's provincial attribution percentage for the particular province and for the taxation year in which the preceding fiscal year ends, or the provincial attribution percentage that would be the non-stratified investment plan's percentage for the particular province and for that taxation year if the particular province were a participating province, is 90% or more (for more information on provincial attribution percentage for a participating province see the section of this bulletin entitled "Calculating the provincial attribution percentage of SLFI distributed investment plans for a participating/selected province").

As a result, a non-stratified investment plan that meets these conditions (a provincial investment plan) is not an SLFI in respect of a reporting period in a fiscal year that ends in its taxation year.

7.2 Investment plan with provincial series (stratified)

Section 13 of the draft SLFI Regulations provides that section 11 of the draft SLFI Regulations does not apply in respect of a reporting period in a fiscal year where each series of the stratified investment plan is a provincial series for the fiscal year. This provision is similar to section 12 of the draft SLFI Regulations (described above) that applies to non-stratified investment plans.

Subsection 1(1) of the draft SLFI Regulations defines a provincial series for a fiscal year of a stratified investment plan as a series of the stratified investment plan that meets all of the following conditions throughout the fiscal year in respect of a particular province:

(a) under the laws of Canada or a province, units of the series are permitted to be sold or distributed only in the particular province and are not permitted to be sold or distributed in any other province;

(b) under the terms of the prospectus, registration statement or other similar document for the series, or under the laws of Canada or a province, the conditions for a person owning or acquiring units of the series include:

   (i) that the person be resident in the particular province (see section "12. Unit holder's province of residence" of this bulletin) when the units are acquired, and

   (ii) if the person ceases to be resident in the particular province on a particular day, that the units be sold, transferred or redeemed within a reasonable time after that day; and

(c) the stratified investment plan's provincial attribution percentage for the series (calculated using the applicable formula in Part 2 of the draft SLFI Regulations) for the particular province and for the taxation year in which the preceding fiscal year ends, or the percentage that would be the stratified investment plan's percentage for the series, for the particular province and for that taxation year if the particular province were a participating province, is 90% or more (for more information see the section of this bulletin entitled "Calculating the provincial attribution percentage of SLFI distributed investment plans for a participating/selected province").

As a result where each series of a stratified investment plan is a provincial series for a fiscal year, the stratified investment plan is not an SLFI in respect of a reporting period in the fiscal year. Where a stratified investment plan has a permanent establishment in a participating province and in any other province and one or more series that are provincial series and one or more series that are not provincial series, the stratified investment plan is an SLFI but it would effectively only apply SLFI rules in respect of those series that are not provincial series, as the provincial series would instead be subject to the general HST and rebate rules.

Expanded residence in a province – provincial investment plans and stratified investment plans with provincial series

As provincial investment plans are not SLFIs and do not use the SAM formula to calculate their liability for the provincial part of the HST, the general HST and rebate rules apply. Section 132.1 of the Act defines persons resident in a province for purposes of the general HST and rebate rules. Generally, if the person is resident in Canada under paragraph 132.1(1)(d), a person that has a permanent establishment in a province is resident in that province. According to subsection 132.1(3), a prescribed person, or a person of a prescribed class, is deemed under prescribed circumstances and for prescribed purposes to have a permanent establishment in a prescribed province.

For the purposes of subsection 132.1(3) of the Act, under proposed subsection 2(3) of the *New Harmonized Value-Added Regulations No. 2* (in Part 3 of the *Draft Regulations Amending Various GST/HST Regulations* released on January 28, 2011), a stratified investment plan with one or more provincial series is a prescribed person and is deemed, for each province in respect of which the investment plan has a provincial series, to have a permanent establishment in the province for the purpose of applying subsection 132.1(1) of the Act for the purpose of section 218.1 and Division IV.1 of the Act.

Similarly, for the purposes of subsection 132.1(3) of the Act, under proposed subsection 2(4) of the *New Harmonized Value-Added Regulations No. 2*, a financial institution that is a provincial investment plan for a province is a prescribed person and is deemed to have a permanent establishment in the province for the purpose of applying subsection 132.1(1) of the Act for the purpose of section 218.1 and Division IV.1 of Part IX of the Act.

As a result, if the investment plan is a provincial investment plan under section 12 of the draft SLFI Regulations or if each series of a stratified investment plan is a provincial series under section 13 of the draft SLFI Regulations and it has a permanent establishment in a province under subsection 132.1(3) of the Act, it is resident in a province under paragraph 132.1(1)(d).

8. Provincial private investment plans/pension entities

A private investment plan or a pension entity of a pension plan that meets the conditions in section 14 of the draft SLFI Regulations is not a prescribed financial institution under section 11 of the draft SLFI Regulations for the purposes of proposed paragraph 225.2(1)(b) of the Act. Specifically, a private investment plan or a pension entity of a pension plan is not an SLFI in respect of a reporting period in a fiscal year that ends in its taxation year if:

- throughout the taxation year, less than 10% of the total number of plan members of the private investment plan or pension entity of a pension plan are resident in the participating provinces; and
- throughout the preceding fiscal year,
    - in the case of a pension entity of a defined benefits pension plan, the total value of the actuarial liabilities of the pension plan that are reasonably attributable to the plan's members resident in the participating provinces is less than $100,000,000, and
    - in any other case, the total value of the assets of the private investment plan or pension plan that are reasonably attributable to the plan's members resident in the participating provinces is less than $100,000,000.

Accordingly, a private investment or pension entity of a pension plan that meets the above conditions is not an SLFI in respect of a reporting period in a fiscal year that ends in its taxation year. It should be noted that, unlike in the case of QSIPs, a private investment plan or pension entity of a pension plan that meets the above conditions cannot make an election to apply SLFI rules.

Examples of investment plans that are not selected listed financial institutions

Example 1 – Provincial private investment plan

- A company in Alberta sets up a trust governed by a deferred profit sharing plan for its employees as defined under the *Income Tax Act*.
- The employees that are plan members of the deferred profit sharing plan reside in either Alberta or Ontario.
- The company concludes that throughout the 2010 fiscal period less than 5% of its employees that are plan members reside in Ontario and the assets attributable to these plan members are $2,000,000 throughout the 2010 fiscal period.

As the employee plan members of the deferred profit sharing plan reside in Alberta and Ontario, it is an SLFI unless section 14 of the draft SLFI Regulations applies.

Throughout the 2010 fiscal period, less than 5% (i.e., less than 10%) of its employees that are plan members of the deferred profit sharing plan reside in Ontario and the assets attributable to these plan members are $2,000,000 (i.e., less than $100,000,000) throughout the 2010 fiscal period. Therefore, the trust governed by the deferred profit sharing plan meets the conditions in section 14. As a result for the reporting period that ends in its 2010 taxation year, the trust governed by a deferred profit sharing plan is not an SLFI and is not subject to the SLFI rules to

calculate its liability for the provincial part of the HST. The general HST and rebate rules will apply for the purposes of calculating its liability for the provincial part of the HST for the applicable reporting period in the 2011 taxation year.

Example 2 – QSIP that is not an SLFI

- Company X sets up a trust governed by an employee benefit plan in Ontario (EBP X) on January 1, 2003.
- EBP X is an employee benefit plan as defined in subsection 248(1) of the *Income Tax Act*.
- EBP X has plan members that are individuals resident in either Ontario or Nova Scotia who have a right, either immediate or in the future and either absolute or contingent, to receive benefits from EBP X.
- EBP X has a fiscal year that is a calendar year.
- EBP X has not elected to be an SLFI under section 15 of the draft SLFI Regulations for its 2011, 2012 or 2013 fiscal years.
- EBP X has not applied under section 16 of the draft SLFI Regulations for its 2011, 2012 or 2013 fiscal years to not be considered to be an SLFI.
- The unrecoverable tax amounts are $5,000 in 2013, $6,000 in 2012 and $4,000 in 2011.

EBP X is an employee benefit plan under the *Income Tax Act* and is a listed financial institution described in subparagraph 149(1)(a)(ix) of the Act. The plan members of EBP X qualify as plan members under subsection 1(1) of the draft SLFI Regulations. As more than 10% of its plan members reside in participating provinces, the exception from the application of the SLFI rules for private investment plans referred to in section 14 of the draft SLFI regulations does not apply.

Based on the location of its plan members, EBP X has a permanent establishment in two provinces (Ontario and Nova Scotia) and at least one province is a participating province. EBP X must determine if it is a QSIP and not a prescribed financial institution under section 11 of the draft SLFI Regulations for its 2014 fiscal year.

QSIP formula – established investment plans

Fiscal year – 2014

As EBP X was established in 2003, it applies the formula for established investment plans:

$$A \times 365/B$$

where

A = EBP X's unrecoverable tax amount for 2013 is $5,000.

B = 365 days for the calendar year commencing January 1, 2013, as EBP X's fiscal period is a calendar year.

Therefore, $5,000 × 365/365 = $5,000.

EBP X has determined that it is a QSIP for the fiscal period January 1, 2014 to December 31, 2014 as its threshold amount is less than $10,000.

Two preceding years

Since EBP X has a threshold amount of $6,000 for 2012 after applying the formula in paragraph 9(2)(b) of the draft SLFI Regulations, EBP X is a QSIP for the fiscal year from January 1, 2013 to December 31, 2013. Similarly, as EBP X's threshold amount for its 2011 fiscal year is $4,000, it is a QSIP for the fiscal year from January 1, 2012 to December 31, 2012. It was not an SLFI in either of the previous two years.

Conclusion

EBP X is a QSIP and was a QSIP in the two immediately preceding years. As a result it is not a prescribed financial institution as described in section 11 of the draft SLFI Regulations and is not an SLFI for the reporting period January 1, 2014 to December 31, 2014.

As previously indicated, investment plans that are not SLFIs would not use the SAM formula to calculate their liability for the provincial part of the HST. These investment plans use the general HST and rebate rules to calculate their net tax and claim rebates see the section of this bulletin entitled "General HST and rebate rules".

Special attribution method for selected listed financial institutions

9. Special attribution method formula

An SLFI uses the SAM formula to calculate its liability for the provincial part of the HST for a participating province. If the amount calculated using the SAM formula for the provincial part of the HST for a participating province for a reporting period of an SLFI is less than the provincial part of the HST for the province that is actually paid or payable by the SLFI in the period (as a result of the application of the general place of supply rules to supplies made to the SLFI), the SLFI will make an adjustment when calculating its net tax that will either reduce its net tax or result in a refund. Conversely, if the amount determined under the SAM formula is more than the actual provincial part of the HST for the province that is paid or payable by the SLFI in the period, the SLFI will have an additional liability for the provincial part of the HST and make an adjustment when calculating its net tax that will increase its net tax.

As SLFIs use the SAM formula to calculate their liability for the provincial part of the HST for a participating province, they are generally not required to track and allocate the extent of consumption or use of each property or service acquired in the participating provinces in order to claim input tax credits (ITCs) related to the applicable provincial part of the HST (either 7%, 8%, or 10% depending on the participating province), nor are they required to self-assess and account for tax on inputs acquired in a non-participating province for consumption, use or supply in a participating province.

Specifically, subsection 169(3) of the Act restricts an SLFI's ability to claim an ITC in respect of the provincial part of the HST unless

(a) the ITC is in respect of

  (i) tax that the SLFI is deemed to have paid under subsection 171(1), 171.1(2), 206(2) or (3), or 208(2) or (3), or

  (ii) an amount of tax that is prescribed for the purposes of paragraph (a) of element F of the SAM formula in subsection 225.2(2);

(b) the SLFI is permitted to claim the ITC under subsection 193(1) or (2); or

(c) the amount is a prescribed amount.

For information on the amount referred to in subparagraph (a)(ii) or paragraph (c) above, see section "9.8.1 Other prescribed amounts of tax – not related to the SAM formula" of this bulletin.

In addition, subsection 218.1(2) and section 220.04 of the Act restrict the application of the self-assessment provisions under Division IV and IV.1 to SLFIs.

Generally, under subsection 218.1(2), SLFIs are not required to self-assess tax under subsections 218.1(1) or (1.2) when the investment plan is an SLFI unless it is an amount of tax that:

- is prescribed for the purposes of paragraph (a) of the description of element F of the SAM formula (subsection 225.2(2) of the Act) as described below (for more information on this prescribed amount of tax, see section "9.8 Prescribed amounts of tax" of this bulletin);
- is in respect of an imported taxable supply of property or service acquired otherwise than for consumption use or supply in the course of an endeavour (as defined in subsection 141.01(1) of the Act) of the investment plan; or
- is a prescribed amount (currently no amount is prescribed).

Also, under section 220.04, if tax under Division IV.1 became payable by an investment plan when it is an SLFI, that tax is not payable unless it is a prescribed amount of tax (for more information on this prescribed amount of tax, see section "9.8.1 Other prescribed amounts of tax – not related to the SAM formula" of this bulletin).

The SAM formula in subsection 225.2(2) of the Act is used to calculate an SLFI investment plan's liability for the provincial part of the HST for a reporting period for **each** participating province (unless the exceptions described above apply to the particular investment plan or a provincial series of a stratified investment plan).

An SLFI investment plan uses the SAM formula in subsection 225.2(2) to calculate its liability for the provincial part of the HST. However, where the investment plan

- is a non-stratified investment plan with a real-time calculation method election in effect for a reporting period in a fiscal year, or
- is a stratified investment plan,

these investment plans would use an adapted SAM formula provided by section 51 of the draft SLFI Regulations (see section "10. Adapted special attribution method formula" of this bulletin).

The SAM formula in subsection 225.2(2) is $[(A – B) \times C \times (D/E)] – F + G$. Elements A to G of the formula are described below.

9.1 Element A

In general terms, element A is the GST and the federal part of the HST paid or payable by the SLFI in that period across Canada.

In particular element A is the total of:

(a) all amounts of the GST plus the federal part of the HST that became payable or were paid without being payable by the investment plan during the particular reporting period, and the GST or federal part of the HST on amounts self-assessed under sections 212, 218 and 218.01 of the Act (other than a prescribed amount of tax under section 42, 60 or paragraph 58(2)(a) of the draft SLFI Regulations, as described in section "9.8 Prescribed amounts of tax" of this bulletin);

(b) all amounts equal to the GST or the federal part of the HST for a supply made to the investment plan that is a corporation by a closely related corporation and that would have become payable by the investment plan if it did not have an election made under section 150 of the Act in effect (unless paragraph (c) below applies); and

(c) all amounts equal to the GST or the federal part of the HST calculated on the supplier's cost (excluding employees' salaries, the cost of financial services, GST and/or HST) of making the supply to the investment plan that is a corporation, where the supplier is a closely related corporation and elections under both section 150 and subsection 225.2(4) of the Act are in effect in respect of the supply.

For more information on the election under section 150 of the Act, refer to Form GST27, *Election or Revocation of an Election to Deem Certain Supplies to be Financial Services* and GST/HST Memorandum 17.14, *Election for Exempt Supplies*. For more information on the election under subsection 225.2(4) of the Act, refer to Form GST497, *Election Under the Special Attribution Method for Selected Listed Financial Institutions and Notice of Revocation*.

9.2 Element B

Element B is generally the total of:

(a) all input tax credits (ITCs) for the GST and federal part of the HST (other than ITCs for a prescribed amount of tax referred to in paragraph (a) of element A) claimed for the particular or preceding reporting periods included in the investment plan's return for the particular reporting period; and

(b) all amounts equal to the ITCs that the investment plan could have claimed if it was required to pay tax equal to the amount included in either paragraph (b) or (c) of element A.

9.3 Element C

Element C is the provincial attribution percentage for a particular participating province for the investment plan. The provincial attribution percentage for each participating province for a particular taxation year is determined according to prescribed rules set out in Part 2 of the draft SLFI Regulations. Refer to the section of this bulletin entitled "Overview of the provincial attribution percentage for a participating province" for detailed information on the calculation of the provincial attribution percentage for a participating province for a specific investment plan.

In accordance with subsection 51(3) of the draft SLFI Regulations, element C of subsection 225.2(2) of the Act is adapted to read as follows:

> Element C is the financial institution's provincial attribution percentage for the participating province and for the preceding taxation year, determined for financial institutions of that class in accordance with the draft SLFI Regulations.

In general terms, element C in subsection 225.2(2) is adapted such that an SLFI investment plan uses its provincial attribution percentage for the participating province for the immediately preceding taxation year, instead of its percentage for the particular taxation year, in the SAM formula. This adaptation of element C is provided for under subsection 51(3) of the draft SLFI Regulations.

For example, as a result of the application of subsection 51(3), the adapted element C in the SAM formula for an SLFI private investment plan that is a trust governed by a deferred profit sharing plan is calculated using the method referred to in section 37 of the draft SLFI Regulations and is its provincial attribution percentage for a participating province for the immediately preceding year.

This adaptation applies to all investment plans other than an investment plan that

- is a non-stratified investment plan with a real-time calculation method election under section 52 of the draft SLFI Regulations in effect which, as discussed above, uses an adapted SAM formula in section 51 of the draft SLFI Regulations;
- is a stratified investment plan which, as discussed above, uses an adapted SAM formula in section 51 of the draft SLFI Regulations; or
- has a reconciliation method election under section 53 of the draft SLFI Regulations in effect (discussed below).

9.3.1 Investment plans – reconciliation method election

In general, the reconciliation election under section 53 of the draft SLFI Regulations is available to all SLFI investment plans that do not have a real-time calculation method election under section 52 of the draft SLFI Regulations in effect.

Where an investment plan makes a reconciliation method election under subsection 53(1), it calculates its provincial attribution percentage determined in accordance with the prescribed rules referred to in Part 2 of the draft SLFI Regulations (element C of subsection 225.2(2)) based on the current/particular taxation year.

Until a prescribed form is available, an investment plan that intends to elect to use the reconciliation method to compute its provincial attribution percentage for a participating province can keep a document in its books and records as evidence of its intent to make the reconciliation method election. The document should include the following:

- the name of the SLFI investment plan;
- a statement indicating that the SLFI investment plan intends to make the election under section 53 of the draft SLFI Regulations;
- the first day of the fiscal year to which the election applies; and
- the signature of an authorized signatory of the SLFI investment plan.

It is important to note that once the election form is prescribed, the investment plan would be required to make the election in prescribed form and manner, in respect of the period for which the document setting out its intent was made, and keep the election in its books and records.

9.4 Element D

Element D is the tax rate for the particular participating province (7% in British Columbia, 10% in Nova Scotia, or 8 % in the remaining participating provinces).

It should be noted that the provincial tax rate for British Columbia and Ontario is effective July 1, 2010. Also, the provincial tax rate for Nova Scotia changed from 8% to 10% effective July 1, 2010.

9.5 Element E

Element E is the rate set out in subsection 165(1) of the Act (the 5% GST or the federal part of the HST).

9.6 Element F

In general terms, element F is the provincial part of the HST for the province paid or payable by the SLFI in that period (proposed element F of subsection 225.2(2) of the Act).

Amounts of tax prescribed under any of sections 42 and 60 and paragraph 58(2)(a) of the draft SLFI Regulations are not included in the calculation of paragraph (a) of element F (for more information, see section "9.8 Prescribed amounts of tax" of this bulletin).

Therefore, element F generally includes:

(a) the total of the provincial part of the HST, under subsection 165(2) of the Act for the participating province or under section 212.1 of the Act calculated at the tax rate for the participating province that

- became payable, or was paid without having become payable, during
  - the particular reporting period, or
  - any other reporting period of the investment plan that precedes the particular reporting period, provided that
    - the particular reporting period ends within two years after the end of the investment plan's fiscal year that includes the other reporting period, and
    - the investment plan was an SLFI throughout the other reporting period,
- was not deducted in determining an amount that, pursuant to subsection 225.2(2), is required to be added to or may be deducted from the net tax for any reporting period of the investment plan other than the particular reporting period, and
- is claimed by the investment plan in a return under Division V filed by the investment plan for the particular reporting period;

(b) where the investment plan is a corporation and has entered into an election under subsection 225.2(4) of the Act as discussed above, the amount equal to tax payable by the other person under any of subsection 165(2), sections 212.1 and 218.1 and Division IV.1 of the Act that is included in the cost to the other person of supplying the property or service to the investment plan.

9.7 Element G

Element G is the total of all amounts, each of which is a positive or negative amount that is prescribed under section 49 or paragraph 58(2)(b) of the draft SLFI Regulations.

Paragraph 58(2)(b) provides for the treatment of a tax adjustment transfer amount by an investment plan manager that is an SLFI. In general, if an SLFI investment plan manager has a tax adjustment transfer election in effect for the reporting period with an SLFI investment plan throughout the particular reporting period, the total of all the investment plan's positive and negative amounts that comprise the tax adjustment transfer amount, as calculated under section 58 of the draft SLFI Regulations, is a prescribed amount for the SLFI manager for the purpose of element G in subsection 225.2(2) of the Act (for more information on the tax adjustment transfer amount where the manager is an SLFI, see section "25. Elections – overview" of this bulletin).

A "prescribed amount" described in paragraph (a) to (e) of section 49 of the draft SLFI Regulations (which may be positive or negative) provides for adjustments to take into account transitional and other special transactions.

The following is a general description of some of the amounts that are included in the calculation of prescribed amounts. This is not meant to be an exhaustive explanation of those amounts. Refer to the specific paragraph in section 49 of the draft SLFI Regulations for complete details on a particular prescribed amount.

Paragraph 49(a) of the draft SLFI Regulations includes amounts related to adjustments, refunds and credits, such as those amounts paid or payable as or on account of tax that were adjusted, refunded or credited under section 232 of the Act to the extent that the amount was included in the total for element A or F in subsection 225.2(2) of the Act. As well, this paragraph includes adjustments in respect of amounts of tax that were refunded, rebated or remitted to the extent that the amount is in respect of tax and was included in the total of element A, F or G in subsection 225.2(2) of the Act. Paragraph 49(a) also includes adjustments that relate to pension entities as described in the next section of this bulletin entitled "9.7.1 Element G of the special attribution method formula – pension entities".

Paragraph 49(b) of the draft SLFI Regulations includes amounts related to deemed supplies and tax adjustments such as the amounts of tax deemed to have been paid by pension entities under subsections 172.1(5), 172.1(6) or 172.1(7) of the Act. These amounts are discussed in the next section of this bulletin. Paragraph 49(b) also includes the tax adjustment amounts under subsection 236(1) of the Act to reduce the amount of ITCs with respect to meal and entertainment expenses.

Paragraph 49(c) of the draft SLFI Regulations includes amounts related to the transitional rules for Ontario and British Columbia and for the 2% Nova Scotia provincial tax rate increase. For example, these amounts include the adjustments for GST paid on property in a reporting period that begins before July 1, 2010 and ends on or after that day and the property is not delivered until after that reporting period as well as where GST, or the federal part of the HST, was payable before the beginning of a reporting period that includes July 1, 2010 and an input tax credit is claimed in that reporting period or a subsequent reporting period.

Paragraph 49(d) of the draft SLFI Regulations includes amounts related to the requirement to recapture the provincial part of the HST for Ontario and British Columbia in respect of certain ITCs.

Paragraph 49(e) of the draft SLFI Regulations includes a deduction from the New Brunswick, Nova Scotia, and Newfoundland and Labrador provincial part of the HST, where an amount of tax in respect of a supply of property or service that was subject to the Ontario or British Columbia

general transitional rules was included in the total of element A in subsection 225.2(2) of the Act for a reporting period ending before July 1, 2010 and not included in the total of element B in that subsection for any reporting period, and the property or service was consumed or used exclusively in Ontario or British Columbia.

9.7.1 Element G of the special attribution method formula – pension entities

In addition to the adjustments referred to above, an SLFI pension entity is required to consider additional element G adjustments when using the SAM formula. For example, where an SLFI pension entity that receives a pension entity rebate (as described in section 261.01 of the Act) is deemed to have paid tax under section 172.1 of the Act, or receives a tax adjustment note under section 232.01 or 232.02 of the Act, section 49 of the draft SLFI Regulations requires that certain element G adjustments be made. These adjustments account for a pension entity's deemed tax amounts or pension rebate as applicable that would factor into the SLFI pension entity's calculation of its liability for the provincial part of the HST. For a detailed discussion of the deemed tax amounts under section 172.1 or the calculation of the pension entity rebate under section 261.01, please refer to GST/HST Notice257, *For Discussions Purposes Only: The GST/HST Rebate for Pension Entities*. For information about tax adjustment notes, please refer to Part V of GST/HST Notice257 and GST/HST Notice261, *Information Required for Tax Adjustment Notes Issued by an Employer to a Pension Entity and the Consequential Notices Issued by the Pension Entity*.

An SLFI pension entity is required to calculate the provincial part of the HST for aforementioned deemed tax and tax adjustment notes in element G in the SAM formula. An SLFI pension entity also uses the SAM formula to make an adjustment for the provincial part of the HST for which it cannot claim a pension rebate. In particular, these amounts, which are described in paragraph 49(a) or 49(b) of the draft SLFI Regulations, are prescribed amounts for the purposes of element G of the SAM formula in respect of a particular reporting period in a fiscal year that ends in a taxation year of the SLFI.

Paragraph 49(a) – element G of the SAM formula

An SLFI pension entity calculates the applicable prescribed amounts for the purposes of element G by including the positive or negative amount determined by the formula described in paragraph 49(a) of the draft SLFI Regulations referred to below:

$$G1 – [(G2 – G3) \times G4 \times (G5/G6)]$$

For a detailed discussion of the calculation of specific amounts referred to in this formula, please refer to GST/HST Notice257. However, a general description of some of the amounts included in the elements of the formula that could apply to SLFI pension entities is provided below.

Element G1

Generally, element G1 includes additions in respect of the provincial part of the HST. Some of these amounts included in element G1 that apply to an SLFI pension entity are described below.

For example, under subparagraph (vi) of element G1, the SLFI pension entity would include the provincial part of the tax adjustment note referred to in subsections 232.01 and 232.02 of the Act, that was issued to the pension entity under subsection 232.01(3) or subsection 232.02(2) in relation to the deemed provincial tax under section 172.1 of the Act that is included in element G12 (the

corresponding amount referred to in either subparagraphs (ii) or (iii) of element G12) in paragraph 49(b) of the draft SLFI Regulations described below.

Element G2

Generally, element G2 refers to deductions representing the GST and the federal part of the HST relevant to SLFI pension entities. Some of these amounts are described below.

For example, in subparagraph (iii) of element G2, a pension entity is required to include GST amounts paid or payable and included in element A of the SAM formula as well as amounts deemed paid by the pension entity included under subparagraph (iv) of the element G7 of paragraph 49(b) of the draft SLFI Regulations. Subparagraph (iv) of element G7 is the total of all amounts each of which is an amount of GST that the pension entity was deemed to have paid during the particular reporting period under subparagraph 172.1(5)(d)(ii) or (6)(d)(ii) or paragraph 172.1(7)(d) of the Act.

In addition, under subparagraph (v) of element G2, a pension entity would include amounts that represent the federal component of tax adjustment notes issued to the pension entity under section 232.01 or section 232.02 of the Act in respect of the deemed tax under subparagraph 172.1(5)(d)(ii) or 172.1(6)(d)(ii) or paragraph 172.1(7)(d) of the Act, which is included by the pension entity under element G7 of paragraph 49(b) of the draft SLFI Regulations.

GST/HST Notice257 describes and explains the calculation of amounts referred to in elements G1 and G2 above. In particular, Part IV of that notice describes the deemed taxable supplies by employers under section 172.1 of the Act, and Part V discusses the effect on pension entities of tax adjustment notes issued by employers under sections 232.01 and 232.02 of the Act.

Element G3

Where the SLFI pension entity has already received the benefit of the ITC or rebate, element G3 generally refers to or accounts for amounts that are recoverable (amounts that could reduce the amounts deducted under element G2) under the GST.

For example, subparagraph (iv) of element G3 includes:

- ITCs in respect of deemed amounts, described in paragraph 232.01(5)(b) or 232.02(4)(b) of the Act that were included in determining its net tax under element B of subsection 225.2(2) (SAM formula) for the particular reporting period or an earlier reporting period of the pension entity; and
- pension entity rebate adjustments on deemed amounts in respect of an amount that the pension entity is required to pay under paragraph 232.01(5)(c) or 232.01(4)(c) of the Act as applicable.

For more information on these adjustments please refer to Part V of the GST/HST Notice257 (the section referred to as pension entity adjustments).

Element G4

Element G4 is an SLFI pension entity's provincial attribution percentage for the particular participating province for the taxation year.

Element G5

Element G5 is the tax rate for the particular participating province (7% in British Columbia, 10% in Nova Scotia, or 8 % in the remaining participating provinces).

Element G6

Element G6 is the federal tax rate set out in subsection 165(1) of the Act (the 5% GST or the federal part of the HST).

Paragraph 49(b) – element G of the SAM formula

In addition to amounts included under paragraph 49(a) of the draft SLFI Regulations described above, an SLFI pension entity must also calculate the applicable prescribed amounts for the purposes of element G of the SAM formula by including the positive or negative amount determined by the formula described in paragraph 49(b) of the draft SLFI Regulations referred to below:

$$[(G7 – G8) \times G9 \times (G10/G11)] – G12$$

In addition to the application of the general provisions of paragraph 49(b) of the draft SLFI Regulations, there are specific provisions related to pension entities that should be considered:

- Under subparagraph (iv) of element G7, an SLFI pension entity is required to include the federal part of the HST deemed paid under subparagraph 172.1(5)(d)(ii)or 172.1(6)(d)(ii), or paragraph 172.1(7)(d) of the Act.
- Under subparagraphs (ii), (iii) and (iv) of element G12, an SLFI pension entity of a pension plan is required to include the total of all amounts, each of which is an amount determined for element B of the formula in paragraph 172.1(5)(c), 172.1(6)(c) or 172.1(7)(c) of the Act, respectively, in respect of a supply the pension entity was deemed to have received from or was deemed to have paid tax to, a participating employer of the pension plan during the particular reporting period. In general, element B is determined (by the participating employer) by multiplying the fair market value of a specified resource or employer resource, as the case may be, by the "provincial factor" determined for each participating province, in respect of the pension plan and the participating employer. Detailed information on the calculation of the provincial factor is provided in the definition of that term in Part IV of GST/HST Notice257. Also, the calculation of element B is demonstrated in Example 11 of GST/HST Notice257 (element B is referred to in that example as the "provincial part" for a specified resource).

9.8 Prescribed amounts of tax

A prescribed amount of tax, for purposes of paragraph (a) of element A in the SAM formula (elements A1 and A4 in the adapted SAM formula) and paragraph (a) of element F in the SAM formula (element D in the adapted SAM formula), is an amount described in section 42 of Part 3 of the draft SLFI Regulations. The following amounts are prescribed amounts of tax:

- under paragraph 42(a) any amount of tax that became payable, or that was paid without having become payable, by an insurer in respect of property or services acquired, imported or brought into a participating province exclusively and directly for consumption, use or supply in the course of investigating, settling or defending a claim arising under an insurance policy (other than an accident and sickness insurance or life insurance policy);

- under paragraph 42(b) any amount of tax that became payable, or that was paid without having become payable, by an SLFI, in respect of a supply or importation of property referred to in subsection 259.1(2) of the Act; and
- under paragraph 42(c) any amount of tax that became payable, or that was paid without having become payable, by a stratified investment plan related to its provincial series (for more information on these provincial series see the section of this bulletin entitled "SLFI investment plan – provincial series").

Also, under section 60 of the draft SLFI Regulations, if an investment plan is an SLFI throughout a particular taxation year in which the fiscal year of the plan that includes July 1, 2010 ends, and was not an SLFI throughout the taxation year of the plan that immediately precedes the particular taxation year, for purposes of paragraph (a) of element A in the SAM formula (elements A1 and A4 in the adapted SAM formula) and paragraph (a) of element F in the SAM formula (element D in the adapted SAM formula), any amount of tax under Part IX of the Act that became payable before July 1, 2010 or that was paid before July 1, 2010 without having become payable is a prescribed amount of tax.

In addition, under paragraph 58(2)(a) of the draft SLFI Regulations, if the investment plan has entered into a tax adjustment transfer election with its manager for the reporting period, the following amounts are prescribed amounts of tax for purposes of paragraph (a) of element A in the SAM formula (elements A1 and A4 in the adapted SAM formula) and paragraph (a) of element F in the SAM formula (element D in the adapted SAM formula):

- under subparagraph 58(2)(a)(i) of the draft SLFI Regulations, any amount of tax in respect of a supply that became payable or that was paid by the investment plan without having become payable, at a particular time that is:
  - during the particular reporting period; and
  - during a reporting period of the investment plan, the return for which is required to be filed by its manager in accordance with subsection 56(2) of the draft SLFI Regulations (reporting entity election); and
- under subparagraph 58(2)(a)(ii) of the draft SLFI Regulations, any amount of tax in respect of a supply made by the manager to the investment plan that became payable or that was paid by the investment plan without having become payable, at a particular time that is:
  - during the particular reporting period; and
  - during a reporting period of the investment plan, the return for which is not required to be filed by the manager in accordance with subsection 56(2) of the draft SLFI Regulations (no reporting entity election).

For more information on these reporting elections see section "25. Elections – overview" of this bulletin.

Note that under paragraph 58(2)(b), where the investment plan manager is an SLFI, the positive or negative amount transferred from the SLFI investment plan to the SLFI investment plan manager is included as a prescribed amount under element G in the SAM formula (as described in section "9.7.1 Element G of the special attribution method formula – pension entities" of this bulletin).

9.8.1 Other prescribed amounts of tax – not related to the SAM formula

Sections 43 and 44 of Part 3 of the draft SLFI Regulations include other prescribed amounts of tax for purposes of section 220.04 and for purposes of paragraph 169(3)(c) of the Act as described below:

- for purposes of section 220.04 of the Act, a prescribed amount of tax is any amount of tax that:
  (a) is prescribed for the purposes of paragraph (a) of the description of F in subsection 225.2(2) of the Act, or
  (b) is in respect of property or a service brought into a participating province or acquired, otherwise than for consumption, use or supply in the course of an endeavour, as defined in subsection 141.01(1) of the Act, of an SLFI.
- for purposes of paragraph 169(3)(c) of the Act, a prescribed amount is any amount of tax that became payable under subsection 165(2) or section 212.1 of the Act during a reporting period that ends before July 1, 2010 as a consequence of the application of Part 3 of the *New Harmonized Value-Added Tax System Regulations* or Divisions 2 and 3 of Part 9 of the *New Harmonized Value-Added Tax System Regulations, No. 2*.

10. Adapted special attribution method formula

Section 51 of the draft SLFI Regulations adapts the SAM formula referred to in subsection 225.2(2) of the Act to suit the particular characteristics of certain investment plans (adapted SAM formula).

The SAM formula is adapted for all stratified investment plans and for non-stratified investment plans with a real-time calculation method election in effect for a reporting period in a fiscal year. The nature of the SLFI investment plan will also determine the factors it would consider before it computes its liability for the provincial part of the HST under the adapted SAM formula.

For example, to compute its liability for the provincial part of the HST using the adapted SAM formula in section 51 of the draft SLFI Regulations, a stratified investment plan is required to consider the following:

(a) Although the stratified investment plan calculates its GST at the entity level as the adapted SAM formula is applied at the series level, it is required to consider the rules referred to in section 54 of the draft SLFI Regulations to allocate the GST amount to a particular series of the stratified investment plan.

(b) In addition to considering the type of investment plan, the formula used to calculate the stratified investment plan's provincial attribution percentage for a participating province (i.e., section 31) will also depend on the method (e.g., real-time calculation method election) chosen by the stratified investment plan in applying the adapted SAM formula described below.

10.1 Stratified investment plan – adapted special attribution method formula

A stratified investment plan may choose one of three methods to calculate its adjustment to net tax under the adapted SAM formula under section 51 of the draft SLFI Regulations.

As described in section 51, the amount included as element A of the adapted SAM formula differs based on the method selected. Therefore, the methods are described in relation to the computation of element A under subsection 51(1) as described below.

- general rule – preceding year
- reconciliation method (section 53 election)
- real-time calculation method (section 52 election)

The adapted SAM formula under subsection 51(1) for a stratified investment plan for a particular reporting period in a fiscal year that ends in a taxation year of the stratified investment plan is:

$$[[A \times (B/C)] - D] + E$$

10.1.1 Element A

Element A represents a composite amount that is based on amounts calculated for each series and is then aggregated to derive element A of the adapted SAM formula. The amounts included in element A are derived from amounts calculated based on the method chosen by the stratified investment plan (i.e., the election entered into by the stratified investment plan) as described below.

In particular, as described in subsection 51(1), element A is the total of all positive or negative amounts, each of which is determined for a series of the stratified investment plan (other than a provincial series of the stratified investment plan for the fiscal year (for more information, see section "11. Provincial series of a stratified investment plan" of this bulletin).

Allocation of expenses to a series of a stratified investment plan

To calculate element A of the adapted SAM formula at the series level, the unrecoverable GST and federal part of the HST amounts are allocated to the particular series using section 54 of the draft SLFI Regulations. Under section 54, for every property or service that a stratified investment plan acquires, imports or brings into a participating province, the stratified investment plan must determine the extent to which the property or service is acquired, imported or brought in for consumption, use or supply in the course of the activities relating to each series of the stratified investment plan.

The allocation of expenses to a particular series under section 54 of the draft SLFI Regulations is subject to the following conditions.

- The total of the amounts allocated to each series must equal 100% (subsection 54(2)).
- The methods used by a stratified investment plan to determine the extent to which properties or services are acquired, imported or brought into a participating province for consumption, use or supply in the course of the activities relating to each of its series must be fair and reasonable and must be used consistently throughout a fiscal year of the stratified investment plan (subsection 54(3)).

Note that these allocation rules under section 54 are also relevant to the allocation of amounts to a provincial series of a stratified investment plan under the *New Harmonized Value-added Tax System Regulations, No. 2*. In particular, these rules are relevant to applying the general HST and rebate rules (discussed in the section of this bulletin entitled "General HST and rebate rules") to a provincial

series of a stratified investment plan (discussed in section "11. Provincial series of a stratified investment plan" of this bulletin).

10.1.2 Description of element A – general rule (preceding year)

To calculate element A of the adapted SAM formula under paragraph 51(1)(b) of the draft SLFI Regulations, a stratified investment plan that uses the general rule would use the formula below (note that a stratified investment plan using this method cannot have a real-time calculation method election under section 52 in effect):

$$(A4 – A5) \times A6$$

where

Element A4

As the amount included in element A4 is calculated at the series level, the amounts included in element A4 are allocated to the series using the allocation of expenses rules referred to above.

In general terms, element A4 includes the following amounts:

- Under subparagraph (i) of element A4, the amount of tax in respect of a supply or importation of property or a service that became payable under any of subsection 165(1) (GST or federal part of the HST) and sections 212, 218 and 218.01 (importation amounts) of the Act by the stratified investment plan during the reporting period or that was paid by the stratified investment plan during the reporting period without having become payable, to the extent that the property or service was acquired or imported for consumption, use or supply in the course of the activities relating to the series (other than prescribed amounts of tax under section 42, section 60 and paragraph 58(2)(a) of the draft SLFI Regulations, which are described in section "9.8 Prescribed amounts of tax" of this bulletin).
- As described in subparagraph (ii) of element A4, a stratified investment plan that is a corporation is also required to include amounts equal to the GST or the federal part of the HST that relate to the series that would have been payable by the investment plan during the reporting period, if the stratified investment plan did not have a section 150 election in effect (where an election referred to in subparagraph (iii) is not in effect).
- As described in subparagraph (iii) of element A4 , if a stratified investment plan that is a corporation has an election under subsection 225.2(4) of the Act in effect, all amounts each of which is an amount equal to the GST or the federal part of the HST calculated on the supplier's cost of making the supply to the stratified investment plan (excluding any remuneration to employees of the other person, the cost of financial services and GST and/or HST), to the extent that the property or service was acquired for consumption, use or supply in the course of the activities relating to the series.

For more information on the election under section 150 of the Act, refer to Form GST27, *Election or Revocation of an Election to Deem Certain Supplies to be Financial Services* and GST/HST Memorandum 17.14, *Election for Exempt Supplies*. For more information on the election under subsection 225.2(4) of the Act, refer to Form GST497, *Election Under the Special Attribution Method for Selected Listed Financial Institutions and Notice of Revocation*.

Element A5

In general, the amount included in element A5 is similar to the amount included in element B of the SAM formula in subsection 225.2(2) of the Act. This amount includes the ITCs claimed in the period in respect of GST or the federal part of the HST paid or payable by a stratified investment plan for the reporting period or the preceding reporting period as applicable, to the extent that the property or service was acquired or imported for consumption, use or supply in the course of the activities relating to the series, as determined under section 54 (see the section of this bulletin entitled "Allocation of expenses to a series of stratified investment plan" under "10.1.1 Element A"). ITCs that relate to prescribed amounts under sections 42 or 60 or paragraph 58(2)(a) of the draft SLFI Regulations, as described in section "9.8 Prescribed amounts of tax" of this bulletin, are excluded from element A5.

This amount also includes all amounts equal to the ITCs that the investment plan could have claimed if it was required to pay tax equal to the amount included in either subparagraph (ii) or (iii) of element A4 discussed above.

Element A6

Where a reconciliation method election under section 53 of the draft SLFI Regulations (as described below) is not in effect, element A6 is the stratified investment plan's provincial attribution percentage for the series, for the participating province and for the preceding taxation year, determined using the appropriate method under Part 2 of the draft SLFI Regulations.

A stratified investment plan is required to apply the formula in section 32 of the draft SLFI Regulations to determine its provincial attribution percentage for the series and for the participating province (the calculation of the stratified investment plan's provincial attribution percentage for the series and for the participating province is described in section "18. Stratified investment plan (other than exchange-traded fund) – provincial attribution percentage for a particular period" of this bulletin) unless the series is an exchange-traded series of a stratified investment plan as noted below.

A stratified investment plan that is an exchange-traded fund is required to apply the formula in section 35 of the draft SLFI Regulations to determine its provincial attribution percentage for the exchange-traded series and for the participating province (the calculation of provincial attribution percentages for exchange-traded funds is discussed in section "19. Exchange-traded funds" of this bulletin).

10.1.3 Description of element A – reconciliation method election

A reconciliation method election under section 53 of the draft SLFI Regulations permits a stratified investment plan to elect to use its current year's provincial attribution percentage (subparagraph (i) of element A6 of paragraph 51(b)) for the purposes of applying the adapted SAM formula. However, if a real-time calculation method election under section 52 of the draft SLFI Regulations is in effect for the reporting period in respect of any series of the investment plan, the stratified investment plan is not allowed to enter into a reconciliation method election under section 53 for the same reporting period.

Similar to stratified investment plan using the general rule (preceding year) method, the stratified investment plan would use the applicable formula in Part 2 of the draft SLFI Regulations (e.g., section 32 of the draft SLFI Regulations) to calculate its provincial attribution percentage for a

participating province. In applying paragraph 51(1)(b) of the adapted SAM formula under subparagraph (i) of element A6, the stratified investment plan would calculate its provincial attribution percentage for the series and for the participating province based on the current taxation year.

A stratified investment plan elects to use the reconciliation method by completing a prescribed election form. This election is not filed with the Minister. Until a reconciliation method election is available in prescribed form, a stratified investment plan can keep a document in its records as evidence of its intention to make the election. The document should include the following:

- the name of the stratified investment plan;
- a statement indicating that the stratified investment plan intends to make the election under section 53;
- the first day of the fiscal year to which the election applies; and
- the signature of an authorized signatory of the stratified investment plan.

It is important to note that once the election form is prescribed, the stratified investment plan would be required to make the election in prescribed form and manner, in respect of the period for which the document setting out its intent was made and keep the election in its books and records.

Subsection 53(5) allows a stratified investment plan to revoke an election made under subsection 53(1). This revocation is effective on the first day of a fiscal year that begins at least three years after the election under section 53 became effective.

An election made by a stratified investment plan under subsection 53(1) ceases to have effect on the earlier of:

- the first day of the fiscal year of the stratified investment plan in which it ceases to be an investment plan or an SLFI, and
- the day on which a revocation of the election becomes effective.

Subsection 53(6) provides a restriction on when a subsequent section 53 election can be made. Specifically, where a section 53 (reconciliation method) election ceases to have effect on a particular day, any subsequent election is only valid where the first day of the fiscal year set out in the subsequent election is at least three years after the day the previous election ceased to be effective.

10.1.4 Description of element A – real-time calculation method election

Paragraph 51(1)(a) provides that where a real-time calculation election under section 52 is in effect in respect of a series of a stratified investment plan throughout a particular reporting period of the investment plan, element A is determined for the reporting period and is the total of all amounts, each of which is determined for a particular day in the reporting period using the following formula.

$$(A1 – A2) \times A3$$

Real-time calculation method election

In general, the real-time calculation method election under section 52 of the draft SLFI Regulations permits a stratified investment plan to determine its net tax adjustment under the SAM formula on a daily, weekly, monthly or quarterly basis.

The real-time calculation method election under subsection 52(1) is not available in respect of a series of an SLFI stratified investment plan where:

- the stratified investment plan is a mortgage investment corporation (subsection 52(1));
- the series of the stratified investment plan is an exchange-traded series (subsection 52(1));
- on the first day the real-time calculation method election is to come into effect, an attribution point election under section 19 is in effect (subparagraph 52(3)(a)(i));
- on the first day the real-time calculation method election is to come into effect, a reconciliation method election under section 53 is in effect (subparagraph 52(3)(a)(ii)); or
- on September 30 immediately preceding the day on which the election is to come into effect, less than 90% of the total value of the units of the series or of the stratified investment plan is held by individuals or specified investors in the investment plan (paragraph 52(3)(b)).

Under subsection 52(1) of the draft SLFI Regulations, where a stratified investment plan is not excluded by the above criteria, it can elect to determine its net tax adjustment with respect to a particular series on a daily, weekly, monthly or quarterly basis.

Under subsection 52(5), the real-time calculation method election made by the stratified investment plan in respect of a series of the investment plan ceases to have effect on the earliest of:

- if, on a day in a particular fiscal year, where a real-time calculation method election is in effect throughout the fiscal year and on a particular day in the fiscal year, subsection 31(3) applies in respect of the series (more than 10% of the total value of the units of the series is held by unit holders other than individuals and specified investors), the first day of the fiscal year immediately following the particular fiscal year;
- the first day of the fiscal year of the stratified investment plan in which it ceases to be an investment plan or an SLFI or becomes a mortgage investment corporation;
- in the case of an election under subsection 52(1), the first day of the fiscal year of the person in which the series becomes an exchange-traded series; and
- the day on which a revocation of the election under subsection 52(6) becomes effective.

Subsection 52(7) provides a restriction on when a subsequent section 52 election can be made. Specifically, where a section 52 (real-time calculation method) election ceases to have effect on a particular day, any subsequent election is only valid where the first day of the fiscal year set out in the subsequent election is at least three years after the day the previous election ceased to be effective.

An SLFI stratified investment plan elects to use the real-time calculation method by completing a prescribed election form. This election is not filed with the Minister. Until the real-time calculation method election is available in prescribed form, a stratified investment plan can keep a document in its books and records as evidence of its intention to make the election. The document should include the following:

- the name of the stratified investment plan;
- a statement indicating that the stratified investment plan intends to make the real-time calculation method election under subsection 52(1) with respect to certain series of the stratified investment plan;

- the name(s) of the series of the stratified investment with respect to which the plan intends to make the election;
- the first day of the fiscal year during which the election is to be in effect; and
- the signature of an authorized signatory of the stratified investment plan.

It is important to note that once the election form is prescribed, the stratified investment plan would be required to make the election in prescribed form and manner, in respect of the period for which the document setting out its intent was made, and keep the election in its books and records.

The elements used to calculate element A in paragraph (a) of element A in subsection 51(1) of the draft SLFI Regulations for a stratified investment plan with a real-time calculation election in effect are described below.

Element A1

The amounts of tax included under element A1 are similar to the amounts included for element A4. However the stratified investment plan calculates these tax amounts included in element A1 based on amounts paid or payable on the particular day rather than for the reporting period referred to in the general rule (i.e., element A4).

Element A2

In general, the amounts of ITCs included in element A2 are similar to the amounts of ITCs included under element A5. However, the inclusion of ITCs in element A2 for the particular day is allowed to the extent that the amount was not included in the determination of A2 for any other day in the particular reporting period.

Element A3

As described below, a stratified investment plan's provincial attribution percentage for a participating province is calculated under section 31 of the draft SLFI Regulations and the attribution point chosen from the list referred to below (i.e., as described in element A3 in paragraph (a) of element A in subsection 51(1) of the draft SLFI Regulations):

- where the stratified investment plan has elected to calculate its provincial attribution percentage for a participating province on a quarterly basis under section 52, it calculates this percentage as of the first business day of the calendar quarter that includes the particular day, or such other day of that quarter that the Minister may allow on application by the stratified investment plan;
- where the stratified investment plan has elected to calculate its provincial attribution percentages on a monthly basis under section 52, it calculates this percentage as of the first business day of the calendar month that includes the particular day, or such other day of that month that the Minister may allow on application;
- where the stratified investment plan has elected to calculate its provincial attribution percentage on a weekly basis under section 52, it calculates this percentage as of the first business day of the week that includes the particular day, or such other day of that week that the Minister may allow on application by the stratified investment plan;
- where the stratified investment plan has elected under section 52 to calculate its provincial attribution percentage on a daily basis as of the particular day.

10.2 Non-stratified investment plan – real-time calculation method election

A non-stratified investment plan that elects to use the real-time calculation method under subsection 52(2) of the draft SLFI Regulations calculates its liability for the provincial part of the HST using the following adapted SAM formula set out in subsection 51(2) of the draft SLFI Regulations:

$$[[A \times (B/C)] - D] + E$$

10.2.1 Element A

Subsection 51(2) provides that where a real-time calculation election under section 52 is in effect throughout the particular reporting period of a non-stratified investment plan, element A is calculated using the following formula:

$$(A1 - A2) \times A3$$

The amounts included in element A1, A2 and A3 are similar to the amount included in element A1, A2 and A3 of the formula described above for a stratified investment plan that has made a real-time calculation method election except that the amounts are with respect to a non-stratified investment plan, not with respect to a series of a stratified investment plan.

Real-time calculation method election

In general, the real-time calculation method election under section 52 of the draft SLFI Regulations permits a non-stratified investment plan to determine its net tax adjustment under the SAM formula on a daily, weekly, monthly or quarterly basis.

The real-time calculation method election under subsection 52(2) is not available in respect of an SLFI non-stratified investment plan where:

- the non-stratified investment plan is a mortgage investment corporation or an exchange-traded fund (subsection 52(2));
- on the first day the real-time calculation method election is to come into effect, an attribution point election under section 19 is in effect (subparagraph 52(3)(a)(i));
- on the first day the real-time calculation method election is to come into effect, a reconciliation method election under section 53 is in effect (subparagraph 52(3)(a)(ii)); or
- on September 30, immediately preceding the day on which the election is to come into effect, less than 90% of the total value of the units of the series or of the stratified investment plan is held by individuals or specified investors in the investment plan (paragraph 52(3)(b)).

Under subsection 52(2) of the draft SLFI Regulations, where a non-stratified investment plan is not excluded by the above criteria, it can elect to determine its net tax adjustment on a daily, weekly, monthly or quarterly basis.

Under subsection 52(5), a real-time calculation method election made by a non-stratified investment plan ceases to have effect on the earliest of:

- if, on a day in a particular fiscal year, where a real-time calculation method election is in effect throughout the fiscal year and on a particular day in the fiscal year, subsection 33(3) applies in respect of the non-stratified investment plan (more than 10% of the total value of the units is

held by unit holders other than individuals and specified investors), the first day of the fiscal year immediately following the particular fiscal year;

- the first day of the fiscal year of the non-stratified investment plan in which it ceases to be an investment plan or an SLFI or becomes a mortgage investment corporation;
- in the case of an election under subsection 52(2), the first day of the fiscal year of the person becomes an exchange-traded fund;
- the day on which a revocation of the election under subsection 52(6) becomes effective.

Subsection 52(7) provides a restriction on when a subsequent section 52 election can be made. Specifically, where a section 52 (real-time calculation method) election ceases to have effect on a particular day, any subsequent election is only valid where the first day of the fiscal year set out in the subsequent election is at least three years after the day the previous election ceased to be effective.

An SLFI non-stratified investment plan elects to use the real-time calculation method by completing a prescribed election form. This election is not filed with the Minister. Until the real-time calculation method election is available in prescribed form, a stratified investment plan can keep a document in its books and records as evidence of its intention to make the election. The document should include the following:

- the name of the non-stratified investment plan;
- a statement indicating that the non-stratified investment plan intends to make the real-time calculation method election under subsection 52(2);
- the first day of the fiscal year during which the election is to be in effect; and
- the signature of an authorized signatory of the non-stratified investment plan.

It is important to note that once the election form is prescribed, the stratified investment plan would be required to make the election in prescribed form and manner, in respect of the period for which the document setting out its intent was made, and keep the election in its books and records.

10.3 Other elements of the adapted SAM formulas in section 51 of the draft SLFI Regulations

10.3.1 Element B

Element B is the tax rate for the particular participating province (7% in British Columbia, 10% in Nova Scotia, or 8% in the remaining participating provinces). This element is the same as element D in the SAM formula in subsection 225.2(2) of the Act.

It should be noted that the provincial tax rate for British Columbia and Ontario is effective July 1, 2010. Also, the provincial tax rate for Nova Scotia changed from 8% to 10% effective July 1, 2010.

10.3.2 Element C

Element C is the rate set out in subsection 165(1) of the Act (the 5% GST or the federal part of the HST). This element is the same as element E in the SAM formula in subsection 225.2(2) of the Act.

10.3.3 Element D

In general terms, element D is element F in the SAM formula in subsection 225.2(2) of the Act, which is discussed in section "9. Special attribution method formula" of this bulletin.

10.3.4 Element E

Element E is the total of all amounts, each of which is an amount that is prescribed under section 49 or paragraph 58(2)(b) of the draft SLFI Regulations. In general terms, element E is element G in the SAM formula in subsection 225.2(2) of the Act, which is discussed in section "9. Special attribution method formula" of this bulletin.

SLFI investment plan – provincial series

11. Provincial series of a stratified investment plan

Where an SLFI is a stratified investment plan and has one or more provincial series, the stratified investment plan would not use the adapted SAM formula to calculate its liability for the provincial part of the HST in respect of the provincial series. Specifically, the adapted SAM formula does not include prescribed amounts of tax that relate to a provincial series of an SLFI stratified investment plan, which are set out in paragraph 42(c) of the draft SLFI Regulations (as described in section "9.8 Prescribed amounts of tax" of this bulletin). As a result, the stratified investment plan would use the SAM formula only in respect of its series, which are not provincial series. As previously discussed in section "7.2 Investment plan with provincial series (stratified)" of this bulletin, the term "provincial series for a fiscal year of a stratified investment plan" is defined in subsection 1(1) of the draft SLFI Regulations.

Paragraph 42(c) defines a prescribed amount of tax for the purposes of paragraph (a) of the description of element A and paragraph (a) of the description of element F in the SAM formula in subsection 225.2(2) of the Act, to include any amount of tax that became payable by a stratified investment plan, or that was paid by a stratified investment plan without having become payable, in respect of property or a service, to the extent that the property or service was acquired, imported or brought into a participating province for consumption, use or supply in the course of the activities relating to a provincial series of the stratified investment plan.

For example, subparagraph (i) of element A4 of the adapted SAM formula referred to in paragraph 51(1)(b) of the draft SLFI Regulations does not include amounts that relate to the provincial series of the SLFI stratified investment plan as this amount qualifies as a prescribed amount of tax under section 42. Similarly, element D of subsection 51(1) does not include an amount of tax that is prescribed under section 42.

As these prescribed amounts are excluded from the SLFI stratified investment plan's net tax adjustment under the adapted SAM formula, the general HST and rebate rules apply to calculate the SLFI stratified investment's liability for the provincial part of the HST for these provincial series.

Note that the SLFI rules do not apply where section 13 of the draft SLFI Regulations applies and all the series of a stratified investment plan qualify as provincial series which was previously discussed in section "7.2 Investment plan with provincial series (stratified)" of this bulletin.

Applicable HST rules – provincial series

If an SLFI is a stratified investment plan with one or more provincial series, the general self-assessment rules including Division IV.1 and section 218.1 of the Act (imported taxable supplies and import rules for financial institutions) apply for the purposes of self-assessing the provincial part of the HST that relates to each provincial series.

For example, where an amount qualifies as a prescribed amount of tax relating to a provincial series of a stratified investment plan under paragraph 42(c), the self-assessment rules in Division IV.1 and section 218.1 for imported taxable supplies and the import rules for financial institutions under the Act, including the proposed amendments to the Act, apply.

To self-assess the provincial part of the HST, a registrant stratified investment plan would include the amount to be self-assessed in accordance with Division IV.1 of the Act on line 405 of Form GST34*, Goods and Services Tax/Harmonized Sales Tax Return for Registrants*. In general, a non-registrant would include this amount on line 501 of Form GST489, *Return for Self-Assessment of the Provincial Part of Harmonized Sales Tax*. If the stratified investment plan is required to self-assess a prescribed amount of tax relating to a provincial series under section 218.1, such amount would be included on line 402 of Form GST59, *GST/HST Return for Imported Taxable Supplies and Qualifying Consideration* for non-registrants and line 405 of Form GST34 for registrants. If the stratified investment plan is an annual filer, it would include this amount on line 405 of Form GST494, *Goods and Services Tax/Harmonized Sales Tax Final Return for Selected Listed Financial Institutions.*

Provincial series – section 261.31 rebate

In addition, as the SAM formula does not provide the provincial series with a credit adjustment for the provincial part of the HST that relates to a non-participating province, it is proposed that section 261.31 of the Act be amended to provide a rebate for amounts of tax that relate to a provincial series. In particular, the stratified investment plan would apply to obtain the rebate that applies to its provincial series.

For the purposes of subsection 261.31(2) of the Act under proposed subsection 21.1(1) of the *New Harmonized Value Added System Regulations No. 2* included in the *Draft Regulations amending various GST/HST Regulations No.2* released January 28, 2011*,* an SLFI that is a stratified investment plan with one or more provincial series is a prescribed person. Proposed section 21.1 of the *New Harmonized Value Added System Regulations No. 2* prescribes the manner (i.e., the formulas referred to in subsection 21.1(2)) in which the rebate under subsection 261.31(2) is calculated. Under section 54 of the draft SLFI Regulations, the stratified investment plan is required to determine the extent to which property or services are acquired, imported or brought in to a participating province for consumption, use or supply in the course of the activities relating to each series of the stratified investment plan by using a method that is fair and reasonable and applied consistently throughout a fiscal year of a stratified investment plan (more information on the allocation of expenses to a provincial series under section 54 of the draft SLFI Regulations is available in the section of this bulletin entitled "Allocation of expenses to a series of stratified investment plan" under "10.1.1 Element A").

Where applicable, an SLFI that is a stratified investment plan with one or more provincial series would be required to apply for the rebate under 261.31 using Form GST189, *General Application for Rebate of GST/HST*. For additional information on completing Form GST189, please refer to

Guide RC4033, *General Application for GST/HST Rebates – Includes Forms GST189, GST288, and GST507*.

Overview of the provincial attribution percentage for a participating province

The provincial attribution percentage for each participating province is determined according to prescribed rules described in sections 20 to 41 of *Part 2, Percentage for a Participating Province* of the draft SLFI Regulations. As previously discussed, it is element C in the SAM formula or element A3 or element A6 in the adapted SAM formula.

Under section 29 of the draft SLFI Regulations, an SLFI investment plan is required to apply the applicable formula(s) in sections 30 to 40 to calculate its provincial attribution percentage for a participating province. As a result, the general rules for individuals, corporations and qualifying partnerships in sections 23, 24 and 28 do not apply to SLFI investment plans. For example, a mortgage investment corporation, as a distributed investment plan, is required to use the formula in section 34 of the draft SLFI Regulations to calculate its provincial attribution percentage for a participating province despite being a corporation that would otherwise use the general rule for corporations under section 24 to calculate its provincial attribution percentage.

An SLFI investment plan should consider the following factors in determining the appropriate method to compute its provincial attribution percentage for a participating province under the SAM formula referred to in subsection 225.2(2) of the Act or the adapted SAM formula described in section 51 of the draft SLFI Regulations.

- The unit holder's province of residence.
- The impact of units held by non-residents on the investment plan's provincial attribution percentage for a participating province.
- The relevant attribution point.
- The possible application of additional information requirements and the impact of missing information on the calculation of the SLFI investment plan's provincial attribution percentage for a participating province.
- Specific deeming rules that would apply where the unit holder information available to the SLFI investment plan is less than 50% of the total value of the units/assets of a series of a stratified investment plan or the particular investment plan at the applicable attribution point.
- The definition of a specified transaction and its impact on the calculation of the provincial attribution percentage for a participating province for a distributed investment plan (other than an exchange-traded fund or exchange-traded series of a stratified investment plan).

12. Unit holder's province of residence

The methods referred to below, which are used to calculate an SLFI investment plan's provincial attribution percentage for a participating province for purposes of the SAM formula in subsection 225.2(2) of the Act or the adapted SAM formulas in section 51 of the draft SLFI Regulations, are based on attributing the value of the units in a series or investment plan to unit

holders resident in a participating province and expressing that value as a percentage of the total value of the series or investment plan.

An SLFI investment plan uses the definition in section 6 of the draft SLFI Regulations to determine a unit holder's province of residence in Canada for the purposes of the draft SLFI Regulations including calculating its provincial attribution percentage for a participating province.

Specifically, under section 6 (despite subsection 132.1(1) of the Act), a person resident in Canada is resident in the province

(a) if the person is an individual, where the person's principal mailing address in Canada is located;

(b) if the person is a corporation or a partnership, where the person's principal business in Canada is located;

(c) if the person is a trust governed by a registered retirement savings plan, a registered retirement income fund, a registered education savings plan, a registered disability savings plan or a TFSA, where the principal mailing address in Canada of the annuitant of the registered retirement savings plan or registered retirement income fund, of the subscriber of the registered education savings plan or of the holder of the registered disability savings plan or TFSA is located;

(d) if the person is a trust, other than a trust described in paragraph (c), where the trustee's principal business in Canada is located or, if the trustee is not carrying on a business, where the trustee's principal mailing address in Canada is located; and

(e) in any other case, where the person's principal business in Canada is located or, if the person is not carrying on a business, where the person's principal mailing address in Canada is located.

13. Impact of units held by non-residents

As described in proposed section 225.4 of the Act, unless an SLFI investment plan elects to exclude non-resident unit holders from the calculation of its provincial attribution percentage for a participating province, the following rules apply:

- When an SLFI investment plan calculates its provincial attribution percentage for a participating province and it knows that certain units are held by non-residents of Canada, these units are deemed to be held by unit holders resident in Canada but not resident in a participating province (as described in paragraph 225.4(3)(a) for a stratified investment plan, paragraph 225.4(4)(a) for a non-stratified investment plan, paragraph 225.4(5)(a) for a private investment plan or a pension entity of a pension plan).

- To determine ITC eligibility in relation to any supply made by the SLFI investment plan in respect of units of the series or plan held by non-residents of Canada, these units are deemed to have been made to a person resident in Canada (paragraph 225.4(3)(b) for a stratified investment plan, paragraph 225.4(4)(b) for a non-stratified investment plan or paragraph 225.4(5)(b) for a private investment plan or a pension entity of a pension plan).

  For example, where a mutual fund trust, that has not entered into an election to exclude non-residents from the calculation of its provincial attribution percentage, makes a supply of a financial service that would otherwise be described in section 1 of Part IX of Schedule VI to the Act to a unit holder of a series of a stratified investment plan of the mutual fund that is a non-resident, it is not allowed to claim ITCs on inputs that relate to this supply (i.e., the zero-rating provisions referred to in Part IX of Schedule VI of the Act would not apply because

the deeming provision would result in the supply being made to a resident and, as a result, the supply would be exempt).

- In general, if the investment plan qualifies as a qualifying taxpayer under section 217.1 of the Act, any outlay made, or expense incurred, in respect of the units of the investment plan that are held by non-residents and that are deemed to be held by Canadian residents under section 225.4, will be in respect of Canadian activities of the investment plan. As a result, any outlay made, or expense incurred, by the investment plan in respect of these units will relate to the investment plan's Canadian activity for the purposes of calculating the amount of an external charge or qualifying consideration as defined in section 217 of the Act (under paragraphs 225.4(3)(c) for stratified investment plan, 225.4(4)(c) for non-stratified investment plans and 225.4(5)(c) for a private investment plan or pension entity of a pension plan). Therefore, in accordance with section 218.01 of the Act the investment plan will be required to self-assess the GST or the federal part of the HST under Division IV of the Act for taxable amounts that are imports (i.e., the amount of an external charge or qualifying consideration) that relate to the units deemed to be held by residents of Canada (but not resident in any participating province) under section 225.4 (for more information on the definition of a qualifying taxpayer please refer to GST/HST Technical Information Bulletin B-095, *The Self-Assessment Provisions of Section 218.01 and Subsection 218.1(1.2) for Financial Institutions (Import Rules)*).
- In determining the amount of an ITC for a non-stratified investment plan (paragraph 225.4(4)(d)), a private investment plan or a pension entity of a pension plan (paragraph 225.4(5)(d)), no amount is to be included in determining an ITC of the SLFI investment plan in respect of a business input unless the business input is an exclusive input of the investment plan. In determining the amount of ITC for a stratified investment plan, no amount is to be included in determining an ITC in respect of a business input unless the business input is not acquired or imported in the course of any activity carried out by the stratified investment plan relating to the series, and is an exclusive input of the stratified investment plan (paragraph 225.4(3)(d)).
    - A business input has the meaning assigned by subsection 141.02(1) of the Act (subsection 225.4(1)).
    - An exclusive input of an SLFI investment plan means property or a service that is acquired or imported by the person for consumption or use directly and exclusively for the purpose of making taxable supplies for consideration or directly and exclusively for purposes other than making taxable supplies for consideration (subsection 225.4(1)).

Note that section 225.4 of the Act does not apply for the purposes of defining a qualifying taxpayer under subsection 217.1(1) of the Act for the purposes of applying the import rules for financial institutions under Division IV of the Act. In particular, units held by non-residents deemed to be resident in Canada (not in any participating province) under section 225.4 of the proposed amendments to the Act referred to above are not relevant to the determination of whether an investment plan is a qualifying taxpayer under subsection 217.1(1) of the Act. For example to determine if a non-resident trust is a prescribed qualifying taxpayer under subparagraph 217.1(1)(b)(iv), the test referred to in proposed section 5 of the *Financial Services (GST/HST) Regulations* released on January 28, 2011 is based on the value of assets held by Canadian resident beneficiaries. This test does not include the total value of assets held by non-resident unit holders that are deemed to be held by Canadian residents under section 225.4.

13.1 Election to exclude non-residents

A stratified investment plan can make an election under proposed subsection 225.4(6) of the Act in respect of a series of the stratified investment plan not to have proposed subsection 225.4(3) apply to the series so the non-resident unit holders would not be deemed residents of Canada for certain purposes including the calculation of its provincial attribution percentage for a participating province. Similarly, under proposed subsection 225.4(7), a non-stratified investment plan, a pension entity or a private investment plan can make an election to have proposed subsection 225.4(4) or 225.4(5), as applicable, not apply to the investment plan so the non-resident unit holders would not be deemed residents of Canada for certain purposes. The election made under subsection 225.4(6) or (7) is effective from the first day of a fiscal year of the SLFI investment plan.

An SLFI investment plan makes an election under subsections 225.4(6) or (7), as applicable, by filing Form RC4610, *Election and Revocation of an Election to Exclude Non-Resident Investment Holdings for the Calculation of the Provincial Attribution Percentage.* Under subsection 225.2(8), this election is to be filed with the Minister on or before the first day of the fiscal year of the SLFI investment plan during which the election is to be in effect (or any later day that the Minister may allow). However, if the SLFI investment plan makes an election under subsection 225.4(6) or (7) for any fiscal year that begins before March 1, 2011, the election is to be filed with the Minister on or before March 1, 2011 (or any later day that the Minister may allow).

An SLFI investment plan that has made an election under subsection 225.4(6) or (7) may revoke the election, effective on the first day of a fiscal year of the person that begins at least five years after the election becomes effective, or on the first day of such earlier fiscal year as the Minister may allow on application by the SLFI investment plan. To revoke the election, the SLFI investment plan would file Form RC4610 no later than the day on which the revocation is to become effective (subsection 225.4(10)).

Subsection 225.4(11) provides a restriction on when a subsequent election under subsection 225.4(6) or (7) can be made. Specifically, where an election under subsection 225.4(6) or (7) is revoked effective on a particular day, any subsequent election is only valid where the first day of the fiscal year of the SLFI investment plan set out in the subsequent election is at least five years after the revocation became effective.

Under subsection 225.4(9), an election to exclude non-resident unit holders from the calculation of its provincial attribution percentage for a participating province under subsection 225.4(6) or (7) ceases to be effective on the earliest of:

- the first day of the fiscal year of the investment plan in which it ceases to be an SLFI;
- where the SLFI investment plan has entered into an election under subsection 225.4(6), the first day of the fiscal year of the person in which the person ceases to be a stratified investment plan;
- where the investment plan has entered into an election under subsection 225.4(7), the first day of the fiscal year of the person in which the person ceases to be an investment plan that is a non-stratified investment plan, a pension entity or a private investment plan, as applicable; and
- the day on which a revocation of the election under subsection 225.4(6) or (7) becomes effective.

14. Attribution point

The attribution point is the date used to calculate the provincial attribution percentage for a participating province for a series of a stratified investment plan or for an investment plan for the purposes of applying the SAM formula or an adapted SAM formula. Section 17 of the draft SLFI Regulations defines the attribution point for the purposes of Part 2 of the draft SLFI Regulations. As described below the applicable date for the attribution point depends on whether the SLFI investment plan has entered into an attribution point election.

14.1 Attribution point – no section 19 election

Paragraph (a) of the definition of attribution point in subsection 17(1) defines the attribution point, in respect of an SLFI investment plan or a series of a stratified investment plan for a taxation year in which a particular fiscal year of the investment plan ends where the investment plan does not have an attribution point election under section 19 in effect throughout the particular fiscal year, to mean:

(i) in the case of a series,

  (A) if the series is an exchange-traded series, each of September 30 of the particular fiscal year and one or more, as determined by the investment plan, of March 31, June 30 and December 31 of the particular fiscal year, and

  (B) in any other case, September 30 of the particular fiscal year, and

(ii) in the case of an investment plan,

  (A) if the investment plan is a distributed investment plan (other than an exchange-traded fund) or a pension entity of a defined contribution pension plan, September 30 of the particular fiscal year,

  (B) if the investment plan is an exchange-traded fund, each of September 30 of the particular fiscal year and one or more, as determined by the investment plan, of March 31, June 30 and December 31 of the particular fiscal year,

  (C) if the investment plan is a pension entity of a defined benefits pension plan, the last day in the particular fiscal year and the three preceding fiscal years of the investment plan for which calculations of the actuarial liabilities of the plan have been completed or, if no such day exists, September 30 of the particular fiscal year, and

  (D) in any other case, the last day in the particular fiscal year and the preceding fiscal year of the investment plan for which the investment plan has, or can reasonably be expected to have, all or substantially all of the data required to calculate the investment plan's provincial attribution percentage for each participating province and for the particular fiscal year or, if no such day exists, September 30 of the particular fiscal year.

14.2 Attribution point – section 19 election

An SLFI investment plan may elect under section 19 of the draft SLFI Regulations to use a different attribution point to calculate its provincial attribution percentage for a participating province. However, where an SLFI investment plan has made a real-time calculation method election under subsection 52(1) or (2) that is still in effect, it cannot make an attribution point election under section 19 (see subsections 19(3) or (4)).

Paragraph (b) of the definition of attribution point in subsection 17(1) defines the attribution point, in respect of an SLFI investment plan or a series of a stratified investment plan for a taxation year in which a particular fiscal year of the investment plan ends where the investment plan has an attribution point election under section 19 in effect throughout the particular fiscal year, to mean:

(i) if the election specifies that attribution points are to be quarterly, the last business day in each of March, June and September of the particular fiscal year and December of the preceding fiscal year, or any four days of the particular fiscal year, each of which is in a different fiscal quarter in the particular fiscal year, that the Minister may allow on application by the investment plan,

(ii) if the election specifies that attribution points are to be monthly, each of the last business day of each month, or such other day of each month that the Minister may allow on application by the investment plan, in the 12-month period ending on September 30 of the particular fiscal year,

(iii) if the election specifies that the attribution points are to be weekly, each of the last business day of each week, or such other day of each week that the Minister may allow on application by the investment plan, in the 12-month period ending on September 30 of the particular fiscal year, and

(iv) if the election specifies that the attribution points are to be daily, each business day in the 12-month period ending on September 30 of the particular fiscal year.

The SLFI investment plan makes an attribution point election by using a prescribed election form. Until the particular election form is prescribed, an SLFI investment plan can keep a document as part of its books and records evidencing its intent to make the attribution point election under section 19. The document should include the following:

- the name of the SLFI investment plan;
- a statement indicating that the SLFI investment plan intends to make the attribution point election under either subsection 19(1) or (2) of the draft SLFI Regulations;
- where the stratified investment plan intends to make the attribution point election under subsection 19(1), the name(s) of the series of the stratified investment with respect to which the plan intends to make the election;
- the first fiscal year of the investment plan during which the election is to be in effect; and
- the signature of the authorized signatory of the SLFI investment plan.

It is important to note that once the election form is prescribed, the SLFI investment plan would be required to make the election in prescribed form and manner, in respect of the period for which the document setting out its intent was made and keep the election in its books and records.

Where the investment plan has made an election under subsection 19(1) or (2) it can revoke the election, effective on the first day of a fiscal year of the investment plan that begins at least three years after the election became effective (subsection 19(7)).

As described in subsection 19(6), an election by the investment plan under subsection 19(1) or (2) ceases to have effect on the earlier of:

- the first day of the fiscal year of the investment plan in which it ceases to be an investment plan or an SLFI, and

- the day on which a revocation of the election becomes effective.

Subsection 19(8) provides a restriction on when a subsequent section 19 election can be made. Specifically, where an election made under subsection 19(1) or (2) ceases to have effect on a particular day, any subsequent election under subsection 19(1) or (2) is only valid where the first day of the fiscal year set out in the subsequent election is at least three years after the day the previous election ceased to be effective.

15. Information requirements

An SLFI distributed investment plan requires information from certain investment plans that invest in its series (other than an exchange-traded series) or plan (other than an exchange-traded fund) or from persons that distribute these units. Certain unit holders (i.e., qualifying investors) are also required to provide information to an SLFI distributed investment plan. An SLFI distributed investment plan is required to use this information to calculate its provincial attribution percentage for a participating province.

15.1 Requirement to provide information upon request

The following persons are required, upon request of an SLFI distributed investment plan (the investee) that they invest in, to provide information:

- category 1 – a unit holder, other than an individual or specified investor in an SLFI distributed investment plan that is not a unit holder in an exchange-traded fund or exchange-traded series;
- category 2 – a selected investor in an SLFI distributed investment plan other than a unit holder in an exchange-traded fund or exchange-traded series; and
- category 3 – a person that sells or distributes units of an SLFI distributed investment plan other than units in an exchange-traded fund or exchange-traded series (dealer).

In addition, there is a category of investors (selected investors that are qualifying investors) that is required to provide information to an investee without the investee first requesting that information (see the section of this bulletin entitled, "15.2 Requirement to provide information as a qualifying investor").

15.1.1 Category 1 – unit holder other than individual/specified investor

If an SLFI distributed investment plan (the investee) makes a written request during a calendar year to a person, other than an individual or specified investor that holds units in an SLFI distributed investment plan that is not an exchange-traded fund or exchange-traded series for the following information, the unit holder must provide the SLFI distributed investment plan with the information (subsection 55(3) of the draft SLFI Regulations):

- the person's investor percentage calculated in accordance with section 30 of the draft SLFI Regulations for each participating province as of September 30 of the calendar year set out in the request, and
- the number of units held on that day (September 30) by the person in the SLFI non-stratified investment plan or in each series (other than an exchange-traded series) of the SLFI stratified investment plan.

This information must be provided to the SLFI distributed investment plan on or before the particular day that is the later of:

- November 15 of that calendar year; and
- 45 days after the day on which the person received the request.

Investor percentage

To satisfy the information requirements referred to in section 55 of the draft SLFI Regulations, a Category 1 unit holder is required to compute its investor percentage in an investee in accordance with section 30 of the draft SLFI Regulations. The method used to calculate the investor percentage under section 30 will depend on the nature of the unit holder (e.g., a corporation or trust) and the type of investment plan.

SLFI non-stratified investment plan – Under paragraph 30(a) of the draft SLFI Regulations, a unit holder that is an SLFI and a non-stratified investment plan is required to provide the percentage that would be its percentage for the participating province as of the particular day (i.e., September 30 of the calendar year set out in the request from the distributed investment plan) **as if a real-time calculation method election under section 52 of the draft SLFI Regulations were in effect** throughout its fiscal year that includes September 30 of the calendar year set out in the request.

SLFI stratified investment plan – Under paragraph 30(b) of the draft SLFI Regulations, if the unit holder is an SLFI stratified investment plan, its investor percentage would be the percentage that is the total of all amounts, each of which is determined for a particular series of the particular person by the formula

$$A \times (B/C)$$

where

A is the percentage that would be the unit holder's provincial attribution percentage for the particular series and the participating province as of the particular day (September 30 of the calendar year set out in the request) **as if a real-time calculation method election under section 52 were in effect** throughout the fiscal year of the unit holder that includes September 30 of the calendar year set out in the request,

B is the total value on the particular day (September 30) of the units of the investee held by the unit holder (the SLFI stratified investment plan) that are reasonably attributable to the particular series of the unit holder, and

C is the total value on the particular day (September 30) of all of the units of the investee held by the unit holder.

SLFI investment plan other than stratified/non-stratified investment plan – Under paragraph 30(c) of the draft SLFI Regulations, the investor percentage for a unit holder that is an SLFI investment plan (other than a stratified/non-stratified investment plan described under paragraphs 30(a) or 30(b) referred to above) would be the amount determined as its provincial attribution percentage for the participating province (element C in the SAM formula) for the taxation year of the SLFI investment plan in which its fiscal year that includes the following reporting period ends:

(i) if the unit holder was previously required to file a return under Division V of Part IX of the Act, the reporting period for which a return is the last such return that was required

to be filed by the particular unit holder on or before the particular day (i.e., September 30 of the calendar year set out in the request), and

(ii) in any other case, the reporting period for which a return would have been required to be filed under Division V of Part IX of the Act by the unit holder, that would be the last such return that was required to be so filed by the unit holder on or before the particular day (i.e., September 30 of the calendar year set out in the request), if the unit holder were a registrant at all times.

Qualifying small investment plan – In general, under paragraph 30(d) of the draft SLFI Regulations, where the unit holder is a QSIP that is not an SLFI, its investor percentage is the amount that would be its provincial attribution percentage for a participating province (element C of the SAM formula) calculated as if the QSIP were an SLFI for the taxation year of the QSIP in which the fiscal year that includes the following reporting period of the particular person ends:

(i) if the QSIP was previously required to file a return under Division V of Part IX of the Act, the reporting period for which such a return is the last such return that was required to be filed by the particular person on or before the particular day (i.e., September 30 of the calendar year set out in the request), and

(ii) in any other case, the reporting period for which a return would have been required to be filed under Division V of Part IX of the Act by the particular person, that would be the last such return that was required to be so filed by the particular person on or before the particular day (i.e., September 30 of the calendar year set out in the request), if the particular person were a registrant at all times.

Other cases – Where paragraphs 30(a), (b), (c) or (d) of the draft SLFI Regulations do not apply, a unit holder determines its investor percentage using the following formula described in paragraph 30(e):

A/B

where

A is the unit holder's taxable income earned in the participating province, as determined for the purposes of the *Income Tax Act* pursuant to the rules prescribed in Parts IV and XXVI of the *Income Tax Regulations*, in the particular taxation year that is,

(i) if the unit holder was previously required to file a return under the *Income Tax Act*, the last taxation year of the unit holder for which a return is required to be filed under the *Income Tax Act* on or before the particular day (i.e., September 30 of the calendar year set out in the request), and

(ii) in any other case, the last taxation year of the unit holder ending on or before the particular day (i.e., September 30 of the calendar year set out in the request), and

B is the unit holder's total taxable income for the purposes of the *Income Tax Act* for the particular taxation year.

15.1.2 Category 2 – selected investor

Subsection 55(4) of the draft SLFI Regulations applies to a unit holder that is resident in Canada and is a selected investor (defined below), but is not a qualifying investor (discussed in the section of this bulletin entitled "15.2 Requirement to provide information as a qualifying investor"), where it has units in an SLFI distributed investment plan other than an exchange-traded fund or exchange-traded

series. Under this provision, the selected investor must provide the following information to a stratified/non-stratified investment plan if it receives a written request during a calendar year:

- the selected investor's address that determines the province in which the selected investor is resident on September 30 of that calendar year in accordance with section 6 of the draft SLFI Regulations (as discussed in section "12. Unit holder's province of residence" of this bulletin); and
- the number of units held on that day (September 30) by the selected investor in the non-stratified investment plan or in each series (other than an exchange-traded series) of a stratified investment plan.

The selected investor is required to provide this information to the distributed investment plan on or before the particular day that is the later of:

- November 15 of that calendar year, and
- the day that is 45 days after the day on which the person receives the request.

A selected investor in an investment plan is defined under subsection 55(1) of the draft SLFI Regulations as a person that is an investment plan other than a stratified/non-stratified investment plan and that holds units of the investment plan with a total value of less than $10,000,000.

A specified investor in a distributed investment plan for a fiscal year of the investment plan that ends in a calendar year is defined under subsection 17(1) of the draft SLFI Regulations as a unit holder (other than an individual or a distributed investment plan) that holds units of the investment plan as of September 30 of the preceding calendar year and that meets the criteria in paragraph (a) or (b) of the definition. Based on the draft SLFI Regulations, subsection 55(4) does not apply to a person described in paragraph (b) of the definition "specified investor"(specifically a unit holder that is not an investment plan) and that, as of September 30 of the preceding calendar year,

- if the investment plan is a stratified investment plan, for each series of the investment plan in which the person holds units, the person holds units of the series with a total value of less than $10,000,000, and
- if the investment plan is a non-stratified investment plan, the unit holder holds units of the investment plan with a total value of less than $10,000,000.

However, we understand that the Department of Finance is reviewing subsection 55(4) of the draft SLFI Regulations and considering clarifying the application of that subsection to unit holders that meet the test in paragraph (b), in the definition "specified investor" in subsection 17(1) of the draft SLFI Regulations.

15.1.3 Category 3 – dealer

Under subsection 55(5) of the draft SLFI Regulations, where a person sells or distributes units of an SLFI stratified/non-stratified investment plan (dealer) other than an exchange-traded fund or exchange-traded series and if the investment plan makes a written request during a calendar year, the dealer must provide, for each participating province:

- the number of units in each series (other than an exchange-traded fund series) of the stratified investment plan or units of the non-stratified investment plan, held by clients of the dealer resident in the participating province on September 30 of that calendar year, and

- the number of units of each series (other than an exchange-traded fund series) of the stratified or units of a non-stratified investment plan, held by clients of the dealer resident in Canada on that day (September 30).

The dealer is required to provide this information on or before the particular day that is the later of:

- November 15 of that calendar year, and
- the day that is 45 days after the day on which the person receives the request.

15.2 Requirement to provide information as a qualifying investor

Unlike the three categories discussed above, under subsection 55(6) of the draft SLFI Regulations, a unit holder that is a qualifying investor is required to provide information to an investment plan without receiving a request from the investment plan to provide information. Specifically, a qualifying investor with units in a series of a stratified investment plan or units of an investment plan on a particular day that is September 30 of a calendar year must provide to the investment plan, on or before November 15 of the calendar year,

- notice that the person is a qualifying investor in the investment plan on the particular day;
- the number of units held on the particular day (September 30) by the qualifying investor in each series of the investment plan or in the investment plan; and
- the qualifying investor's investor percentage for each participating province as of the particular day (September 30).

Note: We understand that the Department of Finance is reviewing the requirement to provide information under subsection 55(6) and the corresponding penalty under subsection 55(9) of the draft SLFI Regulations and considering clarifying that these provisions would apply to a qualifying investor in a non-stratified investment plan (other than an exchange-traded fund) that is an SLFI or in a series (other than an exchange-traded series) of a stratified investment plan that is an SLFI.

A qualifying investor in an investment plan is defined under subsection 55(1) of the draft SLFI Regulations as a selected investor in the investment plan that meets the criteria referred to below.

- it is not a QSIP for the purposes of Part 1 of the draft SLFI Regulations;
- it is an SLFI; or
- it is a member of an affiliated group,
    - the members of which together hold units of the investment plan with a total value of $10,000,000 or more, or
    - any member of which is an SLFI.

According to subsection 55(2), for the purposes of section 55, persons affiliated with each other are:

- pension entities of the same pension plan;
- trusts governed by the same deferred profit sharing plan, employee benefit plans, registered supplementary unemployment benefit plans, employees profit sharing plans, retirement compensation arrangements or employee trusts;

- employee life and health trusts established for the same employees; or
- related persons.

An affiliated group is a group of investment plans, each member of which is affiliated with each other member of the group (subsection 55(1)).

15.3 Penalties

Under subsection 55(8) of the draft SLFI Regulations, where a unit holder described in category 1 or 2 or a dealer described in category 3 fails to provide, on request made by a stratified/non-stratified investment plan, the information described in the request as applicable to the investment plan on or before the particular day described in that subsection, or misstates such information to the investment plan, is liable to a penalty, for each such failure, equal to the lesser of:

- $10,000; and
- 0.01% of the total value, on September 30 of the calendar year set out in the request, of the units of the series of a stratified investment plan or units of a non-stratified investment plan in respect of which the unit holder or dealer/sales person was required to provide information to the investment plan in accordance with the particular request.

Similarly, subsection 55(9) provides that a qualifying investor that is required by subsection 55(6) to provide information to a stratified/non-stratified investment plan on or before November 15 of a calendar year and that fails to do so is liable to a penalty, for each such failure, equal to the lesser of:

- $10,000; and
- 0.01% of the total value, on September 30 of that calendar year, of the units in a series of the stratified investment plan or units of a non-stratified investment plan held by the qualifying investor on that day.

However, as outlined in Part 7 of the *Draft Regulations Amending Various GST/HST Regulations*, no person is liable to a penalty under subsection 55(8) or (9) of the draft SLFI Regulations, in respect of information that is required to be provided to a stratified/non-stratified investment plan on or before the day on which these regulations are published in the *Canada Gazette*, Part II.

Note: As previously indicated, we understand that the Department of Finance is reviewing the requirement to provide information under subsection 55(6) and the corresponding penalty under subsection 55(9) of the draft SLFI Regulations. It is also considering clarifying that these provisions would apply to a qualifying investor in a non-stratified investment plan (other than an exchange-traded fund) that is an SLFI or in a series (other than an exchange-traded series) of a stratified investment plan that is an SLFI.

15.4 Use of information by stratified/non-stratified investment plan

Where a stratified/non-stratified investment plan obtains any information in respect of a unit holder in accordance with any of subsections 55(3) to (6) of the draft SLFI Regulations discussed above, the investment plan must not knowingly use or communicate the information, or allow the information to be used or communicated, otherwise than as required or authorized under the Act,

the draft SLFI Regulations or any other regulation made under the Act, without the written consent of that unit holder (under subsection 55(7)).

As noted above, an SLFI distributed investment plan (stratified/non-stratified investment plan) would use the information obtained from the unit holders referred to above to calculate its provincial attribution percentage for a participating province based on the applicable class in Part 2 of the draft SLFI Regulations.

15.5 Inadequate unit holder information – stratified/non-stratified investment plan

The failure to request information from unit holders could result in an allocation of units to a participating province with the highest tax rate. In particular, as a result of the failure to request information where the unit holder residency or investor percentage information available to the stratified/non-stratified investment plan represents less than 90% of the value of units in the series or plan, these units are allocated to the selected province (i.e., province with the highest tax rate on the first day of the particular fiscal year) for purposes of the formula used to calculate the stratified/non-stratified investment plan's provincial attribution percentage. For more details on the applicable formula, see the section of this bulletin entitled "Calculating the provincial attribution percentage of SLFI distributed investment plans for a participating/selected province".

16. Unit holder information less than 50%

An SLFI investment plan is required to apply special rules when calculating its provincial attribution percentage for a selected province if the value of units of the investment plan or of the series of the plan for which the investor or member information is known represents less than 50% of the value of units in a series or investment plan resulting in an attribution of units to the selected province. Generally, these rules provide that, where an investment plan or a series of a stratified investment plan has investor or member information in respect of less than 50% of the total value of its units, it would determine its provincial attribution percentage using the investor information in respect of the units for which it has such information but would apply the rule to treat the units for which it does not have investor information as being held by individuals resident in the participating province with the highest provincial tax rate.

16.1 Stratified/non-stratified investment plans (other than exchange-traded fund/series) – no election for real-time calculation method

Subsection 32(2) or 34(2) of the draft SLFI Regulations may apply for the purposes of calculating the provincial attribution percentage for a participating province for a series of a stratified investment plan that is not an exchange-traded series and that has not made a real-time election or a non-stratified investment plan that is not an exchange-traded fund and that has not made a real-time election. Subsection 32(2) or 34(2) would apply if, for a particular period in which the fiscal year of the investment plan ends, for a series of a stratified investment or non-stratified investment plan, the total of all amounts, each of which is the total value of the particular units of the series or investment plan held on an attribution point for the series or investment plan either by:

- a unit holder that is an individual or a specified investor in the investment plan and in respect of which the investment plan knows on December 31 of the fiscal year whether or not the unit holder is resident in Canada on the attribution point and, in the case of individuals and specified

investors resident in Canada, the province in which the unit holder is resident on that attribution point, or

- a unit holder that is neither an individual nor a specified investor in the investment plan and in respect of which the investment plan knows on December 31 of the fiscal year the unit holder's investor percentage for each participating province as of that attribution point,

is less than 50% of the total value of the units of the series or investment plan on that attribution point. Where subsection 32(2) or 34(2) apply, the following rules apply:

- the units of the series of a stratified investment plan or units of a non-stratified investment plan, other than the particular units (i.e., units for which the province of residence or investor percentage is known), are deemed to be held on the attribution point by a particular individual and not by any other unit holder;
- the particular individual is deemed to be resident on the attribution point in Canada and in the selected province (participating province with the highest tax rate) for the period; and
- the investment plan is deemed to know on December 31 of the fiscal year that the particular individual is resident on the attribution point in Canada and in the selected province.

16.2 Stratified/non-stratified investment plans (other than exchange-traded fund/series) – real-time calculation method

Subsection 31(2) or 33(2) of the draft SLFI Regulations may apply for the purposes of calculating the provincial attribution percentage for a participating province for a series of a stratified investment plan that is not an exchange-traded series or for a non-stratified investment plan that is not an exchange-traded fund, for a particular day where a real-time calculation method election is in effect in the fiscal year of the investment plan, for a series of a stratified investment or non-stratified investment plan. Subsection 31(2) or 33(2) would apply where the total of all amounts, each of which is the total value of the particular units of the series or investment plan held on that day for the series or investment plan either by:

- a unit holder that is an individual or a specified investor in the investment plan and in respect of which the investment plan knows on that day of the fiscal year whether or not the unit holder is resident in Canada and, in the case of individuals and specified investors resident in Canada, the province in which the unit holder is resident on that day, or
- a unit holder that is neither an individual nor a specified investor in the investment plan and in respect of which the investment plan knows on that day of the fiscal year the unit holder's investor percentage for each participating province as of that day,

is less than 50% of the total value of the units of the series or investment plan on that particular day. Where subsection 31(2) or 33(2) applies the following rules apply:

- the units of the series of a stratified investment plan or units of a non-stratified investment plan, other than the particular units (i.e., units for which the province of residence or investor percentage is known), are deemed to be held on that day by a particular individual and not by any other unit holder;
- the particular individual is deemed to be resident on that day in Canada and in the selected province (participating province with the highest tax rate) for the day or period; and
- the investment plan is deemed to know on that day of the fiscal year that the particular individual is resident on that day in Canada and in the selected province.

16.3 Stratified/non-stratified investment plan – exchange-traded fund

Subsection 35(2) or 36(2) of the draft SLFI Regulations may apply for the purposes of calculating the provincial attribution percentage for a participating province for an exchange-traded series of a stratified investment plan or a non-stratified investment plan that is an exchange-traded fund. Subsection 35(2) or 36(2) would apply if, for any attribution point in respect of an exchange-traded series of a stratified investment plan or an exchange-traded fund of a non-stratified investment plan for a particular period in which a fiscal year of the investment plan ends, the total of all amounts, each of which is the total value of the particular units of the series or fund held on the attribution point by a unit holder in respect of which the investment plan knows, on December 31 of the fiscal year, whether or not the unit holder is resident in Canada on the attribution point and, in the case of unit holders resident in Canada, the province in which the person is resident on the attribution point is less than 50% of the total value of the units of the exchange-traded series or fund on the attribution point. Where subsection 35(2) or 36(2) applies, the following rules apply:

- the units of the exchange-traded series or exchange-traded fund, other than the particular units (i.e., units for which the exchange-traded series or fund knows the province of residence), are deemed to be held on the attribution point by a particular individual and not by any other unit holder;
- the particular individual is deemed to be resident on the attribution point in Canada and in the selected province (participating province with the highest tax rate) for the exchange-traded series or fund and for the particular period; and
- the investment plan is deemed to know on December 31 of the fiscal year that the particular individual is resident on the attribution point in Canada and in the selected province.

16.4 Defined contribution plans and certain private investment plans

Subsection 37(2) of the draft SLFI Regulations may apply for the purposes of calculating an SLFI investment plan's provincial attribution percentage for a participating province where the SLFI investment plan is:

- a pension entity of a defined contribution pension plan, or
- a private investment plan that is a trust governed by a particular deferred profit sharing plan, a particular employees profit sharing plan or a particular retirement compensation arrangement.

Subsection 37(2) would apply if, for any attribution point of the investment plan for a particular period in which a fiscal year of the investment plan ends, the total of all amounts, each of which is the total value, on the attribution point of the assets of the particular plan or arrangement that are reasonably attributable to a plan member (referred to as a "known member" in subsection 37(2)) of the investment plan where the plan knows, on December 31 of the fiscal year, whether or not the plan member is resident in Canada on the attribution point and, in the case of plan members resident in Canada, the province in which the plan member is resident on the attribution point, is less than 50% of the total value, on the attribution point, of the assets of the particular plan or arrangement that are reasonably attributable to plan members of the investment plan resident in Canada. Where subsection 37(1) applies, the following rules apply:

- the total value on the attribution point of the assets of the particular plan or arrangement, other than the assets of the particular plan or arrangement that are reasonably attributable to the known members, is deemed to be attributable to a particular person and not to any other person;

- the particular person is deemed to be a plan member of the investment plan and to be resident on the attribution point in Canada and in the selected province (participating province with the highest tax rate) for the particular period; and
- the investment plan is deemed to know on December 31 of the fiscal year that the plan member is resident on the attribution point in Canada and in the selected province.

16.5 Defined benefits plans

Subsection 38(2) of the draft SLFI Regulations may apply to an SLFI investment plan that is a pension entity of a defined benefits pension plan, for the purposes of calculating its provincial attribution percentage for a participating province. It would apply if, for any attribution point for a pension entity of a defined benefits pension plan for a particular period in which a fiscal year of the pension entity ends, the total of all amounts, each of which is the total value, on the attribution point, of the actuarial liabilities of the pension plan that are reasonably attributable to a plan member (referred to as a "known member" in subsection 38(2)) of the pension entity in respect of which the pension entity knows, on December 31 of the fiscal year, whether or not the plan member is resident in Canada on the attribution point and, in the case of plan members resident in Canada, the province in which the plan member is resident on the attribution point, is less than 50% of the total value, on the attribution point, of the actuarial liabilities of the pension plan that are reasonably attributable to plan members of the pension entity of a defined benefits pension plan resident in Canada. Where subsection 38(2) applies, the following rules apply:

- the total value on the attribution point of the actuarial liabilities of the pension plan, other than the actuarial liabilities of the pension plan that are reasonably attributable to the known members, is deemed to be attributable to a particular person and not to any other person;
- the particular person is deemed to be a plan member of the pension entity and to be resident on the attribution point in Canada and in the selected province (participating province with the highest tax rate) for the participating for the particular period; and
- the pension entity is deemed to know on December 31 of the fiscal year that the plan member is resident in Canada and in the selected province.

16.6 Other private investment plans

Subsection 39(2) of the draft SLFI Regulations may apply for the purposes of calculating an SLFI private investment plan's provincial attribution percentage for a participating province, where the SLFI private investment plan is, in a particular period in which a fiscal year of the private investment plan ends:

- an employee life and health trust,
- a trust governed by an employee benefit plan,
- an employee trust, or
- a registered supplementary unemployment benefit plan.

Subsection 39(2) would apply if, for any attribution point in respect of an investment plan for a particular period in which a fiscal year of the investment plan ends, the total number of plan members (referred to as the "known members" in subsection 39(2)) of the investment plan in respect of each of which the investment plan knows, on December 31 of the fiscal year, whether or

not the plan member is resident in Canada on the attribution point and, in the case of plan members resident in Canada, the province in which the plan member is resident on the attribution point, is less than 50% of the total number of plan members of the investment plan resident in Canada on the attribution point. Where subsection 39(2) applies, the following rules apply:

- the plan members of the investment plan, other than the known members, are deemed to be resident on the attribution point in Canada and in the selected province (participating province with the highest tax rate) for the particular period; and
- the investment plan is deemed to know on December 31 of the fiscal year that the plan members of the investment plan, other than the known members, are resident on the attribution point in Canada and in the selected province.

17. Specified transaction

A specified transaction affects the calculation of the provincial attribution percentage for a participating province where a stratified/non-stratified investment plan calculates its percentage for the series or plan using the formulas referred to in subsections 32(1) or 34(1) of the draft SLFI Regulations (i.e., a series of a stratified investment plan that is not an exchange-traded series and that has not made a real-time election or a non-stratified investment plan that is not an exchange-traded fund and that has not made a real-time election). Specifically, where the units of the series of a stratified investment plan or non-stratified investment plan include units acquired under a specified transaction, the stratified investment plan or non-stratified investment plan is required to apply the rules referred to in subsection 32(3) or 34(3), as applicable, for purposes of calculating its provincial attribution percentage for a participating province.

If a specified transaction (see definition below) occurs, it will affect a stratified/non-stratified investment plan's provincial attribution percentage for a participating province, as units acquired in the specified transaction will be allocated to the selected province unless the stratified/non-stratified investment plan has entered into an attribution point election under section 19 of the draft SLFI Regulations.

It is important to note that, where the non-stratified investment plan is an exchange-traded fund or a stratified investment plan with an exchange-traded series, the occurrence of a specified transaction does not affect the calculation of its provincial attribution percentage for each participating province. Similarly, where the stratified/non-stratified investment plan has a real-time calculation method election under section 52 of the draft SLFI Regulations in effect, the existence of a specified transaction does not affect the calculation of its provincial attribution percentage for each participating province.

Subsection 17(1) of the draft SLFI Regulations defines a specified transaction in relation to an attribution point (also defined in subsection 17(1)), in respect of a non-stratified investment plan or in respect of a series of a stratified investment plan, for a taxation year of the investment plan, as the acquisition by a unit holder, or by a group of unit holders of units of the non-stratified investment plan or of series of a stratified investment plan if

(a) the acquisition by the unit holder, or each acquisition by a member of the group of unit holders, occurs less than 31 days before the attribution point;

(b) the units are disposed of, within the meaning of subsection 248(1) of the *Income Tax Act*, by the unit holder, or by each member of the group of unit holders, within 30 days after the attribution point;

(c) in the case of the acquisition of the units by a group of unit holders, each member of the group is related to every other member of the group;

(d) the total value of the units as of the attribution point is greater than the lesser of

  (i) $10,000,000, and

  (ii) 10% of the total value of all of the units of the non-stratified investment plan or series of the stratified investment plan on the attribution point;

(e) the stratified/non-stratified investment plan's provincial attribution percentage for any participating province and for the taxation year, or the investment plan's provincial attribution percentage for the series, for any participating province and for the taxation year, determined without reference to subsections 32(3) and 34(3) of the draft SLFI Regulations, is less than the amount that would be that percentage if that percentage were determined without reference to the units; and

(f) the acquisition by the unit holder, or any acquisition by a member of the group of unit holders, does not meet one or more of the following conditions:

  (i) the acquisition was undertaken by the unit holder or member and the stratified/non-stratified investment plan in good faith as part of the normal business practice of the investment plan,

  (ii) the unit holder or member and the stratified/non-stratified investment plan deal with each other at arm's length,

  (iii) the acquisition was made for consideration equal to or greater than the value of the units at the time of the acquisition,

  (iv) neither the stratified/non-stratified investment plan nor the manager of the plan provide any guarantees or indemnities to the unit holder or member with respect to gains or losses in the value of the units during the period beginning on the particular day the acquisition occurred and ending on the day that is 30 days after the particular day, and

  (v) any fees charged by the stratified/non-stratified investment plan to the unit holder or member in respect of the units are similar to fees charged by the investment plan to other persons holding units of the non-stratified investment plan or series of the stratified investment plan.

Where a specified transaction occurs that is in relation to an attribution point in respect of a series of a stratified investment plan or units of a non-stratified investment plan for a particular period in which the fiscal year ends and there is no election under section 19 of the draft SLFI Regulations in effect throughout a fiscal year for the applicable investment plan, the following rules apply:

- the units of the series of a stratified investment plan or units of a non-stratified investment plan acquired in the specified transaction are deemed to be held on the attribution point by a particular individual and not by any other person;
- the particular individual is deemed to be resident on the attribution point in Canada and in the selected province (i.e., participating province with the highest tax rate) for the particular period; and

- the stratified/non-stratified investment plan is deemed to know on December 31 of the fiscal year that the particular individual is resident in Canada and in the selected province on the attribution point.

Calculating the provincial attribution percentage of SLFI distributed investment plans for a participating/selected province

An SLFI investment plan calculates its provincial attribution percentage for a participating province and/or selected province by selecting the appropriate formula from sections 31 to 40 of the draft SLFI Regulations. The formulas used to calculate an investment plan's provincial attribution percentage for a participating/selected province in sections 32, 36, 37, 38, 39 and 40 of the draft SLFI Regulations are described below. The general concepts discussed below with respect to sections 32 and 36 are helpful in applying the following provisions in the draft SLFI Regulations:

- section 31 – stratified investment plans with a real-time calculation method election under section 52 in effect in respect of a series throughout the fiscal year;
- section 33 – non-stratified investment plan, other than an exchange traded fund, with a real-time election under section 52 in effect throughout the fiscal year;
- section 34 – non-stratified investment plan, other than an exchange traded fund, without a real-time calculation method election under section 52 in effect throughout the fiscal year; and
- section 35 – stratified investment plan that is an exchange-traded fund.

In general, an SLFI investment plan considers the following factors before determining the appropriate formula to calculate its percentage.

- The type of SLFI investment plan will generally determine the formulas to be used by an SLFI investment plan. For example, a non-stratified investment plan that is an exchange-traded fund is required to use the formulas in section 36 to calculate its provincial attribution percentage for a participating/selected province.
- The type of election made may impact on the formula used to calculate the investment plan's provincial attribution percentage for a participating/selected province. For example, a stratified investment plan that has a real-time calculation method election under subsection 52(1) of the draft SLFI Regulations in effect is required to calculate its provincial attribution percentage for a participating province/selected province using the formulas in section 31 of the draft SLFI Regulations.

As described above (in section "16. Unit holder information less than 50%" of this bulletin), an SLFI investment plan's inability to obtain investor information from its unit holders or the existence of a specified transaction also affects its provincial attribution percentage for a participating/selected province.

18. Stratified investment plan (other than exchange-traded fund) – provincial attribution percentage for a particular period

Where the stratified investment plan has not entered into a real-time calculation method election, the general rule under the adapted SAM formula is applied and a stratified investment plan (other

than an exchange-traded series) would use the formula in section 32 in the draft SLFI Regulations to calculate its provincial attribution percentage for a participating/selected province. Specifically, to calculate element A6 as described in paragraph 51(1)(b) of the draft SLFI Regulations, a stratified investment plan (other than an exchange-traded series) is required to use the formulas in paragraphs 32(1)(a) and/or 32(1)(b) as applicable, which are described below to calculate its provincial attribution percentage for a participating/selected province.

The formula used to calculate the provincial attribution percentage for a series of a stratified investment plan for a selected province under paragraph 32(1)(a) has two purposes described below. The calculation of the provincial attribution percentage for a series of a stratified investment for a participating province under paragraph 32(1)(b) applies where the stratified investment plan has a permanent establishment in a participating province other than the selected province.

18.1 Provincial attribution percentage – selected province

The formula in paragraph 32(1)(a) of the draft SLFI Regulations for a selected province has two purposes. The first purpose is to calculate the provincial attribution percentage for a series in the participating province with the highest tax rate (currently Nova Scotia) where a stratified investment plan has a permanent establishment (as that term is defined in the draft SLFI Regulations) in the selected province. As described in paragraph 32(1)(a), in the case of any one participating province (in this section referred to as the "selected province") having the highest tax rate on the first day of the fiscal year, the provincial attribution percentage for the selected province is determined using the formula discussed below.

The second purpose of the formula in paragraph 32(1)(a) is to account for the allocation of units to the selected province where the unit holder's information requirements and/or province of residence (determined under section 6 of the draft SLFI Regulations) are unknown. As a result, this formula may also be used where a stratified investment plan does not have a permanent establishment in the selected province. The stratified investment plan is required to apply the part of the formula that is in the last set of square brackets of element A in the formula in paragraph 32(1)(a) to account for the allocation of units to the selected province where the unit holder's information requirements and/or province of residence is unknown. Where the stratified investment plan knows the province of residence for its unit holders that hold 90% or more of the value of units of a series of the stratified investment plan, the result from the last part of the formula in paragraph 32(1)(a) would be nil. Where information on the province of residence of unit holders available to the stratified investment plan represents less than 90% of the value of units of a series of the stratified investment plan, the last part of the formula is used to allocate the value of units with respect to the missing information to the selected province.

Formula – selected province

$$A/B$$

The elements of the formula in paragraph 32(1)(a) of the draft SLFI Regulations are described below:

A is the total of all amounts, each of which is determined for an attribution point (e.g., September 30 of preceding taxation year) in respect of the series for the particular period by the formula $[(A1 + A2)/A3] + [A4 \times ((A1 + A2)/A5)] + [(1 – A4) – (A5/A3)]$, and

B is the number of attribution points in respect of the series of the stratified investment plan for the particular period.

Calculation of element A – selected province

$$[(A1 + A2)/A3] + [A4 \times ((A1 + A2)/A5)] + [(1 – A4) – (A5/A3)]$$

The elements used to calculate element A are described below.

A1 is the total of all amounts, each of which is the total value of the units of the series held, on the attribution point, by a unit holder that is an individual or a specified investor in the stratified investment plan and that the stratified investment plan knows, on December 31 of the fiscal year, is resident in the selected province on the attribution point,

> For example, if all the units in a series of a mutual fund trust (stratified investment plan) are held by individuals, and it knows that 20% of the value of units calculated at the attribution point – (e.g., September 30, 2011) in the series is held by individuals that it knows on December 31, 2011 are resident in Nova Scotia on the attribution point, the value of these units (i.e., the amount that is 20% of the total value of units) will be included in the calculation of element A1.

A2 is the total of all amounts, each of which is the total value of the units of the series held, on the attribution point, by a unit holder that is neither an individual nor a specified investor in the stratified investment plan and in respect of which the plan knows, on December 31 of the fiscal year, the unit holder's investor percentage for each participating province as of the attribution point multiplied by the person's investor percentage for the selected province as of the attribution point,

> For example, a segregated fund that is a non-stratified investment plan holds units representing $10,000 at its attribution point (e.g., September 30, 2011) in a series of a mutual fund trust that is a stratified investment plan. At the request of the mutual fund trust (under subsection 55(3) of the draft SLFI Regulations) the segregated fund has indicated (by November 15, 2011) to the mutual fund trust that its investor percentage for Nova Scotia is 20%, the mutual fund trust would include $2000 ($10,000 × 20%) in calculating element A2.

A3 is the total value, on the attribution point, of the units of the series other than units held, on the attribution point, by an individual, or a specified investor in the stratified investment plan, that the stratified investment plan knows, on December 31 of the fiscal year, is not resident in Canada on the attribution point,

> For example, a mutual fund trust that is a stratified investment plan would include in element A3 the value of units in the series held on the attribution point by unit holders that are Canadian residents. This amount includes units that it knows on December 31, 2011 are held by non-resident individuals and specified investors unless an election under proposed subsection 225.4(6) of the Act is in effect to exclude these non-resident units held by individuals and specified investors.

A4 is the lesser of 0.1 and the amount determined by the formula,

$$C/D$$

where

C is the total of all amounts, each of which is the total value of the units of the series held, on the attribution point, by a unit holder where the stratified investment plan

(i) does not know, on December 31 of the fiscal year, any part of the information in respect of those units that is described in whichever of subsections 55(3) to (5) of the draft SLFI Regulations is applicable in respect of those units (which part is referred to in this description as the "missing information"), and

(ii) requests, on or before October 15 of the fiscal year, the missing information pursuant to the applicable subsection referred to in subparagraph (i) above, and

D is the amount determined for A3, and

A5 is the total of all amounts, each of which is the total value of the units of the series held, on the attribution point, by a unit holder

(i) that is an individual, or a specified investor in the stratified investment plan, resident in Canada on the attribution point where the plan knows the province in which the unit holder is resident on the attribution point, or

(ii) that is neither an individual nor a specified investor in the stratified investment plan where the plan knows, on December 31 of the fiscal year, the unit holder's investor percentage for each participating province as of the attribution point.

Note: In general terms, element A5 represents the value of units for which the stratified investment plan knows the unit holder's residence (individuals or specified investors) in a participating province or the applicable investor percentage in a participating province on December 31 of the fiscal period. As a result, where the provincial residency information is missing, the amount that represents element A5 will be less than element A3.

The last part of the formula (in the last set of square brackets of the formula) used to calculate element A accounts for amounts that are unallocated as a result of missing unit holder provincial residency information or missing information requirements. This is the case even if the stratified investment plan does not have any unit holders in the selected province. Where the value of units held by unit holders whose information is missing represents more than 10% of the value of units in the series, the part of the formula used to calculate element A in the last set of square brackets is applied to allocate the value of these units to the selected province.

18.2 Provincial attribution percentage – not selected province

In accordance with paragraph 32(1)(b) of the draft SLFI Regulations, where a stratified investment plan has a permanent establishment (as that term is defined in the draft SLFI Regulations) (e.g., a mutual fund trust can sell units in Ontario) in a participating province (other than the selected province) in the particular period, it would calculate its provincial attribution percentage using the following formula.

Formula – participating province (other than selected province)

$$A/B$$

The elements of the formula in paragraph 32(1)(b) of the draft SLFI Regulations are described below.

A is the total of all amounts, each of which is determined for an attribution point in respect of the series for the particular period by the formula $[(A1 + A2)/A3] + [A4 \times ((A1 + A2)/A5)]$, and

B is the number of attribution points in respect of the series for the particular period.

Calculation of element A – participating province (other than selected province)

$$[(A1 + A2)/A3] + [A4 \times ((A1 + A2)/A5)]$$

The elements used to calculate element A are described below.

A1 is the total of all amounts, each of which is the total value of the units of the series held, on the attribution point, by a unit holder that is an individual or a specified investor in the stratified investment plan and that the stratified investment plan knows, on December 31 of the fiscal year, is resident in the participating province on the attribution point,

A2 is the total of all amounts, each of which is the total value of the units of the series held, on the attribution point, by a unit holder that is neither an individual nor a specified investor in the stratified investment plan and in respect of which the plan knows, on December 31 of the fiscal year, the unit holder's investor percentage for each participating province as of the attribution point multiplied by the unit holder's investor percentage for the participating province as of the attribution point,

A3 is the total value, on the attribution point, of the units of the series other than units held, on the attribution point, by an individual, or a specified investor in the stratified investment plan, that the stratified investment plan knows, on December 31 of the fiscal year, is not resident in Canada on the attribution point,

A4 is the lesser of 0.1 and the amount determined by the formula

$$C/D$$

where

C is the total of all amounts, each of which is the total value of the units of the series held, on the attribution point, by a unit holder where the stratified investment plan

(i) does not know, on December 31 of the fiscal year, any part of the information in respect of those units that is described in whichever of subsections 55(3) to (5) of the draft SLFI Regulations is applicable in respect of those units (which part is referred to in this description as the "missing information"), and

(ii) requests, on or before October 15 of the fiscal year, the missing information pursuant to the applicable subsection referred to in subparagraph (i) above, and

D is the amount determined for A3, and

A5 is the total of all amounts, each of which is the total value of the units of the series held, on the attribution point, by a unit holder

(i) that is an individual, or a specified investor in the stratified investment plan, resident in Canada on the attribution point where the plan knows the province in which the person is resident on the attribution point, or

(ii) that is neither an individual nor a specified investor in the stratified investment plan where the plan knows, on December 31 of the fiscal year, the person's investor percentage for each participating province as of the attribution point.

Please note that the computation of amounts for elements A1 to A5 in the formula used to calculate element A in paragraph 32(1)(b) of the draft SLFI Regulations is the same or similar to the computation of amounts for elements A1 to A5 in the formula used to calculate element A in paragraph 32(1)(a) for the selected province.

19. Exchange-traded funds

An SLFI investment plan that is an exchange-traded fund or an exchange-traded series of a stratified investment plan should consider the following before computing its provincial attribution percentage for a participating province.

- The additional information requirements referred to in section 55 of the draft SLFI Regulations do not apply to an exchange-traded series of a stratified investment plan or an exchange-traded fund. Therefore, an exchange-traded fund calculates its provincial attribution percentage for a participating province based on the province of residency of its unit holders determined in accordance with section 6 of the draft SLFI Regulations (e.g., where the unit holder is a corporation the exchange-traded fund must obtain the address where the corporation's principal business in Canada is located) and is not required to obtain additional information based on the type of unit holder.
- A stratified investment plan would apply the formula in section 35 of the draft SLFI Regulations to calculate its provincial attribution percentage for a participating/selected province for each exchange-traded series. However, the normal rules contained in sections 31 and 32 of the draft SLFI Regulations would apply in respect of each series of the investment plan that is not an exchange-traded series. A non-stratified exchange-traded fund would apply the formula in section 36 of the draft SLFI Regulations to calculate its provincial attribution percentage for a participating/selected province. The formula used to calculate the provincial attribution percentage for a participating/selected province for a non-stratified investment plan is described in detail below.
- Where a stratified/non-stratified investment plan applies either sections 35 or 36 of the draft SLFI Regulations to calculate its provincial attribution percentage for a participating/selected province for an exchange-traded series or exchange-traded fund, it is required to use at least two attribution points. For example, as described in clause (a)(ii)(B) of the definition of attribution point in subsection 17(1), if a non-stratified investment plan is an exchange-traded fund, it is required to use September 30 of the particular fiscal year and one or more attribution points, as determined by the non-stratified investment plan, of March 31, June 30 and December 31 of the particular fiscal year.
- An SLFI stratified/non-stratified investment plan that has exchange-traded series or is an exchange-traded fund, as applicable, could apply to use a different method to determine its provincial attribution percentage for each participating/selected province for the series or fund for the purposes of the SAM formula. This application process is described below.

19.1 Non-stratified investment plan that is an exchange-traded fund – provincial attribution percentage for a particular period

An SLFI non-stratified investment plan that is an exchange-traded fund computes its provincial attribution percentage for a participating/selected province using the formula in section 36 of the draft SLFI Regulations to calculate element C of SAM formula (please refer to adaptation of element C of the SAM formula in section "9.3 Element C" of this bulletin).

Similar to other non-stratified investment plans, a non-stratified investment plan that is an exchange-traded fund may need to use the formula for the selected province in paragraph 36(1)(a) as well as the formula for a participating province (other than the selected province) in paragraph 36(1)(b).

19.1.1 Provincial attribution percentage – selected province

Similar to other non-stratified investment plans, the formula for determining the provincial attribution percentage for the selected province (i.e., any one participating province having the highest tax rate on the first day of the fiscal year) in paragraph 36(1)(a) is not limited to situations where the non-stratified investment plan that is an exchange-traded fund has a permanent establishment (as defined in the draft SLFI Regulations) in the selected province. This formula also applies to allocate unallocated amounts to the selected province where the unit holder residency information available to the exchange-traded fund or exchange-traded series of a stratified investment plan relates to less than 90% of the value of units in the fund or series.

Formula – selected province

$$A/B$$

The elements of the formula in paragraph 36(1)(a) of the draft SLFI Regulations are described below.

As noted above, the exchange-traded fund would calculate the amounts referred to above for September 30 of the particular fiscal year and one or more attribution point as determined by the non-stratified investment plan of March 31, June 30 and December 31 of the particular fiscal year.

A is the total of all amounts, each of which is determined for an attribution point relating to the non-stratified exchange-traded fund for the particular period by the formula $(A1/A2) + [A3 \times (A1/A4)] + [(1 – A3) – (A4/A2)]$, and

B is the number of attribution points in respect of the non-stratified exchange-traded fund for the particular period (as noted above. in accordance with section 17 of the draft SLFI Regulations, an exchange-traded fund is required to have at least two attribution points).

Calculation of element A – selected province

$$(A1/A2) + [A3 \times (A1/A4)] + [(1 – A3) – (A4/A2)]$$

The elements used to calculate element A are described below.

A1 is the total of all amounts, each of which is the total value of the units of the non-stratified exchange-traded fund held, on the attribution point, by a unit holder that the fund knows, on December 31 of the fiscal year, is resident in the selected province on the attribution point,

As with other non-stratified investment plans, element A1 applies where the non-stratified exchange-traded fund knows, on December 31 of the fiscal year, that some of its unit holders reside in the selected province (currently Nova Scotia).

A2 is the total value of the units of the non-stratified exchange-traded fund other than units held, on the attribution point, by a unit holder that the fund knows, on December 31 of the fiscal year, is not resident in Canada on the attribution point,

In general, element A2 includes the value of units of the non-stratified exchange-traded fund at the attribution point that it knows, on December 31 of the fiscal year, are Canadian residents. This amount includes units that the fund knows, on

December 31, 2011, are held by non-residents unless an election under proposed subsection 225.4(6) of the Act is in effect.

A3 is the lesser of 0.1 and the amount determined by the formula

C/D

where

C is the total of all amounts, each of which is the total value of the units of the non-stratified exchange-traded fund held, on the attribution point, by its unit holder where, on December 31 of the fiscal year, the non-stratified exchange-traded fund

(i) does not know whether or not the person is resident in Canada on the attribution point, or

(ii) knows that the person is resident in Canada on the attribution point, but does not know the province in which the person is resident on the attribution point, and

D is the amount determined for A2, and

A4 is the total of all amounts, each of which is the total value of the units of the non-stratified exchange-traded fund held, on the attribution point, by a unit holder resident in Canada on the attribution point where the fund knows, on December 31 of the fiscal year, the province in which the unit holder is resident on the attribution point.

As with other non-stratified investment plans, the last part of the formula (in the last set of square brackets of the formula) used by exchange-traded funds to calculate element A accounts for amounts that are unallocated to a particular participating province (the province of residence is unknown to the non-stratified investment plan on December 31). In general, as a result of the application of the last set of square brackets of the formula used to calculate element A, where the value of units, when information is missing, represents more than 10% of the value of units of the exchange-traded fund, the part of the formula used to calculate element A in the last set of square brackets is applied to allocate the value of these units to the selected province.

19.1.2 Provincial attribution percentage – not selected province

In accordance with paragraph 36(1)(b) of the draft SLFI Regulations where a non-stratified investment plan that is an exchange-traded fund has a permanent establishment (as that term is defined in the draft SLFI Regulations) in a participating province (other than the selected province) in the particular period, it would calculate its provincial attribution percentage using the following formula.

Formula – participating province (other than selected province)

A/B

The elements of the formula in paragraph 36(1)(b) of the draft SLFI Regulations are described below.

A is the total of all amounts, each of which is determined for an attribution point in respect of the non-stratified exchange-traded fund for the particular period by the formula (A1/A2) + [A3 ×(A1/A4)], and

B is the number of attribution points in respect of the non-stratified exchange-traded fund for the particular period (as noted above in accordance with section 17 of the draft SLFI Regulations, an exchange-traded fund is required to have at least two attribution points).

Calculation of element A – participating province (other than selected province)

$$(A1/A2) + [A3 \times (A1/A4)]$$

The elements used to calculate element A are described below.

A1 is the total of all amounts, each of which is the total value of the units of the non-stratified exchange-traded fund held, on the attribution point, by a unit holder that the fund knows, on December 31 of the fiscal year, is resident in the participating province on the attribution point,

A2 is the total value of the units of the non-stratified exchange-traded fund other than units held, on the attribution point, by a unit holder that the fund knows, on December 31 of the fiscal year, is not resident in Canada on the attribution point,

A3 is the lesser of 0.1 and the amount determined by the formula

$$C/D$$

where

C is the total of all amounts, each of which is the total value of the units of the non-stratified exchange-traded fund held, on the attribution point, by a unit holder where, on December 31 of the fiscal year, the non-stratified exchange-traded fund

(i) does not know whether or not the unit holder is resident in Canada on the attribution point, or

(ii) knows that the unit holder is resident in Canada on the attribution point but does not know the province in which the unit holder is resident on the attribution point, and

D is the amount determined for A2, and

A4 is the total of all amounts, each of which is the total value of the units of the non-stratified exchange-traded fund held, on the attribution point, by unit holders resident in Canada on the attribution point where the fund knows, on December 31 of the fiscal year, the province in which the unit holder is resident on the attribution point.

19.2 Exchange-traded fund application to use particular methods to determine provincial attribution percentage

Under proposed section 225.3 of the Act, an SLFI that is an exchange-traded fund may apply to the Minister to use an alternative method to calculate its provincial attribution percentages (e.g., element C of the SAM formula for the purposes of subsection 225.2(2) of the Act) for the fund or series of the fund. Proposed subsection 225.3 of the Act is intended to allow an exchange-traded fund to use an alternate method in respect of the fund or an exchange-traded series of the fund where calculating its provincial attribution percentages for a participating province for the series or the fund using the methods in sections 35 or 36 of the draft SLFI Regulations would provide inappropriate results. Where an exchange-traded fund has both exchange-traded series and series that are not exchange-traded series, it may only apply under proposed section 225.3 of the Act in respect of the exchange-traded series.

Proposed subsection 225.3(3) provides that the application made by the stratified/non-stratified exchange-traded fund must be made in prescribed form, contain prescribed information and be filed with the Minister on or before the day that is 180 days before the first day of the fiscal year to which the application applies (or any later day that the Minister may allow).

Until a specific form is prescribed, an exchange-traded fund may make an application by sending a letter to the Assistant Director of Audit of the exchange-traded fund's tax services office before the day that is 180 days before the first day of the fiscal year to which the application applies. The letter should include the following:

- the name of the exchange-traded fund;
- the name(s) of each exchange-traded series of the stratified investment plan;
- for the exchange-traded fund or, where the fund is a stratified investment plan, with respect to each particular series of the fund, an explanation of why it is inappropriate for the fund or the series to calculate its provincial attribution percentage based on the rules set out in the draft SLFI Regulations;
- a detail description of the particular method(s) for which authorization is being requested to be used to calculate the provincial attribution percentage for each participating province for an exchange-traded fund or each exchange-traded series in which the exchange-traded fund has an actual or a deemed permanent establishment. The details on the method(s) to be used to calculate its percentage for each participating province should include details on the attribution points chosen;
- the first day of the fiscal year to which the application applies; and
- the signature of the authorized signatory of the exchange-traded fund.

It is important to note that once a specific application form is prescribed, an exchange-traded fund would be required to use that form.

For example, if a non-stratified exchange-traded fund has a large group of objecting beneficial owners and it is unable to obtain residency information required to determine the province of residency under section 6 of the draft SLFI Regulations for these unit holders from a third party service provider, the non-stratified exchange-traded fund may apply to the Minister for authorization to use an alternative method to determine its provincial attribution percentage for a participating province. A geographical analysis report from a third party indicating the province of residence of the unit holder that does not meet the specific information requirements in section 6 of the draft SLFI Regulations could be included to support the application to use an alternative method under proposed section 225.3 of the Act. The Compliance Programs Branch would then need to consider all the documentation presented to determine if the geographical analysis report prepared by the third-party service provider is a reasonable representation of the provincial distribution of the units held in the exchange-traded fund or in the exchange-traded series of the fund given the particular circumstances.

Under proposed subsection 225.3(4), the Minister is required to consider the application and authorize or deny the use of the particular methods and inform the stratified/non-stratified investment plan of its decision in writing on or before:

- the later of:
    - the day that is 180 days after receipt of the application, and

- the day that is 180 days before the first day of the fiscal year to which the application applies, or

- any later day that the Minister may specify, if the day is set out in a written application filed by the exchange-traded fund with the Minister.

Under proposed subsection 225.3(5), where a particular method is authorized, this method will apply for the purposes of calculating the provincial attribution percentage for an exchange-traded series of a stratified investment plan or a non-stratified investment plan that is an exchange-traded fund as applicable throughout the fiscal year to determine its provincial attribution percentage for the participating province for the fiscal year. Proposed paragraph 225.3(5)(b) requires the stratified/non-stratified exchange-traded fund to consistently use those particular methods as indicated in the application throughout the fiscal year to determine the provincial attribution percentages for each participating province as applicable.

An authorization granted under proposed subsection 225.4(4) ceases to have effect on the first day of the fiscal year and is deemed never to have been granted, if:

- the Minister revokes the authorization and sends a notice of revocation to the exchange-traded fund at least 90 days before the last day of the fiscal year; or

- the exchange-traded fund files in prescribed manner with the Minister a notice of revocation in prescribed form containing prescribed information on or before the first day of the fiscal year.

Similar to the interim procedure for the application under proposed subsection 225.4(2), an exchange-traded fund may file a notice of revocation under proposed subsection 225.4(6) by sending a letter to the Assistant Director of Audit of the exchange-traded fund's tax services office. The letter should include the following:

- the name of the exchange-traded fund;

- a statement that this is a notice of revocation under proposed subsection 225.2(6);

- the first day of the fiscal year to which the application applies; and

- the signature of the authorized signatory of the exchange-traded fund.

It is important to note that once a specific form is prescribed for the notice of revocation, an exchange-traded fund would be required to use that form.

Calculating the provincial attribution percentage of other SLFI investment plans for a participating/selected province

To calculate the provincial attribution percentage for a participating/selected province (i.e., element C) to apply the SAM formula under subsection 225.2(2), investment plans that are pension entities or private investment plans are required to use the appropriate formulas in sections 37 to 40 of the draft SLFI Regulations.

In general, the formulas for calculating the provincial attribution percentage for each participating province under sections 37 to 40 of the draft SLFI Regulations for these SLFI investment plans are calculated with reference to assets, or in the case of defined benefits plans actuarial liabilities held by plan members in a particular participating/selected province.

Subsection 1(1) of the draft SLFI Regulations defines a plan member of an investment plan that is a private investment plan or a pension entity of a pension plan as an individual who has a right, either immediate or in the future and either absolute or contingent, to receive benefits under:

(a) if the investment plan is an employee life and health trust, the investment plan;

(b) if the investment plan is a pension entity of a pension plan, the pension plan; and

(c) in any other case, the deferred profit sharing plan, the employee benefit plan, the employee trust, the employees' profit sharing plan, the registered supplementary unemployment benefit plan or the retirement compensation arrangement, as the case may be, that governs the investment plan.

Subsection 1(1) of the draft SLFI Regulations defines an individual to include the estate of a deceased individual.

20. Defined contribution pension plans and certain private investment plans – section 37

Unless section 40 of the draft SLFI Regulations applies, an SLFI investment plan that is a pension entity of a particular defined contribution pension plan, or a private investment plan that is a trust governed by a particular deferred profit sharing plan, a particular employees profit sharing plan or a particular retirement compensation arrangement is required to calculate its provincial attribution percentage for a participating/selected province in a particular period in which the fiscal year ends using the formula referred to in section 37 of the draft SLFI Regulations for the particular period.

20.1 Provincial attribution percentage – selected province

The formula in paragraph 37(1)(a) has two purposes. The first purposes is to calculate the provincial attribution percentage for the province with the highest tax rate (currently Nova Scotia) where the SLFI investment plan has a permanent establishment as defined in the draft SLFI Regulations in the selected province (e.g., where a pension entity of a defined contribution pension plan has plan members in the selected province).

The second purpose of the formula in paragraph 37(1)(a) is to allocate plan member assets to the selected province where the plan member's residence (as determined under section 6 of the draft SLFI Regulations) is unknown. For example, as a result of the application of the part of the formula (in the last set of square brackets) of element A in paragraph 37(1)(a), where the province of residence is unknown for more than 10% of the assets of the plan, these assets are allocated to the selected province

As described in paragraph 37(1)(a) in the case of any one participating province (in this section referred to as the "selected province") having the highest tax rate on the first day of the fiscal year, the provincial attribution percentage is determined using the following formula.

Formula – selected province

A/B

The elements of the formula in paragraph 37(1)(a) of the draft SLFI Regulations are described below.

A is the total of all amounts, each of which is determined for an attribution point (as determined in accordance with subsection 17(1) of the draft SLFI Regulations) in respect of the investment plan for the particular period by the formula (A1/A2) + [A3 × (A1/A4)] + [(1 – A3) – (A4/A2)], and

B is the number of attribution points in respect of the investment plan for the particular period.

Calculation of element A – selected province

$$(A1/A2) + [A3 \times (A1/A4)] + [(1 - A3) - (A4/A2)]$$

The elements used to calculate element A are described below.

A1 is the total of all amounts, each of which is the total value, on the attribution point, of the assets of the particular plan or arrangement that are reasonably attributable to a plan member of the investment plan referred to in paragraph 37(1)(a) that it knows, on December 31 of the fiscal year, is resident in the selected province on the attribution point,

> For example, an employee's profit sharing plan would include in element A1 the value of the plan's assets that are reasonably attributable to plan members (calculated on September 30 of the particular fiscal year) that the plan knows, on December 31 of the fiscal year, are resident in Nova Scotia.

A2 is the total value, on the attribution point, of the assets of the particular plan or arrangement other than the assets that are reasonably attributable to plan members of the investment plan that it knows, on December 31 of the fiscal year, are not resident in Canada on the attribution point,

A3 is the lesser of 0.1 and the amount determined by the formula

$$C/D$$

where

C is the total of all amounts, each of which is the total value, on the attribution point, of the assets of the particular plan or arrangement that are reasonably attributable to a plan member of the investment plan in respect of which the investment plan, on December 31 of the fiscal year,

(i) does not know whether or not the plan member is resident in Canada on the attribution point, or

(ii) knows that the plan member is resident in Canada on the attribution point but does not know the province in which the plan member is resident on the attribution point, and

D is the amount determined for A2, and

A4 is the total of all amounts, each of which is the total value, on the attribution point, of the assets of the particular plan or arrangement that are reasonably attributable to a plan member of the investment plan resident in Canada on the attribution point in respect of which the investment plan knows, on December 31 of the fiscal year, the province in which the plan member is resident on the attribution point.

As noted above, in general, the part of the formula (in the last set of square brackets) used to calculate element A accounts for assets that are unallocated because the plan member's province of residence is unknown. Where the plan member information available to the investment plan

represents less than 90% of the assets held at the attribution point, the application of the last square bracket of the formula results in the allocation of these amounts to the selected province.

For example, even where the pension entity of a defined contribution plan does not have a permanent establishment or a deemed permanent establishment in the selected province, as a result of the application of the last part of the formula for element A in paragraph 37(1)(a) of the draft SLFI Regulations, where the assets reasonably attributable at the attribution point to plan members where the province of residence of the plan members known by the plan, on December 31 of the fiscal year, represents 60%, the application of this part of the formula results in a provincial attribution percentage of 30% for the selected province.

20.2 Provincial attribution percentage – not selected province

In accordance with paragraph 37(1)(b) of the draft SLFI Regulations, where an investment plan has a permanent establishment (as defined in the draft SLFI Regulations) in a participating province (other than a selected province), it would calculate its provincial attribution percentage for the particular period using the following formula.

Formula – participating province (other than selected province)

$$A/B$$

The elements of the formula in paragraph 37(1)(b) of the draft SLFI Regulations are described below.

A is the total of all amounts, each of which is determined for an attribution point in respect of the investment plan for the particular period by the formula $(A1/A2) + [A3 \times (A1/A4)]$, and

B is the number of attribution points in respect of the particular investment plan for the particular period.

Calculation of element A – participating province (other than selected province)

$$(A1/A2) + [A3 \times (A1/A4)]$$

The elements used to calculate element A are described below.

A1 is the total of all amounts, each of which is the total value, on the attribution point, of the assets of the particular plan or arrangement that are reasonably attributable to a plan member of the investment plan referred to in paragraph 37(1)(b) of the draft SLFI Regulations that it knows, on December 31 of the fiscal year, is resident in the participating province on the attribution point,

A2 is the total value, on the attribution point, of the assets of the particular plan or arrangement other than the assets that are reasonably attributable to plan members of the investment plan that it knows, on December 31 of the fiscal year, are not resident in Canada on the attribution point,

A3 is the lesser of 0.1 and the amount determined by the formula

$$C/D$$

where

C is the total of all amounts, each of which is the total value, on the attribution point, of the assets of the particular plan or arrangement that are reasonably attributable to a plan

member of the investment plan in respect of which the investment plan, on December 31 of the fiscal year,

(i) does not know whether or not the plan member is resident in Canada on the attribution point, or

(ii) knows that the plan member is resident in Canada on the attribution point but does not know the province in which the plan member is resident on the attribution point, and

D is the amount determined for A2, and

A4 is the total of all amounts, each of which is the total value, on the attribution point, of the assets of the particular plan or arrangement that are reasonably attributable to a plan member of the investment plan resident in Canada on the attribution point in respect of which the investment plan knows, on December 31 of the fiscal year, the province in which the plan member is resident on the attribution point.

Please note that the computation of amounts for elements A1 to A4 in the formula used to calculate element A in paragraph 37(1)(b) is the same or similar to the computation of amounts for elements A1 to A4 in the formula used to calculate element A in paragraph 37(1)(a) for the selected province.

21. Defined benefits pension plans – section 38

Unless section 40 applies, an SLFI pension entity of a defined benefits plan is required to use the formula in subsection 38(1) of the draft SLFI Regulations to determine its provincial attribution percentage for a participating/selected province.

Subsection 1(1) defines a defined benefits pension plan as the part of a pension plan that is in respect of benefits under the plan that are determined in accordance with a formula set forth in the plan, provided that the employer contributions under that part of the pension plan are not so determined.

21.1 Provincial attribution percentage – selected province

The formula for a selected province referred to in paragraph 38(1)(a) of the draft SLFI Regulations is not limited to situations where the pension entity of a defined benefits plan has a permanent establishment (as defined in the draft SLFI Regulations) in a selected province (similar to the formula referred to in paragraph 37(1)(a)).

As described in paragraph 38(1)(a), in the case of any one participating province (in this section referred to as the "selected province") having the highest tax rate on the first day of the fiscal year, the provincial attribution percentage is determined using the following formula.

Formula – selected province

$$A/B$$

The elements of the formula in paragraph 38(1)(a) of the draft SLFI Regulations are described below.

A is the total of all amounts, each of which is determined for an attribution point in respect of the defined benefits plan for the particular period by the formula $(A1/A2) + [A3 \times (A1/A4)] + [(1 - A3) - (A4/A2)]$, and

B is the number of attribution points in respect of the defined benefits pension plan for the particular period.

Calculation of element A – selected province

$$(A1/A2) + [A3 \times (A1/A4)] + [(1 - A3) - (A4/A2)]$$

The elements used to calculate element A are described below.

A1 is the total of all amounts, each of which is the total value, on the attribution point, of the actuarial liabilities of the pension plan that are reasonably attributable to a plan member of the pension entity of a defined benefits plan that it knows, on December 31 of the fiscal year, that is resident in the selected province on the attribution point,

A2 is the total value, on the attribution point, of the actuarial liabilities of the pension plan other than actuarial liabilities that are reasonably attributable to plan members of a pension entity of a defined benefits plan that it knows, on December 31 of the fiscal year, are not resident in Canada on the attribution point,

A3 is the lesser of 0.1 and the amount determined by the formula

$$C/D$$

where

C is the total of all amounts, each of which is the total value, on the attribution point, of the actuarial liabilities of the pension plan that are reasonably attributable to a plan member of the pension entity of a defined benefits plan in respect of which the pension entity, on December 31 of the fiscal year,

(i) does not know whether or not the plan member is resident in Canada on the attribution point, or

(ii) knows that the plan member is resident in Canada on the attribution point but does not know the province in which the plan member is resident on the attribution point, and

D is the amount determined for A2, and

A4 is the total of all amounts, each of which is the total value, on the attribution point, of the actuarial liabilities of the pension plan that are reasonably attributable to a plan member of the pension entity of a defined benefits plan resident in Canada on the attribution point in respect of which it knows, on December 31 of the fiscal year, the province in which the plan member is resident on the attribution point.

In general, the part of the formula that is in the last set of the square brackets of element A accounts for actuarial liabilities that are unallocated to plan members because the plan member's province of residence (as determined under section 6 of the draft SLFI Regulations) is unknown.

For example, although the pension entity of a defined benefits plan does not have a permanent establishment or a deemed permanent establishment in the selected province, where the actuarial liabilities reasonably attributable to plan members where the province of residence of the plan member is known, on December 31 of the fiscal year, represent 60% of the actuarial liabilities held in the plan at the attribution point, as a result of the application of the part of the formula that is in the last set of the square brackets of element A of paragraph 38(1)(a), the provincial attribution percentage for the selected province is 30%.

21.2 Provincial attribution percentage – not selected province

As described in paragraph 38(1)(b) of the draft SLFI Regulations, in the case of a participating province (other than the selected province) in which the pension entity of a defined benefits plan has a permanent establishment (as defined in the draft SLFI Regulations) in the particular period, the provincial attribution percentage is determined using the following formula.

Formula – participating province (other than selected province)

$$A/B$$

The elements of the formula in paragraph 38(1)(b) are described below.

A is the total of all amounts, each of which is determined for an attribution point for the particular period by the formula (A1/A2) + [A3 × (A1/A4)], and

B is the number of attribution points in respect of the pension entity of a defined benefits plan for the particular period.

Calculation of element A – participating province (other than selected province)

$$(A1/A2) + [A3 \times (A1/A4)]$$

The elements used to calculate element A are described below.

A1 is the total of all amounts, each of which is the total value, on the attribution point, of the actuarial liabilities of the defined benefits pension plan that are reasonably attributable to a plan member that it knows, on December 31 of the fiscal year, is resident in the participating province on the attribution point,

A2 is the total value, on the attribution point, of the actuarial liabilities of the defined benefits pension plan other than actuarial liabilities that are reasonably attributable to plan members that it knows, on December 31 of the fiscal year, are not resident in Canada on the attribution point,

A3 is the lesser of 0.1 and the amount determined by the formula

$$C/D$$

where

C is the total of all amounts, each of which is the total value, on the attribution point, of the actuarial liabilities of the defined benefits pension plan that are reasonably attributable to a plan member of the defined benefits plan in respect of which the defined benefits plan, on December 31 of the fiscal year,

(i) does not know whether or not the plan member is resident in Canada on the attribution point, or

(ii) knows that the plan member is resident in Canada on the attribution point but does not know the province in which the plan member is resident on the attribution point, and

D is the amount determined for A2, and

A4 is the total of all amounts, each of which is the total value, on the attribution point, of the actuarial liabilities of the defined benefits pension plan that are reasonably attributable to a

plan member of the pension entity resident in Canada on the attribution point in respect of which it knows, on December 31 of the fiscal year, the province in which the plan member is resident on the attribution point.

Please note that the computation of amounts for elements A1 to A4 in the formula used to calculate element A in paragraph 38(1)(b) is the same or similar to the computation of amounts for elements A1 to A4 in the formula used to calculate element A in paragraph 38(1)(a) for the selected province.

Note: The basis for calculating the value of the actuarial liabilities of a defined benefits pension plan should be reasonable given the circumstances. Although the draft SLFI Regulations do not specify the basis (e.g., going concern, solvency, wind-up) to use, the going concern basis is recommended for the following reasons:

- the going concern assumptions used in an on-going valuation of a pension plan are more likely to be in line with the pension plan's long term financial management policies than those of a solvency or wind-up basis, which are based on economic and market conditions in effect at the valuation date and thus, change from one valuation to the next; and
- a pension plan's actuarial liabilities determined under a going concern basis result in uniformity between pension jurisdictions, whereas the liabilities determined under a solvency or a wind-up basis can differ between jurisdictions (e.g., grow-in rule).

22. Mixed pension plans – section 40

Where part of the pension entity of a pension plan consists of a defined contribution pension plan and the remaining part is a defined benefits pension plan (mixed pension entity) it is required to calculate its provincial attribution percentage for a participating province using the formula described in section 40 of the draft SLFI Regulations. In general, a mixed pension entity is required to calculate its provincial attribution percentage for the defined contribution part using section 37 of the draft SLFI Regulations and the defined benefits part using section 38 of the draft SLFI Regulations before it calculates its provincial attribution percentage for the whole pension entity using section 40.

Under section 40 of the draft SLFI Regulations, an SLFI mixed pension entity of a pension plan, is required to use the following formula to calculate its provincial attribution percentage for a participating province and for a particular period:

$$[A \times (B/C)] + [D \times (C - B)/C]$$

The elements of the formula in section 40 of the draft SLFI Regulations are as follows.

A is the mixed pension entity's provincial attribution percentage determined for the participating province and for the particular period by applying section 37 to the part of the pension plan that is the defined contribution pension plan;

B is the value of the assets of the defined contribution pension plan held by the mixed pension entity of the pension plan on a particular attribution point in respect of the mixed pension entity for the particular period that is the last such attribution point required to be used in the determination of the percentage referred to in the description of A, or such other amount that the Minister may allow on application by the mixed pension entity;

C is the total value of the assets of the mixed pension entity on the particular attribution point, or such other amount that the Minister may allow on application by the mixed pension entity; and

D is the mixed pension entity's provincial attribution percentage determined for the participating province and for the particular period by applying section 38 to the part of the pension plan that is the defined benefits pension plan.

23. Other private investment plans – section 39

Where an SLFI is a private investment plan that is an employee life and health trust or a trust governed by an employee benefit plan, an employee trust or a registered supplementary unemployment benefit plan in a particular period in which a fiscal year of the investment plan ends, the investment plan is required to use the formula referred to in section 39 of the draft SLFI Regulations to calculate its percentage for a participating/selected province for the particular period.

Unlike the formulas referred to in section 37 and 38, the formula in section 39 is based on the number of plan members in a participating province. Therefore, the SLFI investment plan described in section 39 is not required to use the asset test or actuarial liabilities calculation to determine its provincial attribution percentage for a participating province for a particular period.

23.1 Provincial attribution percentage – selected province

As described in paragraph 39(1)(a) of the draft SLFI Regulations, in the case of any one participating province (in this section referred to as the "selected province") having the highest tax rate on the first day of the fiscal year, the provincial attribution percentage is determined using the following formula.

Formula – selected province

$$A/B$$

The elements of the formula in paragraph 39(1)(a) of the draft SLFI Regulations are described below.

A is the total of all amounts, each of which is determined for an attribution point for the particular period by the formula $(A1/A2) + [A3 \times (A1/A4)] + [(1 – A3) – (A4/A2)]$; and

B is the number of attribution points in respect of the investment plan for the particular period.

Calculation of element A – selected province

$$(A1/A2) + [A3 \times (A1/A4)] + [(1 - A3) - (A4/A2)]$$

The elements used to calculate element A are described below.

A1 is the total number of plan members of the investment plan that it knows, on December 31 of the fiscal year, are resident in the selected province on the attribution point,

A2 is the total number of plan members of the investment plan other than plan members of the investment plan that it knows, on December 31 of the fiscal year, are not resident in Canada on the attribution point,

A3 is the lesser of 0.1 and the amount determined by the formula

$$C/D$$

where

C is the total number of plan members of the investment plan in respect of each of which the investment plan, on December 31 of the fiscal year,

(i) does not know whether or not the plan member is resident in Canada on the attribution point, or

(ii) knows that the plan member is resident in Canada on the attribution point but does not know the province in which the plan member is resident on the attribution point, and

D is the amount determined for A2, and

A4 is the total number of plan members of the investment plan resident in Canada on the attribution point in respect of each of which it knows, on December 31 of the fiscal year, the province in which the plan member is resident on the attribution point.

In general, even if the investment plan does not have plan members in a selected province, the last part of the formula (in the last set of square brackets) used to calculate element A in paragraph 39(1)(a) relates to the attribution of plan members to the selected province where the province of residence (as determined under section 6 of the draft SLFI Regulations) at the attribution point is unknown on December 31 of the fiscal year. Where the province of residence of the plan members at the attribution point is unknown on December 31 of the fiscal year for more than 10% of the plan members of the investment plan, the part of the formula that is in the last set of square brackets of element A in paragraph 39(1)(a) is applied to determine a provincial attribution percentage for the selected province.

23.2 Provincial attribution percentage – not selected province

As described in paragraph 39(1)(b) of the draft SLFI Regulations, in the case of a participating province (other than the selected province) in which the investment plan has a permanent establishment (as defined in the draft SLFI Regulations) in the particular period, the provincial attribution percentage is determined using the following formula.

Formula – participating province (other than selected province)

$$A/B$$

The elements of the formula in paragraph 39(1)(b) of the draft SLFI Regulations are described below.

A is the total of all amounts, each of which is determined for an attribution point for the particular period by the formula (A1/A2) + [A3 × (A1/A4)]; and

B is the number of attribution points in respect of the investment plan for the particular period.

Calculation of element A – participating province

$$(A1/A2) + [A3 \times (A1/A4)]$$

The elements used to calculate element A are described below.

A1 is the total number of plan members of the investment plan that it knows, on December 31 of the fiscal year, are resident in the participating province on the attribution point,

A2 is the total number of plan members of the investment plan other than plan members of the investment plan that it knows, on December 31 of the fiscal year, are not resident in Canada on the attribution point,

A3 is the lesser of 0.1 and the amount determined by the formula

$$C/D$$

where

C is the total number of plan members of the investment plan in respect of each of which the investment plan, on December 31 of the fiscal year,

(i) does not know whether or not the plan member is resident in Canada on the attribution point, or

(ii) knows that the plan member is resident in Canada on the attribution point but does not know the province in which the plan member is resident on the attribution point, and

D is the amount determined for A2, and

A4 is the total number of plan members of the investment plan resident in Canada on the attribution point in respect of each of which the investment plan knows, on December 31 of the fiscal year, the province in which the plan member is resident on the attribution point.

Reporting and remittance of tax

24. General registration and reporting

Under subsection 240(1) of the Act, every person who makes a taxable supply in Canada in the course of a commercial activity is required to register for GST/HST purposes with certain exceptions (e.g., where the person is a small supplier). Certain SLFI investment plans are also required to register under proposed subsections 240(1.2) and (1.3) of the Act, as discussed in the sections below on registration required. For more information on registration requirements, please refer to GST/HST Notice265, *GST/HST Registration for Listed Financial Institutions (Including Selected Listed Financial Institutions)*.

Where an SLFI investment plan is not required to register, it may voluntarily apply for registration under subsection 240(3) of the Act in certain circumstances, including under paragraph 240(3)(c) if it is a listed financial institution resident in Canada.

Under proposed section 244.1 of the Act, where the SLFI is an investment plan under subparagraph 149(1)(a)(ix) or a segregated fund under subparagraph 149(1)(a)(vi), its fiscal year is a calendar year for any fiscal years that end after 2010.

The reporting period of an SLFI that is a registrant is a fiscal year (subparagraph 245(2)(a)(iv) of the Act), unless an election is made to have a fiscal month or a fiscal quarter as a reporting period (Form GST20, *Election for GST/HST Reporting Period*). The reporting period of an SLFI that is not a registrant is a calendar month (subsection 245(1) of the Act). An SLFI is required to file returns and remit net tax for each reporting period.

Where an SLFI investment plan's reporting period is a fiscal year, the Form GST494, *Goods and Services Tax/Harmonized Sales Tax Final Return for Selected Listed Financial Institutions* is the only return that the SLFI must file related to its net tax calculation.

Where a registrant SLFI's reporting period is a fiscal month or fiscal quarter, the SLFI is required to also file an interim return for each fiscal month or fiscal quarter within one month of the end of the period using Form GST34, *Goods and Services Tax/Harmonized Sales Tax Return for Registrants*. Where the SLFI investment plan is a non-registrant, its reporting period is a calendar month and it is required to file Form GST62, *Goods and Services Tax/Harmonized Sales Tax (GST/HST) Return (Non-Personalized)* for each calendar month even if there is no net tax to be remitted. All SLFIs with a reporting period of a fiscal month or a fiscal quarter, whether registrant or not, are also required to file Form GST494 as a final return.

For fiscal years beginning after September 23, 2009, an SLFI has six months instead of three months after the end of the fiscal year to file this return. For more information on completing and filing this return, please refer to Guide RC4050, *GST/HST Information for Selected Listed Financial Institutions*. The table below provides a summary of the reporting periods and return due dates for SLFI investment plans.

	Non-registrant	**Registrant**		
Reporting period	***Monthly***	***Monthly***	***Quarterly***	***Annual***
Filing for interim return	1 month after reporting period end (GST62)	1 month after reporting period end (GST34)	1 month after reporting period end (GST34)	Not required
Filing for final return (GST494)	6 months after fiscal year end	6 months after fiscal year end	6 months after fiscal year end	6 months after fiscal year end

It is important to note that where the SLFI investment plan is an annual filer, it may be required to make quarterly instalments under the general instalment rules under section 237 of the Act even in the first fiscal year it becomes an SLFI. Subsection 51(11) of the draft SLFI Regulations provides that the special calculation for instalments in the first year a person becomes an SLFI under subsection 237(5) of the Act does not apply to SLFI investment plans. As described in subsections 51(5), 51(6) and 51(7), the calculation of an SLFI investment plan's instalment base will depend on whether the investment plan calculates its adjustment to net tax under the SAM formula or an adapted SAM formula under the general rule, the reconciliation method or the real-time calculation method election. For more information on calculating an SLFI investment plan's instalment base, refer to Guide RC4050, *GST/HST Information for Selected Listed Financial Institutions*.

Based on proposed changes to the *Financial Services (GST/HST) Regulations* in Part 5 of the *Draft Regulations Amending Various GST/HST Regulations* released on January 28, 2011, SLFI investment plans, as defined in subsection 1(1) of the draft SLFI Regulations, would be prescribed for purposes of subsection 273.2(2) of the Act and, as a result, would not be required to file the annual information return for financial institutions (Form GST111) for any fiscal year that ends on or after July 1, 2010.

25. Elections – overview

There are three joint elections available to an SLFI investment plan and its manager – the first under section 56 (the reporting entity election), the second under section 57 (the consolidated filing election) and the third under section 58 (the tax adjustment transfer election) of the draft SLFI Regulations – that affect the manner in which the investment plan reports its net tax. In general,

these elections permit the manager of the investment plan (as defined in subsection 1(1) of the draft SLFI Regulations) to elect with the SLFI investment plan to file or report amounts on behalf of the SLFI investment plan.

Subsection 1(1) of the draft SLFI Regulations defines a manager of the investment plan as:

- in the case of a pension entity of a pension plan, the administrator (as defined in subsection 147.1(1) of the *Income Tax Act*) of the pension plan; and
- in any other case, the person that has ultimate responsibility for the management and administration of the assets and liabilities of the investment plan.

26. Joint elections for investment plans and their managers

The joint elections available to an SLFI investment plan and its manager are described below:

(a) Reporting entity election – section 56

Section 56 of the draft SLFI Regulations permits an SLFI investment plan and its manager to jointly elect to have the manager file the SLFI investment plan's returns under Division V of Part IX of the Act (i.e., GST34, GST62 or GST494 return). If a reporting entity election is in effect on a particular day on or before a Division V return for a reporting period is required to be filed, the return for the reporting period must be filed by the manager. An SLFI investment plan that makes an election under section 56 is required to be registered for purposes of the GST/HST in accordance with proposed subsection 240(1.2) of the Act (discussed in section "27. Registration required – SLFI investment plan" of this bulletin).

An election made under subsection 56(1) of the draft SLFI Regulations by an SLFI investment plan and its manager must (a) be made by filing a prescribed form; (b) set out the day on which the election is to come into effect; and (c) be filed with the Minister in prescribed manner before that day (or any later day that the Minister may allow).

As described in subsection 56(7) of the draft SLFI Regulations, where a reporting entity election is in effect between an SLFI investment plan and its manager on or before a Division V return of the plan is required to be filed or if the manager files a Division V return of the plan while a reporting entity election is in effect, the manager and the investment plan are jointly and severally, or solidarily, liable for the net tax for the reporting period, and for any interest or penalties in respect of the net tax for the reporting period or in respect of the return.

Subsection 56(4) provides that a reporting entity election under subsection 56(1) between a manager and an investment plan ceases to have effect on the earliest of:

- the day on which the manager ceases to be the manager of the investment plan;
- the last day of the reporting period of the investment plan in which it ceases to be an investment plan or an SLFI; and
- the day on which a revocation of the election becomes effective.

Under subsection 56(5), an SLFI investment plan may revoke a reporting entity election, effective on a particular day, by filing a prescribed form with the Minister, not later than the effective date of the revocation (or any later day that the Minister may allow). As noted in subsection 56(6), in order

for the revocation to be effective, the SLFI investment plan is required to notify the manager of the revocation before the day on which the revocation is to come into effect.

(b) Tax adjustment transfer election – section 58

Section 58 of the draft SLFI Regulations permits an SLFI investment plan and its manager to jointly elect to have certain tax adjustment amounts transferred from the SLFI investment plan to its manager. Specifically, they may elect to transfer the investment plan's adjustments to net tax under subsection 225.2(2) of the Act to the manager. This election is effective from the first day of a reporting period of the manager. An SLFI investment plan that makes an election under section 58 is required to be registered for purposes of the GST/HST in accordance with proposed subsection 240(1.2) of the Act (discussed in section "27. Registration required – SLFI investment plan" of this bulletin).

The amounts that can be transferred vary depending on whether or not a reporting entity election under section 56 is also in effect.

Where the SLFI investment plan has a reporting entity election in effect and also makes a tax adjustment transfer election with its manager, in general terms, the investment plan is permitted to transfer to the manager its positive or negative adjustment to net tax as determined using the SAM formula in subsection 225.2(2) of the Act as adapted by the draft SLFI Regulations.

Where the SLFI investment plan has a tax adjustment transfer election with its manager in effect but does not have a reporting entity election in effect, the amount that would be taken into account in calculating the tax adjustment transfer amount would be limited to the provincial part of the HST that results from applying the SAM formula with respect to the supplies made by the manager to the SLFI investment plan.

Where the manager is not an SLFI, the manager would make an adjustment to increase its net tax on line 104 of its GST34 or GST62 return, if there is a positive tax adjustment transfer amount (i.e., the SLFI investment plan has a liability with respect to the provincial part of the HST). If there is a negative tax adjustment transfer amount (i.e., the SLFI investment plan has a credit with respect to the provincial part of the HST), the manager would be permitted to make an adjustment to decrease its net tax on line 107 of its GST34 or GST62 return, but only if the manager has credited or paid the amount to the SLFI investment plan.

Under paragraph 58(2)(b), where the manager is an SLFI, the positive or negative amount transferred from the SLFI investment plan to the manager is included on the SLFI manager's GST/HST return as a positive or negative prescribed amount under element G of the SAM formula in subsection 225.2(2) of the Act.

The SLFI investment plan is only required to report the tax adjustment transfer amounts on line 039 of its GST494 return.

Where the SLFI investment plan is required to file a GST34 or GST62 return, it would not include any amount on line 104 or line 107 that has been transferred to its manager.

For more information on reporting tax adjustment transfer amount on the GST494 return, refer to Guide RC4050, *GST/HST Information for Selected Listed Financial Institutions.*

Although the net tax adjustment transfer election permits the transfer of the net tax liability or credit to the manager, under subsection 58(8) of the draft SLFI Regulations, the manager and the investment plan are jointly and severally, or solidarily, liable for the net tax for the reporting period and any interest or penalties in respect of that net tax.

The tax adjustment transfer election between an SLFI investment plan and its manager under subsection 58(1) of the draft SLFI Regulations must (a) be made using a prescribed form; (b) set out the first fiscal year of the manager during which the election is to be in effect (i.e., as noted in subsection 58(1) this election is effective from the first day of a reporting period of the manager); and (c) be filed with the Minister before the first day of that first fiscal year of the manager (or such later date that the Minister may allow).

Subsection 58(5) provides that a tax adjustment transfer election ceases to have effect on the earliest of:

- the first day of the fiscal year of the manager in which it ceases to be a manager of the investment plan;
- the first day of the fiscal year of the manager in which the investment plan ceases to be an investment plan or an SLFI; and
- the day on which a revocation of the election becomes effective.

Under subsection 58(6), the manager or the SLFI investment plan may revoke the tax adjustment transfer election, effective on the first day of a fiscal year of the manager. As noted in subsection 58(7), the revocation of a tax adjustment transfer election is effective only if the manager or the investment plan notifies the other person of the revocation before the day on which the revocation is to come into effect.

(c) Consolidated filing election – section 57

Section 57 of the draft SLFI Regulations permits a manager and any two or more SLFI investment plans with which the manager has made a reporting entity election under subsection 6(1) to jointly elect to file the returns of those investment plans on a consolidated basis. An SLFI group of investment plans that have an election under section 57 in effect are required to be registered for purposes of the GST/HST in accordance with proposed subsection 240(1.3) of the Act (discussed in section "28. Registration required – SLFI investment plan group" of this bulletin).

Subsection 57(4) restricts the availability of the consolidated filing election to a group of SLFI investment plans where the end of the respective reporting periods in the fiscal year of each of those investment plans coincide with each other.

Under subsection 57(7), despite section 238 of the Act, if a consolidated filing election is in effect on a particular day on or before which the returns under Division V of Part IX of the Act (i.e., GST34, GST62 or GST494 return) for a reporting period of those investment plans would be required to be filed in the absence of subsection 57(7) of the draft SLFI Regulations, the manager must file, in prescribed manner with the Minister on or before that day, a single joint return for the reporting period in prescribed form containing prescribed information on behalf of those investment plans (e.g., consolidated GST494 return). Investment plans that have a consolidated filing election in effect are each not required to file the Division V return. As described in subsection 57(14), if a consolidated filing election made under subsection 57(1) by the manager and SLFI investment plan

group is in effect on or before which the returns under Division V of Part IX for the reporting periods would be required to be filed in the absence of subsection (7), or if a manager files a consolidated return for the reporting periods of the plans on a day on which a consolidated filing election is in effect, the manager and the SLFI investment plan group are jointly and severally, or solidarily, liable for,

- the net tax for those reporting periods; and
- any interest or penalties in respect of the net tax for those reporting periods or in respect of the joint return referred to in subsection 57(7).

It is important to note that a consolidated filing election only permits the consolidated filing of returns under Division V of the Act as discussed above. It does not, for example, permit the consolidated filing of rebates such as the GST/HST pension entity rebate (i.e., Form RC4607).

Subsection 57(2) provides that where a manager has made a reporting entity and consolidated filing elections with an SLFI investment plan group and the manager has made a reporting entity election with a new SLFI investment plan, the manager and the new SLFI investment plan may jointly elect to include the new SLFI investment plan in an existing SLFI investment plan group. However, as described in subsection 57(5), an election to add a new investment plan under subsection 57(2) to an existing SLFI investment plan group that is to come into effect on a particular day in a fiscal year of the new investment plan may only be made if the end of the respective reporting periods in the fiscal year of the new investment plan and of the existing SLFI investment plan group in the fiscal year of each of those investment plans coincide with each other.

Under subsection 57(8), for the purposes of section 57 and 59, where a manager and a new SLFI investment plan have elected under subsection 57(2) to join an existing SLFI investment plan group, the following rules apply:

- the election between the manager and the existing SLFI investment plan group previously entered into under subsection 57(1) ceases to have effect on the particular day (i.e., the day the election to add the new SLFI investment plan is in effect); and
- a new consolidated filing election is deemed to have been made under subsection 57(1) by the manager and the other SLFI investment plans, and that election is deemed to have come into effect on the particular day.

An SLFI investment plan may elect to withdraw from its consolidated filing election with its SLFI investment plan group where there are three or more investment plans in the group (subsection 57(3)). However, such an election to withdraw from a consolidated filing election may only come into effect on or after the day on which the manager and the other investment plans are notified by the investment plan of its withdrawal (subsection 57(6)).

As described in subsection 57(9), where an SLFI investment plan elects under subsection 57(3) to withdraw from its consolidated filing election with its SLFI investment plan group the following rules apply:

- the previous consolidated filing election under subsection 57(1) ceases to have effect on the particular day (i.e., the day the election to withdraw is in effect); and

- a new election is deemed to have been made under subsection 57(1) by the manager and the remaining SLFI investment plan group (without the SLFI investment plan that has withdrawn from the group) and that election is deemed to have come into effect on the particular day .

Until election forms to add or remove an SLFI investment plan from a consolidated filing election under subsections 57(2) or 57(3) are available in prescribed form, a letter of intent may be sent to the Minister (see section "28. Registration required – SLFI investment plan group" of this bulletin for detailed information on filing a letter of intent).

For information on registration requirements as a result of making a subsection 57(2) or 57(3) election, see section "28. Registration required – SLFI investment plan group" of this bulletin.

Under subsection 57(11), a consolidated filing election made under subsection 57(1) by a person ceases to have effect on the earliest of:

- the day the election ceases to have effect under paragraph 57(8)(a) or under paragraph 58(9)(a) because an investment plan makes an election to be added to or withdrawn from an existing SLFI investment plan group;
- the day on which a revocation of the election under subsection 57(12) becomes effective;
- the first day of a fiscal year of the person in which any investment plan that made the election ceases to have the same reporting periods as any of the other investment plans in the prescribed SLFI investment plan group that made the election;
- if the person is a manager of the investment plan with which it has made the consolidated filing election, the day on which the person ceases to be the manager of the investment plan;
- if the person is an investment plan, the last day of the reporting period of the investment plan in which the investment plan ceases to be an investment plan or an SLFI.

Under subsection 57(12), the SLFI investment plan group that jointly made a consolidated filing election under subsection 57(1) may jointly revoke the election, effective on a particular day, by filing a prescribed form with the Minister not later than the effective day of the revocation (or any later day that the Minister may allow). Subsection 57(13) provides that a revocation under subsection 57(12) of a consolidated filing election made by two or more investment plans (in the SLFI investment plan group) is effective only if one of those investment plans notifies, before the day on which the revocation is to come into effect, the manager that made the joint election .

(d) Combinations of joint elections

The following is a list of the various combinations of elections available to an SLFI investment plan and its manager under section 56, 57 and 58 of the draft SLFI Regulations:

- reporting entity election – no consolidated filling or tax adjustment transfer election;
- reporting entity and tax adjustment transfer elections – no consolidated filing election;
- reporting entity and consolidated filing elections – no tax adjustment transfer election;
- reporting entity, consolidated filing and tax transfer elections; or
- tax adjustment transfer election - no consolidated filling or reporting entity election.

27. Registration required – SLFI investment plan

Under subsection 59(1) of the draft SLFI Regulations, an SLFI investment plan that has made a reporting entity election under section 56 or a tax adjustment transfer election under section 58 but has not made a consolidated filing election under section 57 of the draft SLFI Regulations is prescribed for purposes of proposed subsection 240(1.2) of the Act and is required to register under that subsection.

Under proposed subsection 240(2.1) of the Act, a prescribed SLFI investment plan must apply to the Minister for registration before the day that is 30 days after the day the particular election comes into effect (the prescribed day for the purposes of proposed paragraph 240(2.1)(a.1) as set out in subsection 59(1) of the draft SLFI Regulations). A prescribed SLFI investment plan must apply for registration using Form RC1, *Request for a Business Number (BN)* or Form RC1A, *Business Number (BN) – GST/HST Account Information* where the plan already has a business number and wants to add a GST/HST account.

Upon application of an SLFI investment plan, the Minister may register the SLFI investment plan. Upon doing so, the Minister will assign a registration number to the SLFI investment plan and notify the SLFI investment plan in writing of the registration number and the effective date of the registration, as required under subsection 241(1) of the Act.

28. Registration required – SLFI investment plan group

Where a group of SLFI investment plans has made a consolidated filing election with their manager under subsection 57(1) of the draft SLFI Regulations (in addition to the reporting entity election under section 56), they will be a prescribed SLFI investment plan group under subsection 59(2) of the draft SLFI Regulations for purposes of proposed subsection 240(1.3) of the Act. Under proposed subsection 240(1.3), a prescribed SLFI investment plan group is required to be registered for GST/HST purposes, each SLFI investment plan in the group is deemed to be a registrant and each SLFI investment plan in the group cannot apply for registration independently. As a result, each SLFI investment plan in the group would use the same SLFI group registration number.

In accordance with proposed subsection 240(2.2) of the Act, the manager (a prescribed person under paragraph 59(2)(b) of the draft SLFI Regulations) of the prescribed SLFI investment plan group under subsection 240(1.3) must apply to the Minister within 30 days of the date the consolidated filing election comes into effect under subsection 57(1) of the draft SLFI Regulations (as described in paragraph 59(2)(b)). The manager for the prescribed SLFI investment plan group would apply for group registration using Form RC4602, *Request for a Group GST/HST Registration Number for Selected Listed Financial Institutions With Consolidated Filing.*

Upon the application for registration of the prescribed SLFI investment plan group under proposed subsection 240(1.3) by the manager, the Minister may register the group. Upon registration, the Minister will assign a registration number to the prescribed SLFI investment plan group and notify in writing the manager of the registration number and the effective date of the group registration. The following rules apply upon registration (proposed subsection 241(1.1)):

- for each SLFI investment plan in the group that is registered on the day preceding the effective date, that registration is deemed, for the purposes of the Act, to be cancelled as of the effective date; and

- each SLFI investment plan in the group is deemed, for the purposes of the Act other than section 242, to be registered as of the effective date of the group registration and to have a registration number that is the same as the registration number of the group.

In accordance with proposed subsection 240(1.4) of the Act, the manager of the prescribed SLFI investment plan group is allowed to add an investment plan to the prescribed SLFI investment plan group. Under proposed subsection 240(2.3), if an SLFI investment plan is required to be added under proposed paragraph 240(1.4)(b) to a group registration, that investment plan or the manager must apply to the Minister for the SLFI investment plan to be added to the group registration within 30 days of the day that the SLFI investment plan became a member of the group.

Under proposed subsection 240(5), an application for registration, or an application to be added to a group registration, is to be made in prescribed form containing prescribed information and, in the case of an application for the registration of a group, the names of the members of the group, and such application is to be filed with the Minister in prescribed manner.

In accordance with proposed subsection 242(1.4), the Minister must remove an investment plan from a prescribed SLFI investment plan group registration in prescribed circumstances. Subsection 59(2) of the draft SLFI Regulations provides that for purposes of proposed subsection 242(1.4), a prescribed circumstance in respect of one of those SLFI investment plans in an SLFI investment plan group is the withdrawal of an investment plan from the joint consolidated filing election pursuant to subsection 57(9).

Until election forms to add or remove an SLFI investment plan from a consolidated filing election under subsections 57(2) or 57(3) are available in prescribed form and an application to add an investment plan to an existing SLFI investment group registration is available, a letter of intent may be sent to the following address:

Canada Revenue Agency
Summerside Tax Centre
275 Pope Road
Summerside, PE C1N 6A2

The letter should include the following:

- identification of the consolidated SLFI group (as shown on Form RC4602, *Request for a Group GST/HST Registration Number for Selected Listed Financial Institutions With Consolidated Filing* - Consolidated SLFI group/legal name of the investment plan manager/unique name to identify the group);
- group GST/HST registration number (program account (i.e., 15 digit BN));
- fiscal year end of investment plans in the group;
- request that the investment plan(s) be added to (or withdrawn from) the consolidated filing election;
- request that the investment plan(s) be added to (or removed from) the consolidated SLFI group registration;
- name of investment plan(s) to be added (or removed);

- requested effective date of election; and
- signature of an authorized representative of the investment plan manager.

It is important to note that once the applicable form is prescribed, the parties would be required to file the election and registration application in prescribed form and manner related to the letter of intent.

General HST and rebate rules

The general HST rules referred to include the rules that generally apply to all types of businesses, but would not generally apply where a person is an SLFI. For example, in accordance with the self-assessment rules under Division IV.1 of the Act, an investment plan that is not an SLFI is generally required to self-assess the provincial part of the HST where it is established that a taxable supply it acquired in a non-participating province is for consumption, use or supply in a participating province. Please refer to GST/HST Notice266, *For discussion purposes only – Draft Technical Information Bulletin, Harmonized Sales Tax – Self-Assessment of the Provincial Part of the HST in Respect of Property and Services Brought into a Participating Province* for more information. Information regarding the place of supply rules may be found in GST/HST Technical Information Bulletin B-103, *Harmonized Sales Tax Place of Supply Rules for Determining Whether a Supply is Made in a Province.*

The general self-assessment rules that account for the provincial part of the HST under Division IV of the Act (i.e., the import rules for financial institutions and the rules for imported taxable supplies) would also apply (please refer to GST/HST Technical Information Bulletin B-095, *The Self-Assessment Provisions of Section 218.01 and Subsection 218.1(1.2) for Financial Institutions (Import Rules)* for more information on these import rules).

In general, registrant investment plans that are not SLFIs will be required to use Form GST34, *Goods and Services Tax/Harmonized Sales Tax Return for Registrants* to self-assess the provincial part of the HST and non-registrants are required to use Form GST489, *Return for Self-Assessment of the Provincial Part of Harmonized Sales Tax* to self-assess the provincial part of the HST.

In addition, an investment plan that is a pension entity may be eligible for a pension entity rebate. Where the investment plan is not an SLFI, the pension entity rebate will not be restricted to the GST and the federal part of the HST. For more information on the pension rebate, please refer to GST/HST Notice257, *The GST/HST Rebate for Pension Entities*.

There is also a special rebate available under the proposed amendment to section 261.31 of the Act to investment plans, other than SLFIs, or prescribed persons, where prescribed conditions are satisfied. If tax under subsection 165(2), sections 212.1 or 218.1 or Division IV.1 of the Act is payable by an investment plan, other than an SLFI, or by a prescribed person, and prescribed conditions are satisfied, the Minister must, subject to section 261.4 of the Act, pay a rebate to the investment plan or person equal to the amount determined in prescribed manner. Proposed section 21.1 of the *New Harmonized Value-Added Tax System Regulations No. 2* (in Part 3 of the *Draft Regulations Amending Various GST/HST Regulations* released January 28, 2011) prescribes the method used to calculate the amount of the rebate under proposed section 261.31 of the Act.

For example, where a provincial investment plan as described in section 12 of the draft SLFI Regulations acquires a management service and has paid HST**,** because the service is made in a participating province based on the place of supply rules and this service is acquired for use in a

non-participating province, the investment plan may be eligible to claim a rebate under proposed section 261.31 of the Act to the extent that the amount of tax relates to a non-participating province or to a participating province with a lower tax rate than the particular province in which the supply of the service was made. The investment plan would be required to file Form GST189, *General Application for Rebate of GST/HST* to obtain this rebate under proposed section 261.31. For more information on these rebates, please refer to Guide RC4033, *General Application for GST/HST Rebates*.

Enquiries by telephone

Technical enquiries on the GST/HST: 1-800-959-8287

If you are located in Quebec: 1- 877-960-9102

All technical publications related to the GST/HST are available on the CRA Web site at www.cra.gc.ca/gsthsttech.

Appendix – GST/HST forms and publications

The following is a list of some of the elections, application forms, returns, guides, notices and technical information bulletins that are mentioned throughout this bulletin. To obtain copies of these forms and publications, please go to www.cra.gc.ca/gsthstpub.

FORMS

GST20, *Election for GST/HST Reporting Period*

GST27, *Election or Revocation of an Election to Deem Certain Supplies to be Financial Services*

GST34, *Goods and Services Tax/Harmonized Sales Tax (GST/HST) Return for Registrants*

GST59, *GST/HST Return for Imported Taxable Supplies and Qualifying Consideration*

GST62, *Goods and Services Tax/Harmonized Sales Tax (GST/HST) Return for Registrants (Non-Personalized)*

GST111, *Financial Institution GST/HST Annual Information Return*

GST189, *General Application for Rebate of GST/HST*

GST489, *Return for Self-Assessment of the Provincial Part of Harmonized Sales Tax*

GST494, *Goods and Services Tax/Harmonized Sales Tax Final Return for Selected Listed Financial Institutions*

GST497, *Election under the Special Attribution method for Selected Listed Financial Institutions and Notice of Revocation*

RC1, *Request for a Business Number*

RC1A, *Business Number (BN) – GST/HST Account Information*

RC4601, *GST/HST Reporting Entity and Tax Adjustment Transfer Elections and Revocations For Selected Listed Financial Institutions*

RC4602, *Request for a Group GST/HST Registration Number for Selected Listed Financial Institutions With Consolidated Filing*

RC4603, *GST/HST Adjustment Transfer Election and Revocation for a Selected Listed Financial Institution*

RC4604, *GST/HST Reporting Entity, Consolidated Filing and Tax Adjustment Transfer Elections and Revocations for a Selected Listed Financial Institution*

RC4606, *Election or Revocation For a Qualifying Small Investment Plan to be Treated as a Selected Listed Financial Institution*

RC4607, *GST/HST Pension Entity Rebate Application and Election*

RC4610, *Election and Revocation of an Election to Exclude Non-Resident Investment Holdings for the Calculation of the Provincial Attribution Percentage*

RC4612, *Application to not be Considered a Selected Listed Financial Institution*

GUIDES

RC4050, *GST/HST Information for Selected Listed Financial Institutions*

RC4033, *General Application for GST/HST Rebates – Includes Forms GST189, GST288, and GST507*

GST/HST MEMORANDA SERIES

17.14, *Election for Exempt Supplies*

GST/HST NOTICES

Notice257, *For discussion purposes only: GST/HST Rebate for Pension Entities*

Notice261, *Information Required for Tax Adjustment Notes Issued by an Employer to a Pension Entity and the Consequential Notices issued by the Pension Entity*

Notice265, *GST/HST Registration for Listed Financial Institutions (Including Selected Listed Financial Institutions)*

Notice266, *For discussion purposes only – Draft Technical Information Bulletin, Harmonized Sales Tax – Self-Assessment of the Provincial Part of the HST in Respect of Property and Services Brought into a Participating Province*

GST/HST TECHNICAL INFORMATION BULLETIN

B-095, *The Self-Assessment Provisions of Section 218.01 and Subsection 218.1(1.2) for Financial Institutions (Import Rules*)

B-103, *Harmonized Sales Tax Place of Supply Rules for Determining Whether a Supply is Made in a Province*