MULTI-EMPLOYER BENEFIT PLAN COUNCIL OF CANADA

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Via E-Mail

Department of Finance and the Canada Revenue Agency

E-mail: HWT-consultation-FSBE@canada.ca

Dear Sirs/Mesdames:

Re: Submissions of the Multi-Employer Benefit Plan Council of Canada 2018 Budget Announcement relating to Health and Welfare Trusts.

The Multi-Employer Benefit Plan Council of Canada (MEBCO) is a non-profit corporation representing the interests of Canadian multi-employer pension and benefit plans.

We are writing to submit our recommendations and comments with respect to the transitional rules and amendments to the Income Tax Act to govern the phase-out and conversion of Health and Welfare Trusts (HWTs) to Employee Life and Health Trusts (ELHTs).

MEBCO previously made a submission on the Canada Revenue Agency's (CRA) Income Tax Folio S2-F1-C1 which was released in 2015. One of the concerns in the Folio submission related to the differential treatment of these two vehicles and MEBCO recommended harmonization of the HWT and ELHT rules. While MEBCO did not advocate for the sunset of HWTs, we appreciate that the CRA and Department of Finance has recognized MEBCO's concerns and is taking steps to harmonize the rules albeit now under ELHTs only. MEBCO would be pleased to work with the CRA and Department of Finance to assist with the development of the transitional rules as a stakeholder advisor.

About MEBCO

MEBCO was established in 1992 to represent the interests of multi-employer benefit plans (MEPs) in Canada. MEBCO advocates on behalf of all stakeholders involved with MEPs, including union and employer trustees, independent and professional trustees, professional third party administrators, non-profit or "in house" plan administrators and professionals including actuaries, benefit consultants, lawyers, investment managers, and chartered professional accountants. MEBCO's Board of Directors is composed of volunteer representatives of these groups, and is responsible for identifying, addressing, and advocating with respect to all issues impacting multi-employer plans in Canada.

Background on Multi-Employer Plans

Multi-employer plans are essential to over one million workers and their families in industries including construction, food service, retail, hotel and restaurant, graphic arts, garment manufacturing, security, textiles, transportation and entertainment. MEPs are a response to the difficulties of delivering quality health care services, disability and other income replacement benefits and life insurance to workers and their families in industries typified by small employers and mobile work forces. These plans ensure that seamless benefit coverage is provided to workers and their families as they move from one contributing employer to the next. This seamless coverage is especially important in mobile and/or seasonal industries where it is often expected that workers will be employed by multiple employers in a single year and/or may experience significant periods of non-employment or disability. In these industries, it is not uncommon for a worker to be employed by one employer for a matter of days or weeks before moving on to a different project with a different employer. A centralized MEP ensures these workers have access to necessary benefit coverage regardless of the sometimes intermittent nature of these work relationships.

In addition to providing seamless benefit coverage, MEPs are economically efficient in the sense of providing economies of scale by bringing together large numbers of smaller employers who receive financial savings in respect to administration and the purchasing of benefits. In other words, the pooling of collectively bargained contributions in these industries is beneficial both to workers and smaller employers who may wish to extend benefit coverage to their workers.

MEPs are generally administered by an independent board of trustees, comprised of an equal number of trustees appointed by the participating union or unions and employer bargaining associations. As with any trust, the MEP trustees owe a fiduciary obligation to act in the best interest of the trust beneficiaries, not the sponsoring employers or unions. The trustees do not determine the contribution rates, which are negotiated between the employers and the unions as part of the collective bargaining process. The contribution rates are typically based on hours worked.

MEPs deliver health and welfare benefits and services that are supplementary to publically funded health care and social security programs through privately funded vehicles. Without MEPs, millions of Canadians would not have access to these supplementary benefits, the cost of which would otherwise be unaffordable and may ultimately be borne by public programs.

Recommendations Regarding Transitional Rules

We understand from the Budget announcement that the Department of Finance ("Finance") and the CRA would like input from stakeholders on transitional issues, including the three identified in the Budget, as follows:

- whether a Health and Welfare Trust can continue as an Employee Life and Health Trust without the creation of a new trust;
- whether, and under what conditions, a rollover of assets to a new trust will be permitted; and

- the tax implications for a Health and Welfare Trust that does not satisfy the conditions to become an Employee Life and Health Trust, or where the trustees of a Health and Welfare Trust choose not to convert.

In our submission below, we address and make recommendations on these issues, as well as a number of additional issues that need to be addressed in the transitional rules that are particularly important for MEPs.

1. Conversion to ELHTs

MEBCO strongly believes that the conversion process should be very simple and impose no cost on HWTs. These plans are established to provide qualifying health and welfare benefits within a fixed contribution schedule, not to pay unnecessary professional fees.

Given the historical restrictions on funding HWTs, additional costs to convert to ELHTs is not included in budgeting or considered during collective bargaining. The cost impact is especially important for smaller MEPs, which in some cases receive less than $100,000 in contributions annually.

Requiring an artificial wind-up of existing HWTs and the establishment of a new trust on virtually identical terms and for the same beneficiary group and benefit structure, serves no purpose and would impose extraordinary costs that simply cannot be absorbed by many MEP HWTs.

For the conversion, the transitional rules should deem the HWT to be an ELHT immediately preceding the conversion and the existing ELHT rollover provision in sub-paragraph 144.1(2)(b)(ii) of the ITA would apply. The requirement to convert cannot impose any tax consequences on the plans, the beneficiary/beneficiaries or the participating employers or the plan sponsors.

MEBCO recommends that:

The transitional rules require HWTs to elect conversion to an ELHT by filing their T3 Tax and Information Returns using the ELHT code for the year of conversion.

No wind-up of the HWTs or any other steps should be imposed to effect this conversion other than any amendments to trust and other governance documents which may be required to the extent of any conflict with any of the ELHT conditions.

All HWTs electing to be treated as an ELHT should be deemed to comply as of the effective date specified in the transitional rules for a 5 year period to provide an opportunity for HWTs to amend their trust agreements and governance documents and make any other changes to the trust and benefit plans that may be required to address any conflicts with the ELHT requirements.

2. MEP Rules – Deductible Contributions

For MEP HWTs and ELHTs, the vast majority of the participating employers contribute and participate pursuant to a collective bargaining agreement under which their employees as members of a trade union are covered. MEPs typically also cover employees of the trade union that sponsors or co-sponsors the MEP, and employees of participating employers who may fall outside of the scope of collective bargaining units as defined in the applicable collective agreements.

These employees are typically covered by some form of agreement, most commonly referred to as a "participation agreement", which binds the participating employer to the terms of the trust agreement and, among other things, requires contributions to be remitted to the MEP on behalf of its employees. The contribution rates are typically the same as the contribution formula applicable to participants and the benefits provided are the same as those covered by the applicable collective agreements. Contribution rates are typically set out in a schedule, letter agreement or other document, confirming a contribution rate to be made on a per employee basis.

The existing ELHT MEP rules in subsection 144.1(6)(b) only apply where employers contribute to the trust under a collective bargaining agreement. The fact that the employer contribution may be made pursuant to a participation agreement should not disqualify an ELHT from MEP status. Contribution rates under these agreements are in accordance with a negotiated contribution formula that does not provide for any variation in contribution determined by reference the financial experience of the trust and are determined by reference to a number of hours worked by the individual employees or some other measures specific to each employee (such as salary), thereby satisfying all the other conditions applicable to the MEP contribution/deduction rules.

HWTs which include employers who participate under some form of participation agreement should not have to terminate participation and restructure their employee benefit arrangements as a result of the ELHT conversion. This would impose an unnecessary cost on MEPs and would adversely affect participating employers and their employees. A participating employer who may have 50 unionized employees covered under a collective agreement, that also employs 2 office staff, should not be forced to put in place an alternative plan for the 2 office staff or be required to account for the contribution separately when calculating the employer's deductions for the year. Such a requirement would likely result in less comprehensive benefits due to the loss of the larger group's purchasing power.

MEBCO recommends that the ELHT provision either be amended to add a definition of "collective bargaining agreement" that includes a form of participation agreement commonly used in the MEP industry, or paragraph 144.1(6)(b) be modified to read "(b) employers *primarily*[1] contribute to the trust under a collective bargaining agreement…" This would permit participation of the sponsoring unions with respect to its employees and allow participating employers to include non-bargaining unit staff in the same plan on a

[1] Interpreted in accordance with the general interpretation of the term in the context of the Act, to mean greater than 50%. See for example: *CRA Views, October 1990-94 -- Definition of foreign property*, October 1990; and *RCT 5-5759 -- Meaning of the phrase "all or substantially all" and the word "primarily" for purposes of the definition "small business corporation" in subsection 248(1)*, 3 May 1998.

cost effective basis, provided that the majority of the participants are covered pursuant to a collective bargaining agreement.

3. Multi-Employer Qualification

MEBCO is of the view that the current MEPP definition in s. 144.1(6) is problematic for many existing HWT MEPs that will be required to convert to ELHTs. To qualify as a MEP, the ELHT must be reasonably expected to meet the following conditions:

- At no time in the year will more than 95% of beneficiaries be employed by a single employer, or by a related group of employers;
- At least 15 employers will contribute to the trust, or at least 10% of the beneficiaries of the trust will be employed in the year by more than one participating employer (with employers related to each other being deemed to be a single employer);
- The employers must contribute to the trust under a collective bargaining agreement and in accordance with a negotiated contribution formula that does not provide for any variation in contributions based on the financial experience of the trust; and
- Contributions that are made by each employer are determined, in whole or in part, by reference to number of hours worked, or some other measure, specific to each employee.

As noted above, there are many MEPs HWTs, in which less than 15 employers participate. For some of these plans, it may also not be the case, or it may be unclear or difficult for the Trustees to determine, whether more than 10% of employees meet the alternative test of working for more than one unrelated employer in the same year. In certain industries (e.g. the broader public sector or construction industries), it may be particularly difficult for Trustees to track the "related" status of employers at any given time.

MEBCO is not aware of, and was not consulted with respect to, the rationale underlying the current criteria necessary to establish status as a MEP ELHT under s 144.1(6). However, it appears that the requirements were based on the "specified multi-employer pension plan" ("SMEPP") requirements under s. 8510(3) of the ITA Regulations -- as the key criteria are identical for both.

MEBCO's position is that the SMEPP criteria are simply not appropriate for HWT MEPs that will be required to convert to ELHTs, many of which may not meet, or may have difficulty determining if they meet, the 15 employer/10% mobility test. Further, in MEBCO's view, the policy rationale underlying the SMEPP definition does not make sense in the context of ELHTs.

Specifically, the policy rationale for applying the SMEPP rules to a Registered Pension Plan is to address the particular difficulties that arise calculating a pension adjustment ("PA"), and tracking PA limits, in large multi-employer plans in which employers may have no relationship with each other. The SMEPP rules are intended to address specific technical PA issues that apply only in the context of Registered Plans, and that have no bearing on health and welfare benefits.[2]

[2] Registered Plans Directorate technical manual –17.2 8510(2) "Definition of a Specified Multi-Employer Plan" at (a); Technical Notes, Reg. 8510(6), 18 May 1999; Compliance Bulletin No. 7, 10 May 2011.

The rationale for providing a multi-employer plan classification in section 144.1(6) is entirely different. The purpose of the rules under s. 144.1(6) is, or should be, to ensure contributions negotiated between employers and arms' length trade unions are deductible even where they may not precisely reflect the cost of providing benefits in any given year. This is because contribution rates negotiated through collective bargaining can usually only be addressed every three to five years, and cannot vary at any given time to reflect the funded status of the trust. Section 144.1(6) therefore ensures that a multi-employer collectively bargained plan can provide for employer deductions on contributions despite this potential temporary mismatch, thus reflecting the reality of the collective bargaining context trusts operate. Importantly, the matching of funding and liabilities with typical MEPs, works the other way around. The Trustees determine the benefits when they know the level of funding available for the next three to five years. The Trustees typically determine benefit levels based on prudent funding principles. To the extent that trade unions jointly trustee these funds, they have an institutional interest to deliver the best possible benefits to their members on the most cost effective basis, or to avoid benefit cuts when the MEPs encounter funding difficulties, which are inevitable in the cyclical economies in which the majority of MEPs operate.

Therefore, while a minimum employer or minimum "mobility" threshold may make sense in the context of SMEPP rules (to ensure the existence of the reporting issues the rules are intended to address), there is no rationale for a minimum threshold for collectively bargained ELHTs. Rather, all collectively bargained ELHTs face the same issue in adjusting contribution rates, regardless of number of employers or mobility of employees. Therefore, in MEBCO's view, the MEP ELHT provisions should instead apply to any collectively bargained plan that satisfies the other conditions in s. 144.1(6).

MEBCO, therefore, recommends that the ITA Section 144.1(6) be amended to permit contributions and deduction for such contributions for any contribution made pursuant to a collective bargaining or other participation agreement where the contribution rate is based on hours worked by the employee or other specific measures relating to the employee and does not vary based on the financial experience of the plan.

4. Pre-Conversion HWT Mergers

The HWT Folio is silent with respect to mergers and transfers between HWTs. On wind-up of an HWT, the Folio provided that funds may only be used to provide additional benefits, distributed to the employees on a taxable basis or donated to a registered charity.

With escalating costs of benefits and maintaining HWTs, an increasing number of smaller plans have sought to consolidate and the ability to merge HWTs is a significant issue. Many participating unions and employer associations, have consolidated smaller local unions and associations, but are forced to maintain separate HWTs for their members. The CRA has been reluctant to confirm that such mergers and transfers are permissible on a rollover basis. Given that such mergers involve the transfer of beneficiaries from one HWT to another, to receive eligible benefits, such mergers pose no policy concerns. Participant and participating employer contributions continue to be used exclusively to fund eligible benefits for the beneficiaries of the wound-up trust under the merged trust.

MEBCO recommends that the transitional rules confirm that mergers and transfer of assets to other qualifying health and welfare trusts are permitted and do not give rise to a taxable disposition. The ability to transfer assets on a tax free basis is already available to ELHTs under s. 144.1(2)((b)(ii) of the *ITA*, which permits distribution of property of an ELHT to another ELHT on wind-up or reorganization. The same should be extended to HWTs that merge prior to converting to an ELHT.

5. Exclusion of Non-Employees

The HWT Folio explicitly precludes an HWT from providing benefit coverage to non-employees "such as partners, shareholders or independent contractors." In our submission on the HWT Folio, MEBCO raised concerns that the exclusionary language potentially captures a broad range of individuals not previously excluded and was not warranted, particularly for MEPs. Most of the exclusions that MEBCO was concerned with, such as retirees, and members who were temporarily unemployed or disabled members and widows of active, formerly active or retired members, are not a concern under the ELHT rules given the inclusion of "former employees". However, MEBCO remains concerned with the exclusion of MEP participants who may be deemed not to be an employee by the CRA and/or a court.

Employment Status Uncertain or Unknown

MEPs may cover numerous individuals who are members of a participating union and engaged in the industry covered by the MEP, who may or may not be considered "employees" by the CRA, but whose employment status is not known to the MEP trustees. MEP trustees may have no information regarding the nature of the working relationship or ability to determine employment status, but risk losing ELHT qualification on conversion if any one individual is deemed by the CRA or a court to be a non-employee.

Workers in many industries who are members of a participating union and/or working under a collective agreement may be identified or treated as independent contractors, dependent contractors, owner operators and in some cases, may establish a personal services corporation. In all cases, contributions are remitted on behalf of the individual members by participating employers bound under collective agreements or participation agreements and eligibility is generally tied to union membership. In these industries, there is little rationale to tie benefit coverage in multi-employer ELHTs to "employee" status.

The determination as to whether a given worker is an "employee" is difficult to make, even if the trustees had the necessary information about the various working relationships. Many workers may exhibit indicia of both employee/independent contractor status. The relative degree of these indicia may vary depending on the characteristics of the job and the relationship with a particular employer. In other words, "employee" status may be, at best, unclear, and, at worst, may vary over time. Regardless of status, these workers are subject to the same vulnerability and economic dependence as employees at various points in their work relationships. While a piece worker in the roofing industry, for instance, may work for multiple employers in the same year on a contract basis, he or she may be highly economically dependent on one employer/client at any given time – and it is unpredictable what percentage of the worker's year may be spent on each

project. These workers may be classified as “dependent contractors” under provincial labour legislation, adding further uncertainty to their status as “employees” for ITA purposes.

Inclusion of these members in a plan established primarily for employees does not offend the tax policy guiding the exclusion. MEPs are not vehicles that could be used by shareholders or business owners to tax shelter income or otherwise receive an unfair tax advantage. In fact, the inclusion of the above beneficiaries supports the policy rationale favouring the establishment of MEPs to provide health benefits and insurance to workers and their dependants who may not be able to purchase coverage on their own behalf – thus relieving a potential burden on Canada’s social safety net. MEBCO is concerned that the broad exclusion of all “non-employees” may disqualify many MEPs and unnecessarily impose significant adverse tax consequences on both the members and the employers and is simply unwarranted.

MEBCO recommends that the definition of eligible beneficiary for an ELHT be extended to include any individual who is a member, or employee of a participating union or, on whose behalf contributions are required to be remitted to the MEP by a participating employer pursuant to a contract or participation agreement.

6. Expanding Eligibility to include Health and Wellness and Employee Assistance Programs

In the over 50 years since the CRA HWT policy was first introduced, health and welfare programs have developed substantially in response to health care and social security needs of Canadians. Developed health and welfare programs delivered by MEPs will typically include Member Assistance Plans, commonly referred to outside of the MEP context as Employee Assistance Plans ("EAPs") and/or "health and wellness plans", which address some critical health care issues, such as the almost epidemic growth of mental health issues and drug and alcohol addiction, and successfully target and enhance preventative health care initiatives that are proven to provide better health outcomes and reduce the economic cost to the public health care system. EAP programs often expose health issues, such as mental health and addiction that ought to be viewed as part of a broader health care policy and expanding this coverage will save both money and lives.

HWTs can provide various EAP or health and wellness benefits as part of the general benefit package or through health care or flexible benefit spending accounts that provide reimbursements to members for a variety of benefits that are commonly referred to as "health and wellness" benefits. Many of the benefits provided under a health and wellness program provide reimbursement for expenses that qualify for the METC. For example, potentially eligible expenses typically include various forms of counselling, including grief, stress, depression/anxiety, and crisis counselling provided by an authorized medical practitioner. However, some of the services and benefits under these programs, which are incidental and related to health care and healthy lifestyles, may not qualify. In fact, to the extent that the health and wellness benefits provide preventative health coverage, and promote healthy lifestyles generally, the benefits have a direct impact on the cost of tax assisted health care benefits.

Another common benefit delivered by MEPs is wage loss replacement for unpaid bereavement leaves. Bereavement benefits offset a portion of the loss of income for covered members who must take time off. The limits and eligibility conditions are well defined to avoid abuse and

limits liability similar to disability benefits, which many MEPs include. While these benefits may not qualify as the type of wage loss replacement benefit currently accepted as an eligible HWT benefit under CRA policy, it fulfills a very similar wage protection insurance and social welfare purpose as other eligible benefits, such as short-term disability benefits.

Given the interconnection and complimentary purpose of these types of programs, they are being delivered and administered together with health care and wage loss replacement plans under a health and welfare trust structure. The CRA Interpretation Bulletins recognized this reality, but only permitted these types of programs to be administered under the same health and welfare trust if the contributions, expenses and benefits were accounted for separately. Effectively these rules required HWTs to maintain a separate sub-trust fund.

We believe it is time to legislatively recognize that these programs should be eligible as part of the benefits provided and administered under an ELHT, without any separate accounting or administration, other than the accounting and reporting for taxable and non-taxable benefits, which HWTs already do for the eligible HWT benefits. We note that single employer plans can provide EAP, health and wellness and bereavement leave benefits directly to their employees, but employees covered by an HWT or ELHT cannot receive these benefits.

MEBCO believes that the CRA's 2015 announcement with respect to Private Health Services Plans (PHSPs), applying the substantially all test that has been in place at Revenu Quebec for some time, reflects the recognition that these plans are providing complimentary health care benefits and services, which may not qualify for the METC, but should not disqualify a PHSP and subject all benefits to EBP treatment. We understand that the CRA is considering and will release further clarification regarding the scope of what is being called the "10% Rule", but we expect that no matter how carefully crafted, such clarification will leave lots of ambiguity and is entirely unnecessary from a tax and social policy perspective.

MEBCO recommends that the ELHT rules be modified to permit ELHTs to provide EAP, health and wellness, bereavement and other complimentary benefits typically provided by these types of programs subject only to appropriate tax reporting for the underlying benefits. MEBCO believes that this may be accomplished simply by modifying the ELHT conditions to specify that ELHTs qualify where they are established to "primarily" provide PHSP, group life insurance and sickness and accident insurance benefits.

7. Related Party Investment Restrictions

Paragraph 144.1(2)(h) of the ITA prohibits investments and loans to a participating employer and any entity related to a participating employer.

Given that MEPs may include hundreds, in some cases thousands, of participating employers, monitoring and compliance with these rules is virtually impossible. This is particularly the case with HWT MEPs, which commonly invest in pooled vehicles with little knowledge or control over the underlying investments, which may, without the trustees' knowledge, include some investment in a participating employer or related entity. With respect to multi-employer pension plans, this unique concern has been acknowledged by provincial and federal regulations and is addressed through various exemptions for multi-employer plans under the ITA and federal

pension legislation.[3] A similar exemption should be added to the ELHT provisions particularly for MEP ELHTs. The proposed amendment to these rules summarized in the Department of Finance Comfort Letter dated December 19, 2012 proposing a 50% refundable tax is not an acceptable resolution to this concern.

MEBCO recommends that s. 144.1(2) be amended to exclude ELHTs that qualify as a MEP.

8. Extending carry-forward/carry-back rules for non-capital losses to HWTs

Subsection 111(7.4) was added to the Act with the December 2010 amendments creating the ELHT regime to include a special rule providing for a three year carry-back and carry-forward for the deduction of non-capital losses on the taxable income of the ELHTs. In the Technical Notes released with the ELHT amendments, the Department of Finance explained the special non-capital loss rules as follows:

> "This mechanism is being introduced in recognition that the income of an ELHT for a year will not always reflect its obligations to provide designated employee benefits for the year.
>
> However, the effect of this amendment to the definition "non-capital loss" will also be to enable such a trust to create a loss in relation to a distribution of the capital of the trust. Consequentially, a shorter carry-forward period is provided, which it is anticipated will be sufficient to allow employee life and health trusts to avoid paying income tax in most situations where they have not been over funded."

MEBCO believes that the three year non-capital loss rules is likely sufficient to fulfill the stated objective to allow ELHT to avoid paying income tax for the vast majority of MEPs. However, MEBCO is of the view, that from a tax equity and policy perspective, ELHTs should receive the same treatment as any other trust as set out in the general non-capital loss rules in paragraph 111(1)(a) of the Act and be permitted to carry-forward non-capital losses for 20 years and carry-back for 3 years. MEPs, which are arm's length from the participating employers and trade unions, operate on a not-for-profit basis and provide no personal benefit for any participating employer or trade union given the restrictions on the use of ELHT funds. Short of extending a full exemption for ELHTs, ELHTs should be treated no less favourably than any other trust.

Under the HWT Folio, the CRA administratively imposed a prohibition on HWTs precluding entirely the carry-forward or carry-back of non-capital losses. To the extent that HWTs that convert to an ELHT have been subject to tax for tax years prior to conversion, they should be able to take advantage of the ELHT non-capital loss carry-back rules.

MEBCO recommends that subsection 111(7.4) of the Act be repealed and the general rule set out in paragraph 111(1)(a) should apply to all ELHTs and the Transitional Rules should permit HWTs that convert to an ELHT to carry-back non-capital losses for 3 years, including any tax year in which the Trust was an HWT.

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[3] ITA Regulations, s. 8514(2.1)(d); *Pension Benefits Standards Regulations*, 1985 (SOR/87-19), s 17(3).

9. Refunds of Excess Contributions to Employees

In the past, the CRA had administratively allowed a refund to the members of "excess" contributions in limited circumstances in various technical interpretation letters.[4] The refunds were permitted where contributions in the year exceeded the cost of benefits in the year, but only where the refund was made in the same year that the employer claimed a tax deduction for the contribution and reported as taxable income to the recipient plan member.

Some MEPs have provided refunds on the basis of the CRA's policy, and some members have developed an expectation that ELHTs will continue to do so. MEBCO believes that the CRA and/or Finance should provide clarity on whether or not this practice will continue to be permitted under the ELHT regime.

We understand that the basis for the CRA administrative position in the past has been that excess contributions over the cost of benefits in a year were not permissible and therefore would not be subject to the requirement that all contributions be used exclusively to fund eligible benefits.[5] Given the current ELHT regime, which for MEPs, permits and provides a deduction for all contributions required pursuant to a collective agreement, it is not obvious or clear how the CRA policy can be extended to ELHTs.

Other 2018 Budget Announcements affecting ELHTs and Other MEPs

10. Beneficiary Reporting Obligations

The Budget announcement also included additional reporting obligations to be imposed on trusts generally, requiring additional disclosure of beneficiary information. The proposal only recognized exemptions for registered plans. ELHTs and other non-registered labour trusts are not eligible for the exemption. Given the sensitive nature of personal beneficiary information of these trusts, MEBCO requests that the exemption from these additional reporting obligations be extended to ELHTs and any other labour trusts, including those not required to be registered, some of which may be classified as non-profit organizations under paragraph 149(1)(l) or labour organizations under paragraph 149(1)(k) under the Act.

[4] CRA Views Ruling 9904343 -- Excess Contributions Health and Welfare Trust, (1999); CRA Views, Tech Interp, - External, 2010-0376321E5 -- Health and Welfare Trusts, 15 March 2011; CRA Views, Tech Interp, 2005-0117081E5 -- Construction Industry, 26 April 2005.

[5] In at least one interpretation letter, the CRA expressed the view that these refunds are not prohibited because the payment of “excess contributions” from the HWT to the members on a taxable basis in the same year as the employer deducts the contribution essentially results in the contribution not being made to the HWT at all, but is rather redirected to the member as taxable wages.

11. Further Consultation and Assistance

We would be pleased to discuss our comments on the Transitional Rules and MEBCO, as the subject matter expert on MEPs, can assist with developing and drafting the appropriate legislative amendments and/or policy based on the recommendation in this submission. Please do not hesitate to contact us should you have any questions, or in the event that we can be of further assistance.

Yours truly,

MEBCO

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