

May 5, 2022

Department of Finance, Canada
Delivered by e-mail:
Consultation-Legislation@fin.gc.ca

Dear Sirs/Mesdames:

50 Wellington Street W.
5th Floor
Toronto, ON M5L 1E2
Canada
+1 416 364 8420
canada@aima.org
www.aima.org



RE: Department of Finance Canada of Finance (Canada) consultations on the excessive interest and financing expenses limitation (“EIFEL”) tax amendments

We are writing to provide comments on the proposed EIFEL rules contained in draft legislation to amend the Income Tax Act (Canada) released on February 4, 2022 (the “**Proposed Rules**”). Our comments are directed to the application of the Proposed Rules to the collective investment vehicles that our members manage (collectively, the “**Alternative Investment Funds**”).

About the Alternative Investment Management Association (AIMA)

The Alternative Investment Management Association (AIMA) is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries, including many leading investment managers, professional advisers and institutional investors and representing over \$2.5 trillion in manager assets under management. AIMA’s fund manager members collectively manage more than US\$2.5tn in hedge fund and private credit assets.

AIMA was established in 1990 as a direct result of the growing importance of alternative investments in global investment management (covering primarily hedge funds, private credit, liquid alternative funds though now also digital assets) to help facilitate institutional-quality, operational sound practices for its members. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programs and sound practice guides. As a not-for-profit international education and research body, AIMA works to raise media and public awareness of the value of the industry.

AIMA Canada, established in 2003, has approximately 140 corporate members (53% managers, 19% institutional/retail dealer allocators, 28% service providers, including legal, accounting, prime brokerage, administration and other). Under our pillars of Advocacy, Education and Communication, the objectives of AIMA are to provide an interactive and professional forum for our membership; act as a catalyst for the industry’s future development; provide leadership in due diligence and sound practices, including ESG and diversity, equity and inclusion; enhance industry transparency and education; and liaise with the wider financial community, institutional investors, the media, regulators, governments and other policy makers. Part of the benefit of AIMA’s global and local footprint is to ensure our members have the opportunity to be current and consistent with international best practices and the latest trends impacting alternative investment management.

The majority of AIMA Canada members are managers of alternative investment funds and fund of funds. Most are small businesses with fewer than 20 employees and \$50 million or less in assets under management, though some are some of our country’s largest traditional asset managers. The majority of assets under management are from high-net-worth investors and are typically invested in pooled

Chair

Belle Kaura
Tel. (647) 776-8217

Deputy Chair

Rob Lemon
Tel. (416) 956-6118

Legal Counsel

Darin Renton
Tel. (416) 869-5635

Treasurer

Derek Hatoum
Tel. (416) 869-8755

Head of Canada

Claire Van Wyk-Allan
Tel. (416) 453-0111

funds managed by the member. Investments in these pooled funds are sold under exemptions from the prospectus requirements, mainly the accredited investor and minimum amount investment exemptions. Manager members also have multiple registrations with the Canadian securities regulatory authorities: as Portfolio Managers, Investment Fund Managers, Commodity Trading Managers and in many cases as Exempt Market Dealers.

Of our manager members in Canada, approximately 75% offer private funds (“**Private Funds**”), typically with an offering memorandum (“**OM**”), while 40% engage in selling prospectus-qualified liquid alternative funds (“liquid alternatives”)m further to *National Instrument 81-102* (“**NI 81-102**”) to retail investors. There is some overlap with those managers who offer both types of fund structures (private and retail) to service different investor types (institutional and retail). In this case, often the investment strategy is managed *pari passu* between Private Funds and prospectus-qualified funds, though with different restrictions on short selling, leverage, exposure to private instruments or otherwise.

Prospectus fund AUM (assets under management) is derived primarily from Canadian individual investors (who access these products directly through a registered dealer or multi-family office or through single family office) or through their registered plans. Private Fund AUM is also derived primarily from Canadian investors, though some AUM would be represented by institutional allocators (pensions funds, endowment plans and foundations), though these institutional investors also may purchase liquid alternative funds. AUM of Private Funds largely does not include registered plan investors.

The [AIMA Canada Handbook 2019: A Report on the Canadian Alternative Investment Landscape](#) serves as an important educational reference for the market. With regards to Canadian Securities Administrators’ regulation of alternative investment funds, there is a particularly helpful overview on [page 65 of the Handbook](#). For example, various requirements under Canadian securities law are triggered based on the characterization of the investment vehicle. For example, a vehicle which is an “investment fund” for purposes of Canadian securities law will be subject to different registration requirements and filing obligations with respect to its activities in Canada than a typical “corporate issuer”. As a result, it is important to determine if an issuer is an “investment fund” as a starting point of any inquiry. An illustration of the various registrations that may be required are below

	IFM Registration	Adviser Registration	Dealer Registration
Investment Fund	Yes	Yes	Yes
Private Equity Fund	No	No	Typically, yes
REITs	No	No	Typically, yes
Mortgage Investment Entities	No	No	Typically, yes
Lending Vehicles	No	No	Typically, yes
Managed Account	No	Yes	No

Source: AIMA Canada Handbook 2019. Note: The terms Private Equity Fund, REITs, Mortgage Investment Entities, Lending Vehicles and Managed Account are not defined under Canadian securities legislation and its use in the chart above is for informational purposes only and the actual characteristics of such entity and its activity will determine the applicable registration requirements.

* * *

On behalf of AIMA Canada members, we would like to submit this comment letter to the Department of Finance on the Proposed Rules.

We note and support the comment letter submitted by the Investment Funds Institute of Canada (“**IFIC**”). While IFIC’s concerns, given the interests of its members, are focused on the mutual funds sector, we endorse IFIC’s observation that: *“from a policy perspective and for the reasons discussed below under the International Competitiveness sub-heading, consideration should also be given to excluding all investment funds, including those that are not subject to the requirements of NI 81-102.”*

This follows from the nature of investment funds as collective investment vehicles and in particular the principle that investors in an investment fund should stand in broadly the same tax position (and should not be disadvantaged) in comparison to investing directly in the assets held by the fund.

Specifically, we would ask that similar to other global jurisdictions that have introduced domestic tax rules aimed at implementing a regime that is consistent with the recommendations in the Action 4 report of the Organisation for Economic Co-operation and Development (“**OECD**”) BEPS Action Plan (“**BEPS Action 4**”), the Department should provide exclusions for certain collective investment vehicles, such as the Alternative Investment Funds, on the basis that individual investors, who are not the subject of the Proposed Rules, should not be disadvantaged if they choose to invest through professionally managed collective investment vehicles.

The exception which IFIC has proposed would exempt investment funds that are either structured as “mutual fund trusts” or “mutual fund corporations” for tax purposes that also comply with NI-81-102.¹ This type of exception would apply to most of their members. As noted above, it would not apply to AIMA Canada members in respect of many of their Private Fund products which, where applicable, often operate in parallel to 81-102 Funds. The two types of investment fund offerings represent different investor bases, but not different investment products, either from an investment strategy or regulatory perspective. Another important factor to note is that investment management firms that offer NI 81-102 Funds and/or Private Funds are registered as Investment Fund Managers (IFMs) and must comply with the same rules and regulations as an IFM regardless of the structure of the investment funds they are managing. Accordingly, we would request that the Department provide an exception for investment funds that operate in compliance with the investment requirements of NI-81-102, notwithstanding that NI-81-102 may not apply to the investment fund.

Such an exception would not represent a departure from the approach taken in other jurisdictions in implementing BEPS Action 4. For example, the European Union in Council Directive 2016/1164 (“**ATAD**”) has permitted member states to exclude “financial undertakings” from the scope of the interest limitation rule. This exclusion extends beyond investment funds that would be equivalent to Canadian mutual funds to all other investment funds with a fund manager which is a legal person whose regular business is the management of such funds. Some 16 Member States have explicitly adopted the exclusion permitted by ATAD, and in others it is implicitly observed, given the manner in which the tax regime applicable to funds operates there.

The investment fund industry is a global industry. Canadian investors, particularly in the Private Fund channel, have various Canadian and non-Canadian investment choices available to them. In addition, the Alternative Investment Funds compete with funds outside of Canada for non-Canadian investors.

¹ IFIC Comment letter: [downloads_new.php \(ific.ca\)](https://www.ific.ca/downloads_new.php)

As a result, we would ask that the Department consider the various types of exclusions that other members of the OECD are implementing in their domestic rules implementing BEPS Action 4, and, in particular, consideration be given to the international competitiveness issues that will arise if Canada does not consider similar exclusions.

* * *

We appreciate the opportunity to provide the Department of Finance with our views on this consultation. Please do not hesitate to contact the undersigned with any comments or questions that you might have. We would be pleased to meet with you to discuss our comments and concerns further.

Yours truly,

ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION (CANADA)

Grace Pereira, Borden Ladner Gervais LLP
Sarah Gardiner, Borden Ladner Gervais LLP
Supriya Kapoor, Aurelius GRP
Ron Landry, CIBC Mellon
Paul Hale, AIMA
Hasnat Mahmood, Algonquin Capital
Brian D'Costa, Algonquin Capital
Claire Van Wyk-Allan, AIMA

For more information about AIMA, please visit www.aima.org.