PRIVATE EQUITY
GROWTH CAPITAL
COUNCIL™

SUBMITTED ELECTRONICALLY

April 11, 2014

Mr. Brian Ernewein
General Director
Tax Legislation Division
Tax Policy Branch
Department of Finance
L'Esplanade, East Tower
140 O'Connor Street, 17th Floor
Ottawa, ON K1A 0G5

Re: Proposals on Application of Canada's Tax Treaties to International Investment into Canada

Dear Mr. Ernewein:

This letter is submitted in response to the Department of Finance's (hereinafter, the "Department") request for comments regarding recent tax proposals that would affect the application of Canada's tax policy in the context of international investment into Canada.

The Private Equity Growth Capital Council (the "PEGCC") is an advocacy, communications and research organization and resource center established to develop, analyze and distribute information about the private equity and growth capital investment industry and its contributions to the national and global economy. Established in 2007, and formerly known as the Private Equity Council, the PEGCC is based in Washington, D.C. The members of the PEGCC are the world's leading private equity and growth capital firms ("private equity firms") united by their commitment to growing and strengthening the businesses in which they invest.

Many of the PEGCC's members manage and advise private equity, growth capital and other alternative investment funds (collectively, "funds") that invest in Canada, and have done so for many years. A large number of these private equity firms and funds focus on investing in small and medium-sized enterprises, with the aim of helping those businesses improve their operations and, where appropriate, expand to become global companies. Many of our members are also focused on investing in the energy sector and more generally on helping to develop Canada's significant natural resources.

The PEGCC is deeply concerned that recent proposals by the Department will have the practical effect of discouraging international investment into Canada. The proposals are likely to make it more expensive for our members to invest in Canada, potentially resulting in fewer investments in Canada and thereby imposing a burden on the Canadian resource sector and the

Canadian economy generally. If, despite this acknowledged effect, the Department feels it necessary to proceed with these proposals, we urge the Department to provide a clear regulatory framework with well-defined thresholds for applicability and appropriate safe harbors to create an environment that encourages investment with commercial certainty. Furthermore, we also strongly urge the Department to provide grandfathering to the current regime for existing investments, including disposition of such investments.

The Proposals Will Discourage Investment in Canada

The proposals will effectively increase the overall Canadian tax rate applicable to funds' Canadian investments. In turn, this will make the threshold for such an investment harder to achieve. Increasing taxes and expenses on new inbound investments into Canada runs contrary to the policy goal of encouraging greater inbound investments into Canada. Specifically, if the proposals significantly increase the tax cost of investing in Canada, the funds sponsored by our members may find investments that they otherwise would make become no longer financially viable. If the proposals make investing in Canada less attractive, funds may unfortunately have to invest elsewhere to meet their return objectives. Although the precise impact of these proposals is difficult to quantify, it is indisputable that these measures will negatively influence the funds' ability to invest in Canadian businesses.

Private Equity Firms Desire Appropriate Commercial Certainty that Encourages Greater Investment

If the Department decides to pursue these proposals despite their likely negative impact on Canadian investment, the PEGCC strongly urges the Department to proceed cautiously.

The PEGCC understands that the proposals leave room for interpretation. Therefore, there is uncertainty whether, and in what circumstances, the benefits under an applicable tax treaty will or will not be challenged. For instance, where the proposals would otherwise appear to apply to a particular situation, there is a "relieving provision" that would preserve entitlement to the benefits under an applicable tax treaty to the extent that such entitlement would be reasonable. It will be difficult for Canadian businesses, private equity investors, and other market participants to be able to determine what would be considered reasonable for the purposes of this provision. While market participants may engage tax advisers for their opinions, such opinions are often not free from doubt.

Our members and other international investors seek appropriate commercial certainty that encourages greater investment into Canada. We strongly urge the Department to revise the proposals to reduce uncertainty regarding their application, including defining what investment activity will be covered by the proposals, applicable safe harbors or other relieving measures. In addition, we respectfully request clarification from the Department confirming that the sizable investment activities undertaken by private equity investors in Canada are valuable and will not be impeded by these proposals.

Appropriate Grandfathering Relief is Needed

If the proposals are adopted as is, the PEGCC requests that grandfathering relief should be granted with respect to unrealized gains and other treaty benefits with respect to existing investments. Furthermore, the PEGCC requests that the applicability of the proposals be fully prospective, i.e., the proposals should apply only to future investments.

Grandfathering relief goes to fairness and encompasses two aspects: (a) the degree of grandfathering relief to be granted to unrealized gains with respect to the funds' pre-existing investments in Canada and (b) to the extent applicable, the transition time period within which the funds' structures used for Canadian investments may be modified, if necessary. With respect to the former, the structuring of existing Canadian investments by the funds was based on the state of the law at the time such investments were made, often many years ago. From a commercial perspective, the decision to make such investments was based, in part, on the amount of taxes payable upon the "exit" of such investments in the future. With respect to the latter, the funds (and their advisers) will need to examine and review in full detail all of the issues in connection with modifying existing investment structures to the extent necessary in response to any proposed amendments, including the receipt of the requisite governmental approvals (including those outside of Canada). This examination and review will not be a quick or easy process.

Accordingly, as stated above, the PEGCC requests grandfathering to the current regime for existing investments, including for the disposition of such investments.

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Private equity firms are eager to partner with Canadian businesses to invest in and grow the Canadian economy. We hope that any revisions that the Department undertakes will focus on promoting investment into the country, rather than hampering it.

The PEGCC appreciates the opportunity to express these points, and would be pleased to answer any questions you might have regarding this topic.

Respectfully submitted,

Steve Judge

Steve Judge
President and CEO
Private Equity Growth Capital Council