

TRUST STUDY FACTS AND QUESTIONS

Following are questions and related facts for reference in regard to each witness who appears on the first day of hearings by the Finance Committee in its study of income trusts and their taxation:

- Hon. Jim Flaherty – Minister of Finance (assume not answering questions)
- Senior Department of Finance Personnel – p.2
- Diane Urquhart – Author of Independent Study, Appears as Individual – p.7
- George Kesteven – President, CAIF – p.9
- Brent Fullard – President, CAITI – p.10
- Andrew Teasdale – TAMRI Consultancy – p.13
- Cameron Renkas - Royalty & Income Trust Analyst, BMO Capital Markets – p.15
- William Gleberzon – CARP – p.16
- Dept. of Finance Personnel involved in 2005 Consultation Process – p.17

The questions are provided with consideration of findings of the non-partisan research and education organization, iTrust Institute (Background and references p.20 below). This document is the first of a several offered to assist Committee Members consider key facts and ask questions with the benefit of relevant background on income trusts.

Assumed Terms of Reference

Tax on cash distributions from Canadian income trusts, excluding passive REITs with Canadian holdings, and new rules to inhibit new equity issues by trusts were brought to life in a “Tax Fairness Plan” based on clearly stated and implied objectives:

1. Abolish unfair tax status for income trust equities;
 - a. Reduce tax leakage;
 - b. Eliminate tax-only incentives for existing public equities and private companies from going public as an income trust;
 - c. Preventing growth in and eliminating the public market to protect investors from a “bad”, illegal or fraudulent from of security issue;
2. Support or strengthen Canadian Financial markets;
3. Focus investment on and retain Canadian ownership in productive and growing enterprise, in particular Canadian enterprise.
4. Enact a corporate tax rather than adding a tax burden to that already carried by individual Canadians.

DEPARTMENT OF FINANCE OFFICIALS – FIRST GROUP

TRUST ISSUES

Market integrity and economic development depends on consistent trustworthy rules and integrity of policy including, in particular, public actions that follow public words:

- **How do punitive and surprise rules that take money out of the cash returns for trust owners in 2006 match up with decisions made based on Department data in 2005 that caused the previous Finance Minister to increase credits on dividends?**
- **Given that the Department appears to support the reduction of taxes on payments of dividends to foreign investors, so increasing tax loss, how does the Department justify taxing distributions to Canadians from income trusts?**

Your task has been to gather information and inform policy makers and given taxes have social significance and constitutional implications:

TAX LEAKAGE

The iTrust Institute has gather information regarding the impact of an aging population and tax revenues resulting form deferrals and RRSP investments.

- ✓ According to iTrust Institute review of published CCRA data for 2000 – 2004, CCRA has experienced growing tax revenues from personal income taxes *despite* the role of cash-distributing income trusts in the Canadian market and in investors' portfolios, and despite tax deferrals through use of RRSPs to defer taxes.
- ✓ Study by iTrust Institute of the data in the Department of Finance Annual Reports to the Federal Government shows that income trust revenues grew more than 34% and personal income tax revenues increased 14% faster than corporate income tax revenues over that period despite Department claims that revenues are being lost due to income trusts channeling taxes to individuals who then defer and avoid taxes as if it is a problem.

- **How does recouping an estimated \$1/2 billion a year in taxes from existing tax payers justify instant destruction of \$20 billion from the tax base and a drop in the Canadian dollar?**
- **If this small recouping of taxes through imposition of new taxes is really stopping leakage and adding tax like you promote it as being, then why would the conservative anti-tax group, the Canadian Tax Federation, generally support this new tax?**
- **Given that tax leakage might be related to corporate tax returns, to what extent have corporate taxes been reduced in the last 5 years as a direct result of income trusts?**
- **What proportion of tax losses can be accurately attributed to the fewer than 250 companies that constitute the income trust market compared to the more than 1200 other corporations that constitute the rest of the Canadian equity market?**

CAITI has gathered a range of data from various sources to show there is no tax leakage in Canada with Canadians from trusts:

- **Where is the tax calculations used to justify taxes on trusts?**
- **To what relatively greater extend does the government lose tax to foreign investors and wealthy Canadians structured as off-shore entities compared to the tax losses from income trusts?**
- **What would the Department propose the government do in terms of bank regulation to stop the tax leakage resulting from overseas tax-avoiding structures (notes and swaps deals)?**
- **Given that many formal responses to the 2005 Consultation supported a reduction in Dividend tax rather than the addition of tax to flow-through entities, what was most compelling in the Department's findings that supports the eventual elimination of the entire \$220 billion income trust market and tax base?**
- **With punitive tax rules on the Canadian public owners of trusts, how does the privatization of productive income trusts subsequent to tax news, by sophisticated foreign investors and Canadians holding companies through offshore accounts, really prevent tax leakage?**

PLANNING AND ADMINISTRATION OF THIS POLICY IN THE SERVICE OF THE PUBLIC

- **Why were the findings from the 2005 Consultation not fully published?**
- **With forethought about taxes afforded the Department in preparation to the 2005 Consultation and following it in 2006, why were there no plans as part of the Ministers Tax Fairness "Plan"?**
- **To what extent did the Department forewarn the Minister of Finance about the catastrophic consequences of the new tax rules and provide an appropriately informative context within which to understand the implications of these taxes within the intricate Canadian tax system?**
- **Would you agree that the Canadian people really don't need the burden of case-by-case administration of tax and financings concerns for 240 companies identified by the fact they pay cash returns to investors so much as we need a complete overhaul of the tax system?**

TAX FAIRNESS

Canadian tax law and enactment procedure is intended to protect the interests of the many against the exclusive and inconsistent desires of the few.

- **Why can a person in Frankfurt or Geneva with a lot of money get cash yield from Canadian income trusts and dividend-paying companies without tax whereas Moms and Dads who are struggling to save for or who are living in retirement in Canada have to pay the tax on distributions being imposed on trusts by the Conservatives?**

- **How can a tax on distributions be represented by the Conservative Minister as if it is a tax on corporations and “fair” when there is really little impact on company managers but Canadian tax payers end up with reduced returns?**

One test of fairness relates to potential consistency in administration. The new rules for income trusts have, in effect, had to make allowances for income trusts to submit requests for special consideration every time they want to issue new units or equity:

- **Would you agree that the new tax and equity-restricting rules for trust managers are unfair and inequitable in so far as Department and civil service personnel are called upon to address the financing needs of special interests on a case-by-case basis instead of simply administering a consistent and workable set of rules?**
- **Is there anything about this need for special allowances that speaks to financial and economic efficiency rather than forced administrative inefficiency where Department administrators are forced to determine policy on the basis of special interests?**
- **How is a patchwork set of follow-on allowances for special interests fair?**

PRODUCTIVITY AND GROWTH

Economic and social development depends on participation by Canadians in markets.

And to serve the government and Canadians by informing tax policy with economic growth objectives, the Department must be aware of the relative productivity and real growth rate for companies structured as trusts compared to others.

But the Department seems to support the Minister of Finance’s claim that income trusts are, somehow, a persistent drag on the economy:

- **How does elimination of the most popular segment of the TSX with the greatest average total returns to investors help Canadians & our economy?**
- **How do returns to investors in the major banks compare to returns to investors for income trusts;**
- **What are the net real earnings per employee in companies that offer trust securities compared to other public companies?**
- **Which half dozen trusts demonstrate return on assets, return on capital and internal growth rates more than 5X the rate of inflation and growth in GDP and what harm are these companies to the economy, particularly given that they are paying cash returns fast and frequently to investors?**
- **If these companies have little need or desire to spend money on legal costs to convert trust units back into common equities when new taxes come into place, then what good has the policy done?**

✓ According to the TrustInvestor.com Report, more than three dozen companies with flow-through issues in December 2006 offered investors Return on Capital in excess of 15% per annum (not to be confused with return *of* capital).

- ✓ Preliminary findings from a study being done by the iTrust Institute shows that profitable companies with trust issues and strong balance sheets have little motivation and prefer not to reconvert from trust to equities.

Department personnel are hired to serve the people of Canada from one government to the next. And the Department has the benefit of a sustained and long view of the market and economy:

- **To what extent do the pending taxes force public investors to give up decent returns earned from companies with good managers so that private pension funds can benefit from buying solid assets at a discount?**
- **Is the tax really not like a bullying tactic that forces the lunch bag out of retiree's hands in the proverbial playground so that other less vulnerable individuals and pension funds are given opportunity to grab decent assets and future returns?**
- **Does anyone in the department support the false notion that conversion of one company to a trust in a sector causes all other companies to convert when key differences in managerial interests, financial situation and ownership or control differences are considered (e.g. at the point Telus and BCE considered converting into a trust, Manitoba Telecom had previously decided not to do so)? If so then why?**
- **Why was the recent BMO Nesbitt Burns request for information about department calculations disallowed with blackened-out data so that Canadians are blind to our civil servants' work on such important issues as tax principles and implications?**
- **Have the tax rules to eliminate public equity in favor private equity and public debt not leveraged and harmed both the Canadian market and economies in a dangerous way, just at the time the government is calling for debt reductions?**
- **Would the Department agree that, quite apart from trust taxes, there needs to be a comprehensive overhaul of the Canadian tax system?**

NEED TO PROTECT CANADIANS FROM GENERICALLY BAD FORMS OF SECURITIES

Specific people within the Department were involved in the development of rules in Australia that attempted to eliminate income trusts and the overseas experience is held up as if a cautionary tail with guidance for Canada.

Such civil servants have personally gained status with the on-going focus and ultimate introduction of taxes and rules to eliminate income trusts. So Canadians would like to see the face of someone if only to congratulate him as the person who has worked the hardest behind closed doors and has benefited most in status from the suffering of millions.

- **Who is the key person(s) with international trust experience?**
- **Can the foreign trust expert tell us why there are so many remaining trusts in Australia that the government continues to struggle (as of late 2006) with policy refinements?**

- **If UK stock exchanges have just made it a public listing condition for REITs that they are widely-held, why did the Canadian Department of Finance push tax rules onto trusts at a time that Canadian widely-held companies were considering a conversion into an income trust?**

See next page for questions related to next witness...

DIANE URQUHART, AUTHOR OF HEAD'S YOU WIN...TAILS I LOSE STUDY

NEED TO PROTECT CANADIANS FROM GENERICALLY BAD FORMS OF SECURITIES

You've undertaken a major study, apparently in the interest of protecting investors from bad investments. Given your yield-oriented and selective methodology for assessing trusts and their quality as investments for potential investors:

- **Can you provide a comparative perspective on public equities in Canada in terms of the number that have gone out of business relative to the market?**
- **What would you say the median total annualized return is for income trusts considering capital gains? And how much of this reflects real net earnings?**
- **In what way did your study reflect the broad healthy reality of the income trust market and the explicit appeal of these securities in a measured way?**

Trusts are different than most public equities because trusts provide investors information about cash flows by providing a series of cash distributions along with earnings reports and other financing activities obvious to investors.

- **Is it not true that it is generally more difficult for investors to know the health of a public company if it fails to pay tangible returns to investors and simply uses earnings-oriented accounting methods that can, even within GAAP, be manipulated by managers?**
- **If earnings information is more useful to investors than distribution information, then what is your concern given the earnings health of income trusts?**

- ✓ As of the end of 2006, 88% of trusts making financial reports (so more than a year old) had a positive price to earnings factor (i.e. had positive earnings).
- ✓ The Report from TrustInvestor.com shows that between Q3 2000 and November 30th 2006 (following the 13% average price-down due to taxes), the annualized return for income trusts and REITs was 36% of which more than 25% was constituted by unit price gain and more than 9% comes from cash distributions;
- ✓ The iTrust Institute reported that during 2006, there were more than three times as many distribution increases as decreases by income trusts. There is little difference in statistics when REITs are excluded. He 2006 numbers are little different than 2005.
- ✓ According to iTrust Institute, approximately three quarters of income trusts and flow-through entities have not had a reduction in distribution in the past two years and, furthermore, pay cash returns to investors that are less than operating cash from continuing operations;

Given the practical implications of cash distributions and the transparency they provide to investors, most of the trusts that collapsed did so in the first 18 months following IPO. No such transparency or performance pressure is placed on non-dividend paying companies (i.e. a vast majority of Canadian equities.)

- **Is it not true that all new issues are risky for investors during an IPO given the lack of solid information from a company that uses pro-forma statements instead of actual financial reports to attract investor money?**

- ✓ Dow Jones reported that a survey of fund managers released by Merrill Lynch & Co. found that, "The proportion of fund managers wanting to see cash returned to shareholders reached a record high of 53% this month, up from 44% in December 2006." The Implication: Equities structured for frequent returns, like those from Canadian Income Trusts, meet the needs and demands of global investors. The Merrill Lynch Survey for January 2007 found that:

Investors increasingly want corporations to prioritize their cash flow to return cash to shareholders;

Returns to shareholders can come in the form of share buybacks, dividends or cash acquisitions;

A majority of investors believe cash returns should take priority over capital spending, debt repayment and topping up pension funds.

- ✓ The iTrust Institute has noted that based on studies by BMO Nesbitt Burns and others, the high frequency of cash distributions unique to Canadian income trusts generally increases returns relative to market-related risk for investors as measured by the Sharpe Ratio.

See next page for questions related to next witness...

GEORGE KESTEVEN, PRESIDENT, CAIF

TAX FAIRNESS

Tax on distributions intermediates the legal and financial relationship between trust manager and owner.

The government did not want taxes to impact business consideration of company structure and yet, the pending taxes have been supplemented with additional rules in order to ensure that taxes have an explicit negative impact on business considerations.

- **What impact, if any, do taxes really have on healthy operating companies compared to investors who own units?**
- **How many trusts would fall into the healthy operating company category even if measured by their costly membership in your organization?**
- **What is the working or practical difference and reality of new taxes for trusts with units issued in the American market along with their Canadian issue, compared to a TSX-only issuer?**

NEED TO PROTECT CANADIANS FROM GENERICALLY BAD FORMS OF SECURITIES

Trust critics and some investor advocates have called for new and improved standards on communication or information about the nature of distributable cash.

- **Why is distributable cash still a concern to investors in regard to financial reporting given that these companies must, otherwise and in any case, adhere to market standards similar to other equities?**
- **Do you feel that trusts are afforded some privilege to avoid reporting in a way that other companies don't, and that privilege is justified.**
- **Between all of the companies that are members of your organization, what is the total tax paid at a corporate level upon issuance of income trust units?**

STRENGTHENING CAPITAL MARKETS

CAIF represents managers and some of these include insiders (owners).

- **To what extent do your members represent companies that are already controlled by private interests (e.g. majority owners who sold upon IPO)?**
- **Do taxes and the discounting of unit prices not force a lot of new opportunity into the market in terms of attracting the attention of private and foreign interests including leveraged buyout specialist? And is this not good for the market?**

BRENT FULLARD, PRESIDENT OF RECENTLY FORMED LOBBY, CAITI

GROWTH AND PRODUCTIVITY

You head up, with respect as a one-man show, an upstart advocacy group. And you come from the world of investment banking. Retail investors may well be pleased that CAITI has taken an investor advocacy position. It was formed with financing from major fund managers in whose interest the trust sector is great.

You have funded the start-up of CAITI with money that has, in effect, come from investors who would have liked the majority of your founding members' advocacy and support before now.

- **Over the course of the last 20 years of the trust market, to what extent has your funding members or fund managers and brokers like them, profited from new trust issues and taken profit off the backs of small investors when the banks' brokerage arms were pushing companies to go public as income trusts?**

- ✓ According to presentations made in Q3 2006 by the TSX business development group featuring trust executives talking about the risks and challenges to them of operating as a trust:

In 2005 when the Liberal government threatened to tax trusts, many retail investors sold trusts only to have fund managers buy them up at discount prices.

The majority of trust owners in 2006 became managers of large funds including foreign hedge funds.

- ✓ Following October news of taxes:

The iTrustInvestor Report shows that the median price drop for Canadian income trusts and REITs;

The Canadian dollar dropped against foreign currencies as foreign investors temporarily fled owning TSX trust issues

TAX FAIRNESS

It is highly likely that news of taxes in October 2006 forced even more small investors were forced or scared out of the market.

Can you tell us:

- **If the period for new taxes on existing trusts was lengthened from 4 to 10 years, would there be a jump in market values?**
- **If there is a price jump as the tax holiday is extended from 4 to 10 years, exactly how much profit and "outperformance" would CAITI's fund manager-members expect to make for themselves, their foreign and Canadian investors?**

TAX LEAKAGE

CAITI has a range of data to show there is no tax leakage in Canada with Canadians from trusts:

- **What can the government do in terms of bank regulation or what would your group's founding members propose doing to stop the tax leakage resulting from overseas tax-avoiding structures (notes and swaps)?**
- **Why can a person in Frankfurt or Geneva with a lot of money get cash yield from Canadian income trusts and dividend-paying companies without tax whereas Moms and Dads who are struggling to save for or who are living in retirement in Canada have to pay the tax on distributions being imposed on trusts by the Conservatives?**
- **Would you and your members agree that there needs to be a comprehensive overhaul of the Canadian tax system?**

NEED TO PROTECT CANADIANS FROM GENERICALLY BAD FORMS OF SECURITIES

Some say that new equity issues, of which income trusts were dominant up until last year, are promoted to retail investors when the deal is not good for your large fund managers who have the power to pre-buy the cream of the new crop.

- ✓ Studies done as part of the TrustInvestor Report in 2003-2006 showed that on average, large fund managers made many times the returns on the funds they managed as did their client investors who put money in the income trust market through such large funds.
 - ✓ The TrustInvestor.com Report shows that between Q3 2000 and November 30th 2006 (following the 13% average price-down due to taxes), the annualized return for income trusts and REITs was 36%;
- The same total return measure for income-oriented funds of funds (e.g. Brompton, Sentry Select, Scotia Managed Companies) was less than one third of that general market return rate, despite funds having professional management.

Despite the growth in number of new issues and the relative growth of the market due, in no small way, to the fundamental value of the underlying companies:

- **Why do managers of diversified funds profit more from income trust and equity successes than the managers' clients?**
- **Will his answer change if high taxes prohibit new income trusts issues?**
- **Is it not true that taxes on distributions put greatest pressure for performance and good management on those who pay themselves first from distributions, i.e. fund managers?**
- **If we think about who gains most from rules that destroy the trust market, is it not true that the natural hedge against the risks from small and medium sized companies with new income trust issues that pay relatively high yield was ownership of long-standing low-dividend-paying and widely-held banks, financial services firms and telecommunication stocks?**

Like the Bank of Canada, Ms. Urquhart has published a report that leads to the conclusion that there are problems in the fund and new equity sales process.

The Bank of Canada report on public Canadian markets observed general problems similar to those on which Ms. Urquhart focused in her trust sector report. The Bank of Canada didn't, however, call for the elimination of all equities because the sales process was bad. Ms. Urquhart, on the other hand called for death of the message due to bad communications rather than calling for improvement in the faulty medium that lived before and will live on beyond the trust market.

And CAITI came to life with income trusts but represents interests with holdings that were alive before these hearings and that will live outside just the trust market.

- **What is your group going to do to advocate for the kind of improved sales process, market regulation and enforcement, called for by Ms. Urquhart and Bank of Canada reports?**

See next page for questions related to next witness...

ANDREW TEASDALE, TAMRIS CONSULTANCY

NEED TO PROTECT CANADIANS FROM GENERICALLY BAD FORMS OF SECURITIES

You have concerns about the financials for income trusts and reporting considerations, being quotes as suggesting that the Department of Finance "had no choice" but to clamp down on income trusts:

- **What are the common characteristics of income trusts about which you have most concern and how do they differ from common equities?**
- **To what extent does the scope of your work do an appropriate comparison to assess underlying quality including a comparison of the 250 or so trust management teams versus the other 1300 companies on the Toronto Stock Exchange?**
- **Given that your consultancy web site talks a lot about structuring finance and investment for private clients as well as tax avoidance plans, what are your findings in regard to the appropriate structure of public companies as trusts compared to the kinds of plans you put in place to structure finances and your own services for private high wealth individuals?**

Most trusts that collapsed did so in the first 18 months following IPO and some new issues, whether trust or equity, are set up through acquisition-based accounting.

- **Would you agree that all new issues are most risky for investors during an IPO given the lack of solid information from a company that uses pro-forma statements instead of actual financial reports to attract investor money?**
- **Can you explain how your findings and conclusions match up at all with the idea that, for just one example, the Reichmann family managed a blue chip property owner and service provider, Olympia & York OYR.UN, in a stable and profitable way and then had the company bought out by larger companies with the involvement of pension funds?**
- **Because your promotional communications appear to advocate for enhanced regulation of financial service providers and markets in general, can you explain how much improvement you'd expect to see over your own negative conclusions about income trusts if your concerns were appropriately and more broadly address along with your concerns about the equity market in general?**
- **If your advice was followed in the generic spirit in which it is expressed, then would you similarly caution Canadian investors about the pending buyout of income trusts by pension funds?**

GROWTH AND PRODUCTIVITY

Trusts are different than most public equities because trusts provide investors information about cash flows by providing a series of cash distributions along with earnings reports and other financing activities obvious to investors.

- ✓ Again: According to iTrust Institute, approximately three quarters of income trusts and flow-through entities have not had a reduction in distribution in the past two years and, furthermore, pay cash returns to investors that are less than operating cash from continuing operations;
- ✓ As of the end of 2006, 88% of trusts making financial reports (so more than a year old) had a positive price to earnings factor (i.e. had positive earnings).

- **To what extent do the pending taxes force public investors to give up decent returns from good managers so that private pension funds can benefit from buying solid assets at a discount?**
- **Is it not true that it is generally more difficult for investors to know the health of a public company and obtain returns if it fails to pay tangible returns to investors and simply uses earnings-oriented accounting methods that can, even within GAAP, be manipulated by managers?**
- **If earnings information is more useful to investors than distribution information that you have difficulty comparing to other equities, then what is your concern given the actual earnings health of income trusts?**
- **Do cash-paying income trusts really force greater risk on an investor compared to a growth-oriented company with no cash flows?**

See next page for Institute Background, terms of and source references ...

CAMERON RENKAS – BMO CAPITAL MARKETS ANALYST

TAX FAIRNESS

Tax on distributions intermediates the legal and financial relationship between trust manager and owner.

The government did not want taxes to impact business consideration of company structure and yet, the pending taxes have been supplemented with additional rules in order to ensure that taxes have an explicit negative impact on business considerations.

- **What impact, if any, do taxes really have on healthy operating companies compared to investors who own units?**
- **How many trusts would fall into the healthy operating company category even if measured by their costly membership in your organization?**
- **What is the working or practical difference and reality of new taxes for trusts with units issued in the American market along with their Canadian issue, compared to a TSX-only issuer?**

STRENGTHENING CAPITAL MARKETS

Some say that the public market is, with the loss of income trusts becoming a private equity and debt financing market:

- **Is the pending transformation of the market a good or bad consequence for markets and your firm?**
- **Given the historic nature of the income trust market as the domain of retail investors, why does BMO Capital Markets care about the continued existence of the income trust market?**
- **How much does a company like BMO depend on new trust issues for the bread and butter of its investment banking and capital markets revenue?**
- **To what extent do income trusts today work in the private control and interest of insiders?**
- **Do taxes and the discounting of unit prices not force a lot of new opportunity into the market in terms of attracting the attention of private and foreign interests including leveraged buyout specialist? And is this not good for the market?**

BILL GLEBERZON, CARP

NEED TO PROTECT CANADIANS FROM GENERICALLY BAD FORMS OF SECURITIES

You may share concerns about the financials for income trusts and reporting considerations:

- **What are the common characteristics of income trusts about which you have most concern and how do they differ from common equities?**

Most trusts that collapsed did so in the first 18 months following IPO and some new issues, whether trust or equity, are set up through acquisition-based accounting.

- **Is it not true that all new issues are most risky for investors during an IPO given the lack of solid information from a company that uses pro-forma statements instead of actual financial reports to attract investor money?**
- **Would your members benefit most from broad-based improvements in equity sales standards, regulations and enforcement?**

GROWTH AND PRODUCTIVITY

Trusts are different than most public equities because trusts provide investors information about cash flows by providing a series of cash distributions along with earnings reports and other financing activities obvious to investors.

- **How do cash-paying income trusts force greater risk on an investor compared to a growth-oriented company with no cash flows?**
- **Is it generally more difficult for investors to know the health of a public company and obtain returns if it fails to pay tangible returns to investors and simply uses earnings-oriented accounting methods that can, even within GAAP, be manipulated by managers?**
- **Do you share concerns that pending taxes force public investors to give up decent returns from good managers so that private pension funds can benefit from buying solid assets at a discount?**

See next page for questions related to next witness...

DEPARTMENT OF FINANCE OFFICIALS –SECOND GROUP

TAX LEAKAGE

- **Where are the statistics that show there is a substantial or even a tangible problem with tax losses over time from income trusts?**

- ✓ According to iTrust Institute review of published CCRA data for 2000 – 2004, CCRA has experienced growing tax revenues from personal income taxes *despite* the role of cash-distributing income trusts in the Canadian market and in investors' portfolios, and despite tax deferrals through use of RRSPs to defer taxes.
- ✓ Study by iTrust Institute of the data in the Department of Finance Annual Reports to the Federal Government shows that income trust revenues grew more than 34% and personal income tax revenues increased 14% faster than corporate income tax revenues over that period despite Department claims that revenues are being lost due to income trusts channeling taxes to individuals who then defer and avoid taxes as if it is a problem.

NEED TO PROTECT CANADIANS FROM GENERICALLY BAD FORMS OF SECURITIES

Specific people within the Department were involved in the development of rules in Australia that attempted to eliminate income trusts and the overseas experience is held up as if a cautionary tale with guidance for Canada.

Such civil servants have personally gained status with the on-going focus and ultimate introduction of taxes and rules to eliminate income trusts. So Canadians would like to see the face of someone if only to congratulate him as the person who has worked the hardest behind closed doors and has benefited most in status from the suffering of millions.

- **Who is the key person(s) with international trust experience?**
- **Can the foreign trust expert tell us why there are so many remaining trusts in Australia that the government continues to struggle (as of late 2006) with policy refinements?**
- **If UK stock exchanges have just made it a public listing condition for REITs that they are widely-held, why did the Canadian Department of Finance push tax rules onto trusts at a time that Canadian widely-held companies were considering a conversion into an income trust?**

What would the Department of Finance experts on tax be able to offer as a perspective in terms of the relationship between tax, cash returns, good governance and real growth for companies including trusts?

PLANNING AND ADMINISTRATION OF THIS POLICY IN THE SERVICE OF THE PUBLIC

- **Given that the original Public Consultation document for 2005 was reportedly more than 500 pages with due consideration of the positive benefits of income trusts, would you say that the 50-page final document that described income trusts as causing tax leakage could fairly represent such a complicated situation?**
- **Why were the findings from the 2005 Consultation not fully published?**
- **With forethought about taxes afforded the Department in preparation to the 2005 Consultation and following it in 2006, why were there no plans as part of the Ministers Tax Fairness "Plan"?**
- **Would you agree that the Canadian people really don't need the burden of case-by-case administration of tax and financings concerns for 240 companies identified by the fact they pay cash returns to investors so much as we need a complete overhaul of the tax system?**
- **To what extent did the Department forewarn the Minister of Finance about the catastrophic consequences of the new tax rules and provide an appropriately informative context within which to understand the implications of these taxes within the intricate Canadian tax system?**

TAX FAIRNESS

Canadian tax law and enactment procedure is intended to protect the interests of the many against the exclusive and inconsistent desires of the few.

- **Why can a person in Frankfurt or Geneva with a lot of money get cash yield from Canadian income trusts and dividend-paying companies without tax whereas Moms and Dads who are struggling to save for or who are living in retirement in Canada have to pay the tax on distributions being imposed on trusts by the Conservatives?**
- **How can a tax on distributions be represented by the Conservative Minister as if it is a tax on corporations and "fair" when there is really little impact on company managers but Canadian tax payers end up with reduced returns?**

Income trusts pay frequent cash returns that are world-leading in the way they increase the velocity of money, one element in economic growth. Distribution taxes destroy the extraordinary economic multiplier effect that is unique to flow through entities.

- **How can you call a policy fair if it discriminates by increasing taxes only on distributions to those who already pay taxes and doesn't affect corporations other than adding on them responsibility to collect taxes before paying due returns to investors?**

One test of fairness relates to potential consistency in administration. The new rules for income trusts have, in effect, had to make allowances for income trusts to submit requests for special consideration every time they want to issue new units or equity:

- **Would you agree that the new tax and equity-restricting rules for trust managers are unfair and inequitable in so far as Department and civil service personnel are called upon to address the financing needs of special interests on a case-by-case basis instead of simply administering a consistent and workable set of rules?**
- **Is there anything about this need for special allowances that speaks to financial and economic efficiency rather than forced administrative inefficiency where Department administrators are forced to determine policy on the basis of special interests?**
- **How is a patchwork set of follow-on allowances for special interests fair?**

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BACKGROUND ON INSTITUTE & QUESTIONS

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As stated above, tax on cash distributions from Canadian income trusts excluding passive REITs with Canadian holdings, and new rules to inhibit new equity issues by trusts were brought to life in a "Tax Fairness Plan" based on stated and implied goals:

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 - a. Reduce tax leakage;
 - b. Eliminate tax-only incentives for existing public equities and private companies from going public as an income trust;
 - c. Preventing growth in and eliminating the public market to protect investors from a "bad", illegal or fraudulent form of security issue;
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7. Focus investment on and retain Canadian ownership in productive and growing enterprise, in particular Canadian enterprise.
8. Enact a corporate tax rather than adding a tax burden to that already carried by individual Canadians.

The Institute embraces the objectives of the Committee to understand these issues. We aim to inform the Committee so it can achieve a beneficial outcome to its goals and processes, both during and following pre-hearings.

Furthermore, we assume that the Finance Committee, members of Parliament and government administrators can see beyond daily politics to address questions for all Canadians in a meaningful way. Despite party pressures, we assume that the peoples' representatives and civil servants seek factual context within which findings need to be considered, to ensure that facts are not obscured in favor of political preference.

Focus on key financial considerations in the context of comprehensive and factual context is necessary for the Finance Committee to ensure that its time serves Parliament and Canadian interests. And in this regard, the Institute offers unique and useful perspective.

Unique Resource for Objective Data and Capacity to Inform Committee

The Institute has been studying income trusts and their market in a broad context as a non-partisan organization for more than a year now including both collection of research published by a full range of experts and through our own original studies.

The organization is a research and education organization focused on objective perspective to address questions of value and to consider notions of trust with findings of potential interest and consequence for all Canadians (refer to Background, below).

During 2006, the Institute activated its web site as a system to gather information and studies related to the income trust market and securities, including views on tax

considerations, from income trust executives directly as well as through review of the results from the 2005 Consultation that were published by the Department of Finance. It is notable that the Consultation was not completed nor was all the submissions published.

Towards its research efforts, the voluntary President, Ms. Leslie Hayman both lent financing towards set-up of the organization and provided access to a comprehensive database of fundamental business measures and market pricing data that she had established for use in reporting to subscribers of her iTrustReport.

A key Institute resource is, of course, its participants who are inquisitive members of the public with public interests in mind. We cared to ask if income trust securities were trustworthy investments, wanting to understand if they are simply a tax avoidance or Ponzi scheme as proposed by a few analysts.

Based on Comprehensive and Consistent Data and Systematic Analysis

The database provided to the Institute by Leslie Hayman tracks every one of the approximately 250 trusts and REITs as well as the income-oriented fund of funds listed on the Toronto Stock Exchange. Key elements of the comprehensive data set and analytical system are as follows:

- ✓ **Trust Market Guide and Index** of total annual returns including distributions and price data, details on the break-down of distributions, business-specific data and unit prices on an equal weight basis by trust and sector:
 1. Oil and gas producers:
 - a. Oil oriented;
 - b. Gas-focused;
 - c. Output mix
 2. Energy-related trusts:
 - a. Upstream energy services;
 - b. Mid-stream pipelines & processors;
 - c. Down-stream distributors and retailers;
 3. Real Estate Investment Companies:
 - a. Residential REITS including Seniors Facilities;
 - b. Office Property and Commercial Property REITs
 - c. Hotel and Temporary Lodging Providers;
 4. Food-related Business Trusts:
 - a. Producers;
 - b. Distributors and Retailers
 - c. Restaurants;
 5. Business trusts:
 - a. Resource Producers
 - b. Service Providers
 - c. Product Manufacturers;
 6. Managed funds of funds:

- ✓ **Patent-pending Analytical System** to reveal underlying values on an objective and consistent basis for a broad range of securities including an equivalency system to consider income trusts and other flow-through entities along with equities.

Canadian Tax Orientation

As Canadians and investors of all political stripes, Institute members and advisors see need to understand how business returns to public investors align with the productive capabilities and operating practices of the enterprises they own, and if those enterprises are structured and managed in such a way that growth is possible and pays returns aligned with surrounding interests in growing the Canadian economy.

The Institute makes no assumption about the need for or appropriate use of tax revenues, only that taxes relate to the rights and freedoms of citizens and play a role in economic and social growth including rules with constitutional implications so must be applied in a decisive manner for clear purposes and applied on a consistent/fair basis.

About the Institute In General

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Objective and Inclusive

The iTrust Institute is an independent, non-partisan organization that provides research and education services to members and others.

The Institute was born in early 2006 from the interests of members in TrustInvestor, a leading independent information resource for more than 3993 members including investors, advisors, brokers, bankers, traders, financial professionals, market makers & issuers. That number now approaches 5000 as Liberal tax policy and Conservative election promises helped popularize income trusts in early 2005.

The iTrust Institute was incorporated as a federal not-for-profit organization as a means to address the information needs of a public and government divided during the Department of Finance Consultation of 2005. At that time, we assembled a Round Table to address questions still unanswered today. Many sensed growing need for specialized education and objective information in regard to the securities and their market.

Specifically, the Institute was formed to ask the question and explore the extent to which "Equities managed and structured like income trusts to flow net gains through to owners by way of frequent and regular distributions of cash can offer superior rates of overall return, support market growth, enhance economic productivity and contribute to growth of the tax base with less risk than other equities given honest managers and a fully competitive market supported by open communications."

Founding Directors and Advisors

Three founding directors included a retired executive and senior, a semi-retired lawyer and the President, Ms. Leslie Hayman.

Ms. Hayman was elected President to bring the Institute her expertise as the creator, publisher and editor of the long-running TrustInvstor.com as well as the subscription service all the iTrustReport. These services are both free and paid subscription services, respectively, geared to helping do-it-yourself investors and financial service professionals with useful information about income trusts and funds, their risks, returns and investment strategies in the context of the Canadian market.

She has a business degree from the Ivey School of Business at Western University in London Ontario. Leslie is an active associate member of both of the CFA Society of Toronto as well as Advocis, the Financial Advisors' Association of Canada, for whom she had the privilege of writing the December 2006 review of the trust market, coinciding with the announcement of new taxes by the Minister of Finance (copy attached).

In addition to the two other directors, Ms. Hayman calls upon and responds to a range of advisors who offer diverse and significant perspective on trust related issues, the markets and broader considerations on a formal and periodic informal basis. Advisors have included government administrators, government policy advisors, senior executives with income trusts, professional fund managers, company executives, corporate and commercial lawyers, accountants and, as important, individual investors with good questions and ideas.

In the Name of Trust

The Institute obtained the name iTrust from Ms. Hayman for use by the Institute, not to advocate or lobby for income trusts. The iTrust name is a trademark used with permission by the Institute.

Rather than promoting income trusts per se, founding members saw need and potential to test the real benefits and risks for investors and Canadians to place their trust in public financial securities in general. We saw further opportunity to obtain great insight by focusing on legal structures and working realities and performance of flow-through securities and trust structures in particular.

With surprise imposition of new taxes and rules on flow-through entities in 2006, the Canadian government increased the urgency for good information in order to ensure policy has positive impact on Canadians and our economy, today and tomorrow. With reversal of election promises, the Conservative government also provided a fertile environment for the Institute to consider broader notions, requirements, practices as well as consequences of trust in regard to social and economic development.