Canadian Life & Health
Insurance Association

Association canadienne des
compagnies d'assurances
de personnes

Stephen Frank
President and CEO

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Mr. Tim Schuurman, Associate Deputy Minister
Ministry of Finance
Frost Bldg 7th Floor,
7 Queen's Park Cres.
Toronto, Ontario M7Z 1Y7

Dear Mr. Schuurman:

RE: Considerations for Ontario's Tax and Revenue Collection System Review

The Canadian Life and Health Insurance Association Inc. (CLHIA) is proactively reaching out to you to provide its comments to the Ontario Ministry of Finance (Ministry) on improving the administrative effectiveness and enhancing legislative clarity of the Ontario's tax and revenue collections system. We would like to engage the Ministry in discussions aimed at reducing the tax burden on the life and health insurance sector through premium based taxes.

In addition to corporate income tax based on profits, Ontario also imposes two types of premium based taxes, a 2% premium tax on life and health insurance premiums as well as an 8% Ontario retail sales tax (ORST) on group insurance premiums. These apply to both insured and uninsured plans contributions, raising over $0.7 billion premium taxes and $1.9 billion in ORST annually for Ontario.

As a more immediate matter, we believe there is an opportunity to streamline and enhance several aspects of the ORST administration as part of the Ontario Tax Review process. Our members and plan sponsors face significant challenges in administering ORST since its inception in 1993. We request the Ministry's review and consideration of this matter to clarify and ensure a more efficient and effective administration of ORST on group insurance plans going forward.

We trust that the Ministry will be open to engaging in discussions about the concerns outlined below and will lead the way in implementing the necessary modifications to ensure both efficiency and consistency in the administration of RST on group insurance plans in the province.

Insured Plans and ORST

Background:
In the case of insured plans, ORST is a tax that is applied at the point of sale/consumption, and it is payable in full upfront on the premiums paid to the insurer by plan sponsors without regard to actual insurance services delivered to policyholders which can only be determined at the end of the coverage period. Hence, ORST paid can be in excess of services delivered by the insurer. The practice for any excess premiums not refunded is to credit the plan sponsors account with the insurer, known as the unrestricted deposit account (UDA). The UDA bears interest at market rates and can be withdrawn by the plan sponsor at any time or be used to settle future premiums at their discretion.

The Issue:
ORST paid on these excess premiums is not refunded or credited until such time the amounts are paid back to the plan sponsor, even though the UDA is not being used to provide any current insurance coverage and the amounts are vested indefeasibly with the plan sponsor immediately.

Since benefits and claims/expenses cannot be estimated to a high degree of accuracy to avoid any excesses or shortfalls, there is invariably a disparity in terms of ORST paid and services consumed for the period/year. Given the uncertainty and volatility over the level of claims, premiums include contingencies which can give rise to material mismatch between the amount of premiums received and the total of settled claims and expenses for the period. Consequently, this leads to overpayment of ORST and the need for a refund mechanism. This process does not work effectively under the current ORST administration process and is cumbersome and inefficient as explained below.

Administratively, Ontario has taken the position not to allow an offset against ORST obligations for excess premium amounts credited to the UDA. Current process allows for the ORST to be refunded only when these sums are repaid to the plan sponsor.

This is despite the fact that even when a plan sponsor of a Group Benefit policy allows the excess premiums to remain with the insurer in an UDA, where the beneficial and contractual rights to the UDA are with the plan sponsor. From an insurer's perspective, the deposit of excess premium to the UDA constitutes payment by the insurer to the plan sponsor as the insurance company has no right to the use of such funds without the express authority of the plan sponsor. The UDA amounts are outside of the insured policy and legally distinct from funds held within a policy that are used to service future claims and expenses related to the policy.

It is also worth noting, from a practical perspective the plan sponsor finds it prudent to keep such excess premiums with the insurer to fulfill a funding shortfall in a subsequent year and avoid administering return of premiums to plan certificate holders. The Ministry's current practice of not permitting ORST refunds for excess premiums does not appear to recognize the legal and practical matters outlined above.

While the four-year time limit for withdrawing funds from a UDA is intended to provide relief, it does not align with the plan sponsors timing and management of the plan costs, etc. Further, it puts an unfair burden on the insurers to track excess premiums/UDA balances by year and by client.

Further, should a plan sponsor allocate funds from a UDA to pay premiums for the policy, the premium would be subject to ORST again, which leads to double taxation as ORST on excess premiums in an UDA was not refunded or credited.

Recommendation:
Given the practical challenges and double taxation concerns, the CLHIA recommends that the Ministry consider amending relevant legislation and administrative practices to promote fairness and efficiency in the application and administration of ORST on group benefit plans.

Changes should be instituted to ensure the final ORST for a given period/year be computed and settled on the net premiums for the period after accounting for changes in UDA amounts by plan sponsor. This would be consistent to how premium taxes are administered in Ontario thereby making the system simpler for everyone involved including Ministry of Finance auditors.

We acknowledge that these changes may have an initial negative impact on the government's cash flow. To minimize this effect, we propose that any retrospective payments due under the revised regulations be spread over a predetermined time period.

Uninsured Plans (Funded vs. Unfunded) and ORST

Background:
Currently, there are two types of uninsured ASO benefit plans stipulated in the Retail Sales Tax Act (RSTA): funded and unfunded. Since 2007 plan sponsors have been required to designate uninsured plans into one of these two categories. Historically, the timing of the applicability of ORST to these plans has been contingent on the funding status of the plan.

The definition of Funded plans requires ORST be applied on the advance/contributions. A plan is considered to be funded when the contributions paid into a fund out of which benefits will be paid exceeds the amounts required for the payment of benefits foreseeable and payable within 30 days. Unfunded plans are billed in arrears and ORST is only applied on claims and expenses as they are paid out of the plan.

The Issue:
In practice, funding status for ORST purposes could vary monthly, and typically could not be determined with certainty in advance requiring careful tracking. This creates a burden for the plan sponsor to ensure compliance with ORST rules.

Additional complications can arise on funded plans, since the amount of each contribution must be estimated and the estimate subject to ORST must be reduced if the plan has members outside Ontario, or if the plan covers disability income benefits that are subject to Employer Health Tax (and therefore exempt from ORST). In such cases, contributions into a plan become an even less accurate measure of the true benefits that should be subject to ORST.

In our opinion, the tax collected should be consistent for both plan types, with plan deposits closely matching benefit and expense payouts. However, the reality is that proper matching only occurs over the total length of the arrangement, which may be several decades when it comes to insurance contracts and does not hold well over short intervals.

Recommendation:
Since this is essentially an issue of slightly delayed (around a month or more) remittance timing rather than the amount of tax to be remitted, CLHIA recommends that the "funded" definition be eliminated such that all plans will be treated as unfunded, to simplify and ensure consistent administration.

Vendor Obligations

Background and Issues to be reviewed:
The current regime for group insurance premiums permits a range of practices and introduces unnecessary confusion regarding the roles of plan sponsors and vendors in the collection of ORST.

For example, where a plan sponsor is a registered vendor for ORST purposes, they may choose to remit the member portion of the ORST and forward their portion of the tax to the next party (TPA or the Insurer) for remittance to the Ministry. This scenario could result in more than one party collecting and remitting the tax, which can lead to double taxation as well as an additional administrative burden for everyone involved, including the Ministry.

Additionally, some TPAs may have differing remittance arrangements depending on who is involved (plan sponsors and insurers), leading to varying practices regarding compliance and certification, and further challenges regarding account reconciliation.

Recommendation:
CLHIA recommends that the Ministry updates relevant legislation and guidance such that only one party is responsible for the collection and remittance of tax. We believe that life and health insurers are best positioned to play that role as they would have the complete data related to the premiums, benefits and expenses related to the plan.

Finally, while the primary focus of this letter is on ORST administration matters, we would also like to engage the Ministry in discussions aimed at reducing the overall tax burden in Ontario from premium based taxes. For any questions, please contact Noeline Simon, Vice-President, Taxation, Pension and Reporting at nsimon@clhia.ca or at 416-359-2047.

About CLHIA:

The CLHIA is the national trade association for life and health insurers in Canada. Our members account for 99 per cent of Canada's life and health insurance business. The industry provides a wide range of financial security products such as life insurance, annuities, and supplementary health insurance. For example, in 2022, over 10 million Ontarians had supplementary health insurance and $13.3 billion in health insurance benefits were paid.

Yours sincerely,

Stephen Frank

c.c. Miles White, Policy Advisor Minister of Finance