



Certified General  
Accountants  
Comptables généraux  
accrédités

Certified General  
Accountants Association  
of Canada

1201 – 350 Sparks Street  
Ottawa, ON  
Canada K1R 7S8

Tel: 613 789-7771  
Fax: 613 789-7772  
[www.cga-online.org/canada](http://www.cga-online.org/canada)

December 16, 2011

Mr. Sean Keenan  
Director, Personal Income Tax  
Tax Policy Branch  
Department of Finance  
L'Esplanade Laurier  
16<sup>th</sup> Floor, East Tower  
140 O'Connor Street  
Ottawa, ON K1A 0G5

Email: [RDSP-REEI@fin.gc.ca](mailto:RDSP-REEI@fin.gc.ca)

**Re: Review of the Registered Disability Savings Plan (RDSP)**

Dear Mr. Keenan,

The Certified General Accountants Association of Canada (CGA-Canada) is pleased to participate in the three-year review of the Registered Disability Savings Plan (RDSP), launched by the Government of Canada in October 2011.

Founded in 1908, the Certified General Accountants Association of Canada serves 75,000 Certified General Accountants and students in Canada and more than 90 countries. Respected accounting and financial management professionals, CGAs work in industry, finance, government and public practice.

Given that many CGAs are tax practitioners, with clients from every segment of the Canadian population – including persons with disabilities – it follows that issues pertaining to the RDSP are of interest to our members. Moreover, in view of CGA-Canada's attention to important public policy issues, in preparing this response we reached out to our members and consulted with some of Canada's national organizations that have expertise in matters relating to the needs of Canadians with severe disabilities and their families.

CGA-Canada believes that the RDSP is a valuable and generous program that serves an important need by helping parents and others save toward the long-term financial security of persons with severe disabilities. By recognizing the burden of disability – financial and otherwise – on parents and families, and providing a direct contribution to help ease some of the concerns, the federal government is in fact providing for a better future for disabled children and their families. However, while the RDSP is to be commended, it also has certain limitations, which we shall address below in response to issues raised in the consultation document, entitled *Ensuring the Effectiveness of Registered Disability Savings Plans*.

Before turning our attention to specific features of the RDSP, as referenced in the consultation document, we would like to briefly revisit elements of CGA-Canada's letter to Finance Canada and HRSDC, written in October 2007 in response to the draft legislative proposals to implement the RDSP. A copy of that letter is attached for your information.

First, the process for certifying persons with disabilities continues to present a challenge. As you will be aware, only those who are eligible for the Disability Tax Credit (DTC) are permitted to be the plan beneficiary for an established RDSP. However, the language and content of the Disability Tax Credit Certificate (T2201 tax form) continues to be unclear. For example, CGA-Canada has been told there was to be a committee studying how to best re-word sections of Form T2201, but we understand there has not been any new wording proposed as of yet. Moreover, we are advised there still is significant resistance from the medical community concerning form completion due to their lack of confidence in understanding their role in the process. It would be useful for the CRA to continue to visit professional events and reach out to medical practitioners.

Second, concerns and potential problems continue to surround issues relating to de-certification and competency. You will know that, under the current RDSP arrangements, the threshold for private contributions equals \$200,000, which in turn attract government contributions, up to a maximum lifetime limit of \$90,000 in both bonds and matching grants. As it now stands, adult beneficiaries – some of whom are not mentally competent – have the ability to collapse their plan to gain access and exclusive control to sizable amounts of capital, as well as the right to will those funds to anyone of their choosing. This should be cause for concern as it raises the spectre of financial abuse, in that some adults with severe mental disabilities who are the beneficiary of an RDSP could become the target or victim of unscrupulous caregivers. Some say those persons who contribute to the RDSP and are not the beneficiary, (e.g. the legal parent, guardian or other) should have oversight over the RDSP in certain circumstances – for example, should the beneficiary die or should the funds not be used as intended.

In the next section, CGA-Canada will comment on topics included in the three-year review of the RDSP: basic parameters; establishing plans and legal representation; savings accumulation and access; plan termination; and improving administration and reducing red tape.

### **Basic parameters**

In CGA-Canada's discussions with members and stakeholder groups, a key issue of concern identified was that of the age requirements attached to the Registered Disability Savings Plan.

With an RDSP, an individual has to first apply for the Disability Tax Credit, and meet the following conditions to be eligible: have a severe impairment in physical or mental functions, and the impairment must be prolonged (it has lasted or is expected to last for a continuous period of at least 12 months), as certified by a qualified practitioner through the completion of Form T2201. Once eligible for the DTC, an RDSP may then be established – whereby contributions are permitted until the beneficiary turns 59 years old, and the government matches annual RDSP contributions at various rates through Canada Disability Savings Grants (CDSGs) as well as provides annual Canada Disability Savings Bonds (CDSBs) until the end of the year in which the plan beneficiary attains 49 years of age.

The problem is that these existing requirements and parameters are not particularly helpful or supportive to those Canadians who become disabled at an older age in life, in their adulthood as opposed to their childhood – which would include those individuals who are diagnosed with Multiple Sclerosis (MS) or Muscular Dystrophy (MD) for example. In the case of MS, the average age of onset for someone

diagnosed with this disease is approximately in their mid-thirties, and the full effects of this illness often do not become visible until this person is in their forties. In other words, it may take years for someone with MS to qualify for the DTC and meet the criteria of a “severe and prolonged” impairment, which consequently does not provide very much time to put money into an RDSP, and even less time for the government to make contributions to the program in view of the cut-off at 49 years of age. This result runs contrary to one of the central objectives of the RDSP – which is to encourage long-term savings and allow plan assets to grow “sufficiently large.” This leads some to say the requirement that the government can only contribute to an RDSP until the beneficiary reaches 49 years of age may be too young or early, and that the government should consider eliminating this specific rule and replacing it with an alternative threshold, such as the maximum lifetime contribution limit for an RDSP. The government may also want to look at “rollover” options and demonstrate some further flexibility in this area – for example, allowing those who became disabled at an older age in life, and may have locked some funds into an RRSP, to roll these RRSP funds into an RDSP account, thereby gaining access to federal government contributions.

Another related issue of concern is with respect to the age at which beneficiaries are allowed to access their savings. Sixty years of age is simply not the life expectancy rate for some Canadians who suffer with severe and prolonged disabilities - such as Muscular Dystrophy and Cystic Fibrosis. While Budget 2011 introduced an amendment to the RDSP in order to assist those beneficiaries with shortened life expectancies, this was in specific relation to the 10-year repayment rule for CDSGs and CDSBs, and not in relation to other fundamental issues concerning the timing and conditions under which individuals with severe and prolonged disabilities are able to access their savings. This issue will be further discussed on pages 4 and 5, in the section entitled “Savings Accumulation and Access.”

### **Establishing plans and legal representation**

CGA-Canada is aware of the policy reasons as to why the Disability Tax Credit was designated as a necessary pre-condition to establishing a Registered Disability Savings Plan. However, even though the DTC may appear to have been a “reasonable fit” for the RDSP, it is important to note that the DTC is not a perfect fit for all circumstances.

CGA-Canada has been told by stakeholders that it is a challenge in and of itself to qualify for the DTC – particularly for those individuals with learning disabilities. We understand that it is relatively easier to determine sensory or mobility impairments in comparison to disabilities related to cognitive skills. These circumstances make it much more difficult for those with learning disabilities or mental health issues to obtain the necessary evidence to determine their eligibility for the DTC. One national association in Canada stated that, in order for a learning-disabled individual to qualify for a DTC, the individual needs to be so severely learning-disabled – to the point of needing twenty-four hour supervision or care. From this perspective lies the concern that there is an entire group of Canadians who fall somewhere in between these extremes and are being excluded from the DTC and, subsequently, an RDSP. These individuals have learning disabilities; are unable to maintain a full-time permanent job as they are often caught in a vicious cycle of employment and unemployment depending on their illness; and are largely at the low-end of the income scale. They are struggling both emotionally and financially, but are falling through the cracks in terms of meeting the criteria for DTC support and being eligible for an RDSP.

As mentioned previously, a “qualified practitioner” – defined in Form T2201 as a medical doctor, optometrist, audiologist, occupational therapist, physiotherapist, psychologist and speech-language pathologist – must certify the impairment and has to complete Form T2201. However, Form T2201 also

specifies that only a medical doctor or psychologist is permitted to certify a learning disability. This may represent an obstacle to those with learning disabilities.

Some people report that finding a medical doctor to sign the DTC for learning disabilities is next to impossible, and experience has also shown that medical doctors have actually refused to sign the DTC for learning disabilities. Medical doctors – specifically, general practitioners – either do not have the expertise to diagnose a learning disability, or they do not understand the impact that a learning disability has on an individual’s day-to-day activities – both of which act as a barrier to successfully completing Form T2201.

It was also brought to CGA-Canada’s attention that, based on the above problem concerning medical doctors, the CRA appears to be tightening the criteria to qualify for the DTC by further restricting certification to only psychologists. However, we understand it is equally if not more problematic to obtain a psychologist to certify a learning disability and complete Form T2201. For example, in Québec, only a few psychologists are ever engaged in the process; rather it is a team of several professionals who are involved in one evaluation, including a speech-language pathologist, a Special Education teacher and sometimes an audiologist. In addition, not all provinces and territories have qualified psychologists who can evaluate for learning disabilities – such as PEI, Newfoundland and Labrador, the Northwest Territories and the Yukon.

This adds to the difficulties in qualifying for a DTC and being able to establish an RDSP, which in turn leads to the exclusion of segments of the Canadian population with disabilities. In view of this, CGA-Canada would recommend, at the very least, that the federal government take another look at the list on Page 2 of Form T2201 to ensure that the rules governing which “qualified practitioner” is able to certify which specific impairment accurately reflects the different realities of each province and territory.

Going further, CGA-Canada believes a review ought to be undertaken to determine if the DTC should continue to function as the “gatekeeper” to enabling an individual to establish an RDSP. Is the DTC the “best possible fit” for the RDSP? Is the RDSP serving those in need as well as it should – in terms of its inclusiveness and effectiveness? Are there other criteria that should be examined which would provide more Canadians with severe and prolonged disabilities – specifically those who do not fit the current rules – with the opportunity to establish an RDSP?

### **Savings Accumulation and Access**

First, on the subject of “rollovers”, CGA-Canada is aware that Budget 2010 provided for a deceased individual’s Registered Retirement Savings Plan (RRSP) or Registered Retirement Income Fund (RRIF) proceeds and certain Registered Pension Plan proceeds to be transferred on a tax-free basis (or rolled over) to the RDSP of a financially dependent infirm child or grandchild. Given that the RDSP is widely regarded as an innovative savings tool that can help ensure the long-term financial security of children with severe disabilities, and that annual RDSP contributions can attract CDSGs at matching rates of up to 300 per cent, there was a general consensus in our discussions with members and stakeholders that it would be advantageous for the Government of Canada to examine further options – such as permitting a rollover from a Registered Education Savings Plan (RESP) to an RDSP (and other rollover possibilities mentioned in this brief).

Second, the “10-year rule” – which requires that a person in receipt of CDSGs or CDSBs wait 10 years after the last government contribution in order to withdraw money from his or her RDSP account or, failing this, repay the last 10 years in grants and bonds back to the government – is seen as a top barrier to

the RDSP. People with disabilities have different needs than most, and many of these individuals may need access to their savings before the 10 years is up, so the 10-year rule may simply not be appropriate or practical in all cases. Again, CGA-Canada recognizes that a Budget 2011 amendment allowed for some exception to this requirement in the case where a beneficiary has a shortened life expectancy, but we submit that the federal government needs to go beyond this one exception to the rule and consider other cases where further flexibility may be warranted. We note that those individuals who have an RRSP are permitted to withdraw money from it for real estate or education purposes, tax-free. The same logic should apply to the RDSP. Without compromising the long-term savings objective of the RDSP, and under certain-defined circumstances (e.g. “capped” withdrawals) and for specific purposes, it may be reasonable for the government to consider allowing individuals to withdraw from their RDSP without penalty. Exceptions for consideration could include medical emergencies, purchases of medical equipment/devices, retrofits or possibly changes in financial status due to job loss.

### **Plan termination**

CGA-Canada is aware that there are specific cases or particular episodic illnesses, where an RDSP beneficiary ceases to have a severe/prolonged impairment qualifying them for the DTC, but there exists a strong medical likelihood that the impairment will return in the foreseeable future, making them eligible once again for the DTC. Under the current rules, when a beneficiary ceases to be eligible for the DTC, they are required to terminate the RDSP and repay CDSGs and CDSBs back to the government. Not only does this undermine the long-term savings objective of the RDSP, it seems unfair and punitive.

CGA-Canada would agree that changes are needed to provide greater flexibility to RDSP beneficiaries in matters concerning the cessation or decertification of DTC eligibility. It was suggested to CGA-Canada that if an RRSP can be rolled into an RDSP – which is permissible under certain conditions as a result of a Budget 2010 amendment – then consideration ought to be provided to the opposite, from an RDSP to an RRSP. For example, when the RDSP beneficiary is no longer eligible for the DTC, the RDSP funds could be rolled into a locked-in RRSP with the contributions intact for the time being, and then funds from a locked-in RRSP of this type could be rolled back out again into an RDSP should the DTC be reinstated in the foreseeable future.

### **Improving administration and reducing red tape**

As one national association pointed out, “individuals with disabilities go from pillar to post to figure out where to obtain information, what programs and initiatives are available, who offers or delivers which services” – the list of questions can be endless. Existing arrangements are vast, spread out, complicated and burdensome – especially in view of Canada’s decentralized system.

It is suggested that the federal and provincial governments as well as other stakeholders work together to establish a national help-line for individuals with disabilities – a one stop shop that would bring all the resources together under one roof. This kind of single-window access to all the programs and services available to disabled persons would represent a tremendous improvement over the present situation, by providing information faster, easier and in a much more convenient manner to those in need.

### **Other**

While the RDSP is seen as a “major policy innovation”, a “fantastic initiative” and a “generous program”, CGA-Canada is struck by the fact that only a mere fraction of those eligible have actually opened an

RDSP – apparently somewhere in the vicinity of 48,000 accounts have been established since the program became available in December 2008.

According to a survey of Canadian adults who have a disability or have a family member with a disability – conducted by BMO Financial Group in December 2010 – despite the benefits that RDSPs provide, only five per cent of Canadians with disabilities actually hold an RDSP account. What’s more, close to half of those surveyed had never even heard of an RDSP.

Given the less-than-desirable uptake of an extremely beneficial program, CGA-Canada believes the Government of Canada needs to take a lead role and work with the banks and financial institutions, tax professionals and financial planners, as well as those on the front lines in the medical profession, to further promote, educate and raise awareness of the RDSP initiative.

On a final note, not only are the topics identified in the three-year review crucial to the overall success of the RDSP, but these issues are all interrelated and very complex in their nature. Going forward, CGA-Canada recommends that a permanent technical tax committee with representatives from Finance Canada and the Canada Revenue Agency, as well as stakeholders, be established to review these and other relevant issues. In the past, the Government of Canada has benefited from the helpful work of committees – such as the Technical Advisory Committee on Tax Measures for Persons with Disabilities and the Expert Panel on Financial Security for Children with Severe Disabilities – in providing advice on issues related to tax measures that support persons with disabilities.

### **Concluding remarks**

CGA-Canada is grateful to Finance Canada for the opportunity to provide its views and recommendations on elements of the RDSP, and we remain available for further comment or questions on this or any other issue.

Sincerely yours,

### ***Original signed by***

Denis St-Pierre, Chair,  
Tax and Fiscal Policy Advisory Group  
CGA-Canada

Encl.



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Certified General  
Accountants Association  
of Canada

1201 – 350 Sparks Street  
Ottawa, ON  
Canada K1R 7S8

Tel: 613 789-7771  
Fax: 613 789-7772  
www.cga-online.org/canada

October 23, 2007

Ms. Catherine Cloutier  
Chief  
Department of Finance  
Deferred Income Plans  
140 O'Connor Street  
Ottawa, ON K1A 0G5

Ms. Caroline Weber  
Director General  
HRSDC  
Office for Disability Issues  
355 North River Road  
Ottawa, ON K1A 0L1

**Re: Registered Disability Savings Plan (RDSP)**

Dear Ms. Cloutier and Ms. Weber:

The Certified General Accountants Association of Canada (CGA-Canada) is pleased to have the opportunity to comment on the draft legislative proposals to implement the Registered Disability Savings Plan (RDSP), as announced in Budget 2007 and released by the Ministers of Finance and Human Resources and Social Development on October 2, 2007.

The Certified General Accountants Association of Canada is a professional accounting organization that represents 68,000 members and students world-wide. CGA is the fastest growing accounting designation in Canada, and is recognized for its ability to set professional and education standards, provide financial leadership, oversee its members and ensure the public interest is well-served.

CGA-Canada supports the federal government's intention to invest in Canadians and, in particular, to help parents and others save toward the long-term financial security of persons with severe disabilities through the creation of a RDSP.

That being said, and having reviewed the draft legislative proposals, I wish to point out that the issues surrounding certification and de-certification require consideration, and must be addressed in advance of, or in the process of, implementing the RDSP.

- **Certification**

Under this legislative proposal, in order to establish an RDSP, an individual must first qualify for the disability tax credit (DTC), or be the parent(s) or other legal guardian(s) of the eligible individual. In turn, to be eligible for the disability tax credit, a qualified practitioner must certify in writing that the individual has a prolonged impairment, which is then subject to approval by the Canada Revenue Agency (CRA). As it now stands, the process of certifying persons with disabilities presents a challenge – there are a number of regulations, sections of the *Income Tax Act* (ITA) and various forms involved; the content and language of the documents (eg. Certification Form T2201) is said to be unclear and, as we understand it, there is some resistance from the medical community to complete and sign the DTC application certification.

We are told that former members of the Disability Advisory Committee – whose mandate was to provide advice to the Minister of National Revenue on the needs and expectations of persons with disabilities as they relate to the laws and programs administered by CRA – have asked the Minister of National Revenue to review the plethora of complaints stemming from the certification process. CGA-Canada supports the committee’s request – resolving the problems associated with the certification of persons with disabilities are key to the success of the RDSP.

In addition, we believe the manner in which an individual may qualify, that is by being eligible for the disability tax credit, may unfairly penalize some individuals who may in the future qualify. This particular exception would apply to individuals who may have a hereditary disability, and while they do not yet qualify for the disability deduction, there is no doubt from a medical perspective that they will be disabled in the future. May we suggest that a mechanism be considered to facilitate these individuals’ participation in the RDSP.

- **De-certification**

Furthermore, CGA-Canada is concerned that the draft legislative proposals in question do not adequately address the subject of de-certification, nor the potential problems resulting from de-certification. There appears to be a built-in assumption in the proposed plan that disabled persons do not have the right to withdraw their certification unless they are legitimately no longer disabled. It should be noted that, under S. 118.3 of the *Income Tax Act*, an individual does have the ability or the right to choose not to be certified. Moreover, under that very same section of the *Income Tax Act*, CRA has the ability or the right to rescind an individual’s request for certification.

The questions that arise are: In the event of de-certification, what happens to an RDSP? What mechanisms are in place to ensure that the RDSP fund is not a target of abuse? What safeguards exist to address public fears about the possibility of family members and/or others taking advantage of the situation – for example, by utilizing an RDSP as a tax shelter, as a means to bypass current attribution rules; or by gaining control of the RDSP fund through a court order which could declare the disabled person in this case “incompetent”?

Clause 14 of the Explanatory Notes Relating to Registered Disability Savings Plans, which deals with section 146.4 of the ITA, states that “generally, there can never be more than one registered disability savings plan of a beneficiary at any given time”. It is of interest to know what specific provisions there are to prevent an individual from establishing multiple RDSPs – that is, investing in an RDSP and then collapsing that same plan by choosing to rescind the request for certification, only to reapply at a future date to be certified in order to set up and contribute to another RDSP. Moreover, how exactly is the RDSP fund going to be monitored to ensure that the lifetime contributions of one individual do not exceed the maximum amount of \$200,000?

Again, the issues and the questions surrounding certification and de-certification in relation to the disability tax credit and the Registered Disability Savings Plan are what most concerns CGA-Canada and its members. We thank you for the opportunity to comment and remain available for further discussion of these legislative proposals.

Sincerely yours,

***Original signed by***

Carole Presseault  
Vice-President, Government and Regulatory Affairs