

August 21, 2018

Consultations and Communications Branch
Department of Finance Canada
14th Floor
90 Elgin Street
Ottawa, Ontario K1A 0G5

Dear Sirs:

Re: Modernization of the Unclaimed Balances Regime – Request for Comment

I am writing in reply to the request for comment on proposed [Modernization of the Unclaimed Balances Regime](#).

I consent to public disclosure of this submission, including my identity. However, such disclosure must note that the entire submission is my personal opinion and does not necessarily reflect the views of my employers, past and present.

You have asked for feedback on below questions. My comments will address each question separately.

1. Should financial institutions provide the Bank of Canada (Bank) with further information (e.g., Social Insurance Number (SIN), date of birth, signature card and business number) to streamline the validation process for claimants and to protect against fraudulent claims?

A bank, retail association or a company (collectively ‘financial institution’) covered under provisions of the *Bank Act*, the *Cooperative Credit Associations Act*, and the *Trust and Loan Companies Act*, respectively, should be required to provide minimum information that is reasonably necessary to assist in identifying or locating a depositor of an unclaimed account or owner of an unclaimed instrument (in each case, ‘the owner’). In this regard, having a financial institution provide the owner’s SIN and date of birth to the Bank should be sufficient.

Section 438 (2.1) of the *Bank Act*, s. 385.03 (2.1) of the *Cooperative Credit Associations Act* and s. 424 (2.1) of the *Trust and Loan Companies Act* allow the Bank to submit a written request to a financial institution to provide it with copies of signature cards and signing authorities relating to unclaimed deposit or instrument in respect of which the financial institution has made a payment to the Bank. It is expected that this requirement will be retained and can be relied on in situations where the Bank requires additional information to assist it identify or locate the owner.

Approach in Alberta

In Alberta, s. 7 (2) of the *Unclaimed Personal Property and Vested Property Act and General Regulation* (Alberta) requires a holder, while transferring unclaimed personal or vested property to Tax and Revenue Administration (TRA), to provide the last known address and the SIN, if known, of the owner and any other information respecting the owner as prescribed in the *General Regulation*. In Alberta, the TRA administers a registry of unclaimed personal and vested property items where the owners can search for them and reclaim.

On scope of 'other information' to be provided by the holder, s. 12 (1) of the *General Regulation* requires the holder to volunteer all information known to it regarding the owner that is relevant in identifying or locating them.

2. Should the prescription time for smaller balances be reduced, and if so, for which amounts and for how long?

The Government should consider reducing the prescription time for smaller balances. In this regard, I would recommend for an amount of \$100 or less and a prescription time of 7 years. The suggested prescription time will more adequately balance the trade-off between preserving the value of the unclaimed balance and efficiently reducing related administrative burden, including costs.

Please note that in order to ensure compliance, the prescription time may, in the short term, result in some spending by financial institutions. For instance, expenses will likely be incurred on adapting a financial institution's automated system and/or manual process to align with the suggested prescription time. However, given the statistics that 'unclaimed balances under \$100 account for approximately 70% of all unclaimed balances held by the Bank, with the vast majority of these balances never claimed,' the prescription time will likely lead, in the long term, to a reduction in administrative costs.

Approach in Alberta

Section 29.2 (1) of the *Alberta Treasury Branches (ATB) Regulation* and s. 118 (1) of the *Credit Union Act* (Alberta) allow small unclaimed balances of less than \$250 and 100, respectively, to be transferred to a financial institution's income provided the following conditions have been met:

- it has been two years since the customer last transacted through the related account or provided written acknowledgment of the balance; and
- after the two years, the financial institution made reasonable endeavours to contact the customer.

Alternatively, the financial institution could decide to follow 12 years prescription time for larger unclaimed balances.

3. Should the definition of unclaimed balances in legislation be expanded to include foreign-denominated accounts?

The definition of unclaimed balances should be expanded to include foreign-denominated accounts. Given the objective of the unclaimed balances program, which is to reunite consumers with their unclaimed balances, a decision to include foreign-denominated accounts within in-scope accounts will serve to better protect the interest of these consumers.

In Alberta, for instance, s. 29.1 and 29.2 of the *ATB Regulation* applies to deposits in the form of deposit accounts, bank drafts, certified cheques, money orders or term deposits. The section does not distinguish between Canadian dollar-denominated accounts and foreign-denominated accounts.

Australia and Exemption of Foreign-denominated Accounts

In 2015, the Australian Government, through [Banking Laws Amendment \(Unclaimed Money\) Bill 2015](#), exempted foreign-denominated accounts from its unclaimed accounts provisions. Citing that foreign currency accounts were generally used by sophisticated consumers to settle business transactions in

foreign currencies, the Australian Government opted for the exemption, in alignment with how Australian community would normally use such accounts.

While it is true that consumers sometimes open foreign-denominated accounts to allow them settle business transactions in foreign currencies, it is also commonplace for consumers to open these accounts primarily for other purposes, including as a means of portfolio diversification and to take care of their expenses while vacationing abroad.

Foreign Exchange Fluctuations and Value Preservation

Should the Government proceed to include foreign-denominated accounts, it must recognize the potential foreign exchange fluctuations and the likely impact on these accounts. In this regard, pertinent issues for the Government to consider, and possibly address, include the following:

- are financial institutions to make payments in foreign currencies?
- if financial institutions are to convert unclaimed balances to Canadian dollars before payments are made to the Bank, given that the owners may not reclaim these payments from the Bank immediately, can this approach ensure value preservation for these owners?

4. Should financial institutions be required to notify balance owners through electronic means such as email, if possible, in addition to mail?

Writing to the last known address of a customer may be a great option. However, it may not be a feasible option where the customer has since left the address and failed to notify the financial institution of their new address.

With technological advancements and changing consumer preferences, financial institutions are now able to serve their customers through new service delivery channels and non-traditional platforms, such as digital and mobile banking. The Government should consider revising relevant provisions on unclaimed balances to ensure alignment with present day realities. Specifically, for increased consumer convenience and less burdensome unclaimed balances process, financial institutions should be allowed to send notices by electronic means, in addition to mail, to the owners.

Approach in Alberta

Sections 117 (1) and 118 (1) of the *Credit Union Act* (Alberta), similar to s. 29.1 and 29.2 of the *ATB Regulation*, require credit unions in Alberta to make reasonable endeavours to locate the owner. The term 'reasonable endeavours' appears quite broad and will, in addition to mail, accommodate notices sent to through mediums such as telephone call (with the expectation that conversation with the customer will be documented, including the date and time), email, etc.

5. Should the Bank stop paying a rate of interest on unclaimed balances? Should the Bank have the ability to charge administration fees, such as on a cost recovery basis?

Consistent with unclaimed property regimes in some other jurisdictions, the Government may consider allowing the Bank to stop paying interest on unclaimed amounts. More so, given the current low interest rate environment, the 1.5 per cent, prescribed by the 1944 *Order in Council*, is much higher than could be received on a savings account, at least today.

On administration fees, the Government should allow the Bank to charge a fee on a cost-recovery basis when balances are claimed. Allowing the Bank to do so will align with unclaimed property regimes of some other jurisdictions. This will also allow the Bank to recoup expenses incurred in administering the program. In Alberta, the TRA is allowed to [charge](#) reasonable fees for administering unclaimed property.

6. Should exiting financial institutions be allowed to transfer unclaimed balances to the Bank of Canada prior to reaching the 10-year dormancy period?

The Government should allow exiting financial institutions to transfer outstanding unclaimed balances to the Bank of Canada prior to reaching the 10-year dormancy period. A financial institution should not be required to hold on to unclaimed balances of its customers in situations where it is impracticable or unreasonable to do so. In Alberta, for instance, the *Unclaimed Personal Property & Vested Property Act* (Alberta) allows a holder to voluntarily transfer unclaimed personal or vested property to the TRA before the abandonment period for the property. The holder does not have to be in the process of exiting to be able to so voluntarily transfer.

Please let me know if you have any questions or require clarifications on above submission. I can be reached at (587) 700 9427 or by email: [komolafedipupo@gmail.com](mailto:kamolafedipupo@gmail.com).

Sincerely,



Olakunle Komolafe, LL.M