



DEPARTMENT OF LABOR

Employee Benefits Security Administration

Technical Correction to PTE 2016-10, Exemption from Certain Prohibited

Transaction Restrictions: Royal Bank of Canada (Together with its Current and Future Affiliates, RBC or the Applicant)

AGENCY: Employee Benefits Security Administration (EBSA), Labor.

ACTION: Notice of technical correction.

SUMMARY: This document makes a technical correction to Prohibited Transaction Exemption (PTE) 2016-10 granted to the Royal Bank of Canada (D-11868) on October 28, 2016.

DATES:

Issuance date: These technical corrections are issued on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] without further action or notice.

Exemption Date: PTE 2016-10 will remain in effect for the period beginning on the Conviction Date (as corrected herein) until the earlier of: (1) the date that is twelve months following the Conviction Date; or (2) the effective date of a final agency action made by the Department in connection with an application for long-term exemptive relief for the covered transactions described in PTE 2016-10.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department, telephone (202) 693-8456. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2016, the Department published PTE 2016-10 in the *Federal Register*.¹ PTE 2016-10 is a temporary administrative exemption that permits certain

¹ 81 FR 75147 (October 28, 2016).

entities (the RBC Qualified Professional Asset Managers (QPAMs)) with specified relationships to Royal Bank of Canada (Bahamas) Limited (RBCTC Bahamas) to continue to rely upon the relief provided by the Department's QPAM Exemption² for a one-year period, notwithstanding a potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud.³

The Department granted PTE 2016-10 to protect Covered Plans⁴ from the harm that may arise if and when RBCTC were convicted in the District Court of Paris.⁵ Therefore, PTE 2016-10, as initially granted, defined the term "Conviction" as "the potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud to be entered in France in the District Court of Paris, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12."

In January 2017, the trial court in France acquitted RBCTC of the aiding and abetting the tax fraud charge, so the exemptive relief provided in PTE 2016-01 was unnecessary. However, RBCTC recently informed the Department that the French prosecutor has appealed the lower court's acquittal and the case is now being heard de novo as a new trial by a French appellate court. According to RBCTC, the alleged crime, the parties, and the case numbers remain the same as the District Court of Paris case that is defined as the "Conviction" in PTE 2016-01. RBCTC has requested confirmation from

² PTE 84-14 49 FR 9494, March 13, 1984, as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005) and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as PTE 84-14 or the QPAM exemption.

³ Section I(g) of PTE 84-14 prevents an entity that may otherwise meet the definition of a QPAM from utilizing the exemptive relief provided by PTE 84-14 for itself and its client plans, if that entity or an "affiliate" thereof, or any owner, direct or indirect, of a five percent or more interest in the QPAM has within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in that section.

⁴ A "Covered Plan" is a plan subject to part 4 of title 1 of ERISA ("ERISA-covered plan") or a plan subject to Section 4975 of the Code ("IRA"), with respect to which an RBC QPAM relies on PTE 84-14, or with respect to which an RBC QPAM (or any RBC affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption. A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the RBC QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

⁵ RBC's exemption request (D-11868) is available by contacting EBSA's Public Disclosure Room at (202) 693-8673.

the Department that the relief provided in PTE 2016-10 would be available for one year, if RBCTC were ultimately convicted by the French appellate court.

As noted above, PTE 2016-10 is intended to protect Covered Plans from harm if RBCTC were convicted for the alleged crime in France. This same harm would arise whether RBCTC is convicted for the same crime, stemming from the same conduct, in a French appellate court or “the District Court of Paris.” Therefore, to ensure that Covered Plans are protected from any harm that would arise from the appellate court’s conviction of RBCTC, the Department is revising the definition of “Conviction” in PTE 2016-10 to refer to “the potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud to be entered in France in the Court of Appeal, French Special Prosecutor No. 1120392066, French Investigative Judge No. JIRSIF/11/12 or another court of competent jurisdiction.”

RBC represents to the Department that to the best of RBC’s knowledge, there have been no material changes since September 2, 2015, the date of RBC’s application for PTE 2016-10, that are relevant to that application or the technical corrections set forth herein, other than changes in RBC’s number of clients and assets under management. RBC makes these representations with the caveat that, as a large global financial institution, it has been subject to a variety of legal proceedings, including civil claims and lawsuits, regulatory examinations, investigations, audits, and requests for information. To the best of its knowledge at this time, however, RBC does not believe that the outcome of any current investigation or other such proceeding would cause the exemption to be unavailable. Moreover, no affiliate of RBC has been convicted of any crime described in section I(g) of the QPAM Exemption and, to the best of RBC’s knowledge, neither RBC nor any affiliate has entered into a deferred prosecution or non-prosecution agreement since September 2, 2015.

The Department notes that it is making this technical correction based upon RBC's certified representation that since September 2, 2015: (1) there have in fact been no material changes other than those changes noted above; (2) no affiliate of RBC has been convicted of any crime described in section I(g) of the QPAM Exemption, other than the conviction covered under PTE 2016-10; and (3) neither RBC nor any affiliate of RBC has entered into a deferred prosecution or non-prosecution agreement. If, at any time, RBC discovers any of these representations is no longer true, RBC must immediately contact the Department and submit a written statement that provides the Department with the complete details on the circumstances discovered.

The Department is not taking a position regarding whether the outcome of any proceedings will cause the exemption to be unavailable and also notes that the availability of PTE 2016-10 is conditioned upon RBC's compliance with all of the conditions included therein, including the condition that expressly states: "During the effective period of this temporary exemption, RBC: (1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) that RBC or an affiliate enters into with the U.S Department of Justice, to the extent such DPA or NPA involves conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA." As noted in the preceding paragraph, if RBC discovers that RBC or any RBC affiliate has entered into a DPA or NPA at any time since September 2, 2015, RBC must inform the Department promptly upon RBC or its affiliates' discovery of such fact.

TECHNICAL CORRECTION

Section II(a) of PTE 2016-10 is amended to read as follows:

"(a) The term "Conviction" means the potential judgment of conviction against RBCTC Bahamas for aiding and abetting tax fraud to be entered in France in the Court of Appeal,

French Special Prosecutor No. 1120392066, French Investigative Judge No.

JIRSIF/11/12 or another court of competent jurisdiction”

Signed at Washington, DC, this 5th day of December 2023.

George Christopher Cosby,
Director, Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor.

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