



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

Issue QUALIFIED INTERMEDIARY (QI) PROPOSED SECTION 302 SELF-TENDER RULES

Issue Context	<p>In the fall of 2007, draft regulations were introduced (REG-140206-06, <i>Notice of Proposed Rulemaking and Notice of Public Hearing Withholding Procedures Under Section 1441 for Certain Distributions to Which Section 302 Applies</i>) regarding a U.S. withholding agent's obligation to withhold and report tax under Section 302 of the Internal Revenue Code (IRC). These regulations require U.S. withholding agents to apply an escrow holding procedure for distributions where a publicly traded corporation offers to buy back its stock from its shareholders (self-tenders).</p> <p>The presumption is that such payments are dividends and subject to a 30% withholding tax (or reduced dividend treaty rates) unless proper certifications are received from beneficial owners/QIs to either confirm that the payment should be treated as proceeds or that the payment should be treated as a dividend. Intermediaries have up to the 60 days that payments are in escrow to obtain certifications from clients to help determine if the distribution should be treated as a dividend subject to withholding or a distribution in part or full payment in exchange for stock (proceeds). When the regulations were drafted, it was contemplated that they would come into effect on January 1, 2009, however, the draft regulations allow U.S. withholding agents to use the procedures earlier and the Depository Trust Company (DTC) announced it would do so effective January 1, 2008.</p>
IIAC Position	<p>The IIAC strongly opposed the regulations, arguing that the new rule would likely not generate the expected additional revenue that the Internal Revenue Service (IRS), especially given the high cost of implementing and following the onerous proposed procedures.</p>

	<p>The IIAC proposed that, as a minimum, the rules should be simplified and that QIs assuming primary withholding and reporting responsibilities under section 1441 of the Internal Revenue Code should be able to follow the same rules as U.S. financial institutions and not be required to operate through a U.S. withholding agent (DTC or other custodian).</p> <p>The IIAC also urged DTC not to apply the new rules prior to agreement on the procedures' applicability.</p>
Background	<p>The IRS implemented a withholding and information reporting regime in January of 2001. Under this regime, financial institutions designated by the IRS may apply to enter into a contractual withholding tax agreement with the IRS to become qualified intermediaries (QIs) entitled to withhold taxes and to report the tax status of their non-U.S. customers without having to provide customer-specific information.</p>
Staff Contact	<p>Jack Rando, jrando@iiac.ca</p>
Timeline	<p>January 1, 2009: Self-tender Regulations came into effect.</p>
Reference Documents	<p><u>IIAC urges IRS and U.S. Treasury to amend proposed withholding regulations - 02/07/2008</u></p> <p><u>IIAC Comments to U.S. Treasury on Proposed Self-Tender Regulations - 01/18/2008</u></p> <p><u>IIAC Comments on IRS Proposed Regulations on Withholding Procedures for Certain Distributions - 01/16/2008</u></p> <p><u>IIAC Letter to DTC on Section 302 Withholding Procedures - 12/31/2007</u></p>

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