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

February 8, 2010

CC:PA:LPD:PR (REG-101896-09)
Couriers Desk
Internal Revenue Service
1111 Constitution Avenue, NW
Washington DC 20224

SENT ELECTRONICALLY VIA FEDERAL eRULEMAKING PORTAL

RE: REG-101896-09: Basis Reporting by Securities Broker and Basis Determination for Stock (the "Regulations")

The IIAC appreciates the opportunity to provide further comment on the development of the proposed Regulations, which would implement changes in the law made by the *Energy Improvement and Extension Act of 2008*. This submission will focus on the request for comments regarding the usefulness of information received from non-U.S. payors and non-U.S. middlemen, and the costs to non-U.S. payors and non-U.S. middlemen of complying with the requirements. In particular, we will reiterate the complex challenges that basis reporting will present for reporting by Canadian Qualified Intermediaries (**QI**s), most of whom are not U.S. payors.

The Investment Industry Association of Canada (**IIAC**) is Canada's equivalent to the Securities Industry and Financial Markets Association (**SIFMA**) in the United States, and represents over 200 investment broker-dealers across Canada. The IIAC QI Committee is responsible for reviewing and commenting on amendments to legislation that would affect the Canadian QI community, and developing positions on practical and conceptual matters surrounding U.S. tax reporting requirements, including audits and QI forms.

Previous Submissions on Proposed Basis Reporting Requirements

The IIAC has previously provided extensive comments to Tax Counsel of the House, Senate and Joint Committee on Taxation, the Acting Tax Legislative Counsel in the Office of Tax Policy at the Department of Treasury and the Internal Revenue Service (**IRS**). Although these comments remain applicable, we will not repeat them in detail in this submission. We are enclosing our earlier submissions for your reference (see Appendix "A").

Comments and Recommendations

Our comments in this letter focus specifically on the cost burden and practical problems faced by non-U.S. reporting intermediaries. In particular, we believe that there are a number of factors that support the ***exclusion*** from the application of the basis reporting requirements of QIs that currently comply with IRS-approved and audited reporting requirements.

Beyond the scope of the QI Agreement

The objective of the QI Agreement, as set out in Revenue Procedure 2000-12 is to "*simplify withholding and reporting obligations for payments of income (including interest, dividends, royalties, and gross proceeds) made to an account holder through one or more foreign intermediaries"*. The cost basis of securities sold has no impact on the withholding obligations of a QI, nor does it impact the amounts to be reported with respect to income, including gross proceeds.

We recognize that it is the right of the U.S. government, Treasury and the IRS to make changes to legislation; however, in many instances such changes will dramatically affect and alter the intent and scope of the QI contractual obligation. It continues to be our contention that extending the scope of a QI's information reporting obligation to include cost basis of securities sold is inappropriate without direct consultation with the QI community and an examination of the impact such changes bring. We appreciate that Treasury and the IRS continues to solicit comments on the usefulness and costs related to basis reporting for non-U.S. payors, and encourage Treasury and the IRS to engage in a fulsome analysis of the practical impact upon QIs before requiring compliance.

Excessive costs associated with compliance relative to potential additional tax revenue

As mentioned previously, most Canadian QIs are non-U.S. payors. For a non-U.S. payor, proceeds from the disposition of U.S. securities are reportable payments if sales are effected in the U.S. within the meaning of Treas. Reg. section 1.6045-1(a), and proceeds from the disposition of non-U.S. securities are reportable payments if payment is made in the U.S. within the meaning of Treas.Reg. section 1.6049-5(e). On this basis, Form 1099-B reporting of proceeds of disposition by a QI that is a non-U.S. payor is generally only required for U.S. non-exempt recipients residing in the U.S.

As a result of various securities regulations and other compliance requirements, most QIs have a very limited number of accounts for U.S. non-exempt recipients residing in the U.S. Given the proximity of Canada to the U.S. and the mobility of individuals back and forth across the border, the Canadian QI community likely has a greater number of account holders for which the reporting of proceeds on Forms 1099-B is required than do QIs in other jurisdictions. Nevertheless, initial estimates by Canada's largest brokers indicated that less than 1% of their total accounts require Form 1099-B reporting of proceeds.

As we have indicated above, securities and other compliance requirements limit the extent to which most QIs will have accounts for U.S. residents. The aggregate amount reported on Forms 1099-B by QIs is likely negligible in relation to the amount reported by U.S. paying agents. A review of Forms 1099-B actually submitted to the IRS would probably confirm this assumption.

The U.S. tax rules associated with the calculation, maintenance and reporting of basis information are extremely complicated and must be supported by advanced systems capabilities and/or significant levels of manual record keeping. We understand that many U.S. brokers already have developed and implemented the necessary systems and process changes to provide some level of basis information and are voluntarily providing such information to account holders as a component of their customer service. Yet despite being further ahead in their ability to report basis information to the IRS, the comments already submitted in response to previous IRS Notices provide a clear indication that there are still a significant number of issues to be addressed in the guidance and regulations issued by Treasury and the IRS, for which U.S. brokers will be required to develop further enhancements and modifications.

QIs will largely be starting from scratch to comply with basis reporting, including from the perspective of having to research and become familiar with a new set of highly detailed and technical tax rules that have not previously had relevance to them. Significant systems, process and procedural enhancements would also be required. Those QIs that do currently provide customers with basis information are providing it in accordance with the rules applicable to the majority of their customers, which in Canada is the weighted average cost method. If these QIs are also required to comply with U.S. basis calculation rules, this will be in addition to, rather than in lieu of, the information currently being maintained. All of this will be extremely costly for QIs that have very few accounts to which the rules apply.

The cost associated with developing, implementing and maintaining the capability and capacity to comply with the basis reporting requirements will likely exceed any additional tax revenue to be generated by additional information reporting provided by QIs and we strongly believe that QIs should be excluded from the requirements. If it can be demonstrated that there is in fact a potentially significant tax gap related to these accounts, it will be critical for the IRS and Treasury to consult with QIs to consider alternatives which would provide the IRS with increased information without being excessively burdensome for QIs.

In determining whether or not QIs should be excluded from the basis reporting regime, or whether QIs should be subject to a deferred applicable date (see below), the IRS and Treasury should also be mindful of the additional reporting burdens that will be placed upon foreign financial institutions (including QIs) under the proposed Foreign Account Tax Compliance (**FATC**) legislation currently forming part of the *Tax Extenders Act of 2009*. QIs must justify the use of scarce resources in a difficult economy to accommodate the reporting needs associated with a relatively small percentage of the overall client base.

The combination of the proposed FATC requirements and the cost basis reporting requirements may force many QIs to consider whether or not it is economically feasible to service their U.S. clients.

Given the substantial burden that will be placed on foreign financial institutions under FATC, cost basis reporting should not be required by QIs, particularly given the expected insignificance of this information when it is obtained from QIs.

Deferral of applicable date for QIs

It is clear from the proposed Regulations that a significant number of detailed issues must be addressed by the IRS and Treasury prior to the finalization of meaningful guidance enabling U.S. brokers to implement basis reporting by the applicable dates. As we have indicated briefly in this submission (and in more detail in the previous submissions attached as Appendix "A"), implementation among non-U.S. brokers is substantially more complex. If it is determined that QIs will not be excluded from the application of the basis reporting requirements, deferring the date of application for QIs will allow non-U.S. brokers more time to consult with Treasury and the IRS and will allow Treasury and the IRS to focus initially on the issues that impact the reporting by U.S. brokers which will cover the vast majority of U.S. taxpayers.

If the IRS and Treasury determine that more time and/or information is required to confirm that excluding QIs from the application of the Amendments is the most appropriate decision, we recommend that the applicable date of these provisions for QIs be deferred until there has been direct consultation with QIs.

Additional Considerations for QIs

As noted above, various comments from earlier submissions remain applicable to QIs and are attached as Appendix "A". There are, however, some issues that are of particular concern.

Reporting by foreign issuers of actions affecting the basis of securities

The proposed regulations require a domestic or foreign issuer to furnish a written statement of the effect of a corporate action on U.S. cost basis. In most cases, foreign issuers do not and would not be willing to report the U.S. tax consequences of a corporate action. As a result, brokers may not know how these actions affect basis. It should be recognized that the majority of investments held in QI customers' accounts will likely be non-U.S. securities.

Non-U.S. securities should be excluded from the cost basis reporting requirements. At the very least, QIs should not be penalized if reasonable efforts are made to determine the impact of corporate actions on basis if no information is provided by issuers.

Account holders that become U.S. persons

As we have noted in our earlier submissions, the accounts for which most QIs are required to provide Form 1099-B reporting represent a negligible percentage of their overall population of accounts. If QIs are required to comply with the cost basis requirements, most will likely rely heavily on the use of manual processes and can only reasonably maintain basis information for account holders for whom Form 1099-B reporting is required.

If an account holder becomes a U.S. person, a QI should only be required to apply the new cost basis reporting requirements to securities acquired or transferred into the account with a statement under section 6045A after the QI is notified that the account holder has become a U.S. person. All other securities in the account should be treated as "uncovered securities".

If you have any questions or comments regarding our submission, please feel free to contact me by phone at 416-687-5477 or by email at jrando@iiac.ca.

Sincerely,

"Jack Rando"

Jack Rando
Director, Capital Markets
Investment Industry Association of Canada
www.iiac.ca

Encl.

cc: Douglas H. Shulman, Commissioner, Internal Revenue Service
Michael Danilack, Deputy Commissioner – International, LMSB Division, Internal Revenue Service
Walter Harris, Industry Director, Financial Services, LMSB Division, Internal Revenue Service
Carl Cooper, Senior Counsel of the Office of Chief Counsel – International
Thomas Chillemi, QI Program Manager, LMSB Division, Internal Revenue Service
Eric San Juan, Acting Tax Legislative Counsel, Office of Tax Policy, Department of the Treasury
Stephen Schaeffer, Office of Associate Chief Counsel (Income Tax and Accounting), Internal Revenue Service

APPENDIX "A"

PREVIOUS IIAC SUBMISSIONS

(not included on IIAC website)