



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

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Mr. Glenn Kirkland
Internal Revenue Service (IRS)
Room 6512, 1111 Constitution Avenue NW
Washington, DC 20224
U.S.A.

Dear Mr. Kirkland:

Re: IIAC Comments on Draft W-8BEN and Instructions

The Investment Industry Association of Canada (IIAC) is pleased to have an opportunity to present the comments of the Canadian Qualified Intermediary (QI) community on the recently released Draft W-8BEN – Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding – and accompanying instructions. We appreciate your efforts to address concerns expressed in the past and to bring additional clarity. Below we focus on just those areas where we believe change is needed, with the first three items considered high priority.

- 1. Part 1 – Foreign tax identifying number (Box 7) and related instructions:** The revised form makes completing box 7 mandatory unless the person completing the form is a direct account holder of a QI, a withholding foreign partnership or withholding foreign trust that reports the account holder's information on a pooled basis. We recommend that the completion of this box be left optional for a number of reasons, including the following:
 - **Collection of such an identifier for Canadian individuals:** There are strict rules governing *when* the Canadian social insurance number (SIN) (similar to the U.S. social security number) can be requested, *how* it must be requested and *whether* it can be provided to third parties. Once the SIN is provided under Section 237 of the *Income Tax Act* (Canada), it is not to be knowingly used, communicated or allowed to be communicated except as required or authorized under the *Income Tax Act* (Canada) or other specific Canadian regulations. For example, we believe the SIN could *not* be used on a Form 1042-S as this is not an allowed use of the SIN by the government entity (Canada) issuing the card; nor do we believe that an account holder can be requested to provide this identifier for purposes other than provided for in the Canadian legislation. Unauthorized disclosure or use constitutes an offence under Canadian law.
 - **Collection of such an identifier for persons foreign to Canada (excluding U.S. persons):** We believe that the requirement for the QI to obtain this foreign tax identifying number should be left to the domestic tax laws and regulations applicable to the QI. The QI is not required to obtain such a number for domestic tax reporting for non-residents. This information will serve no additional value in further identifying the beneficial owner.

Due to heightened public awareness of privacy legislation in Canada and we believe abroad, our members are being increasingly scrutinized by their client base in regards to the unauthorized collection and disclosure of personal information and, in particular in Canada, unauthorized use of social insurance numbers.

In addition to these legal issues, there are the complexity and system changes these provisions add to the existing documentation requirements.

For the above reasons, we recommend that completion of the box remain optional.

2. **Part IV instructions – Signing form under power of attorney:** Under the power of attorney (POA) section, a line has been added: “You may authorize an agent to sign Form W-8BEN only in the case of disease or injury or if the IRS has granted permission to you to do so for other good cause.” We are not clear why this has been narrowed as individuals giving POAs for someone to sign on their behalf would only give that permission to someone who would have access to the information required on the Form W-8BEN. The QI has no obligation or means for determining why a legal POA was initially granted. We believe this proposed revision may put the foreign QI in a position that compromises their QI Agreement in instances where a QI is unable to fulfill their obligation to honour a legally binding POA and has no choice but to record the account as undocumented for QI purposes. ***Please revert to the previous POA approach, at least for jurisdictions that have not evidenced any problems in this area. If there have been issues or concerns with POAs within Canada, please let us know.***
3. **Instructions – Effective date for new form:** Given the need for time to change procedures, communicate to staff and make technology changes for system-generated forms, as well as the need to address delays typical in dealing with a dispersed client base, we strongly request a transitional period for accepting older W-8BEN versions. For example, we expect to see cases where the withholding agent has requested forms be renewed prior to December 31, 2007, but does not actually receive the forms until after January 1, 2008. ***Please amend the instruction that prior versions of Form W-8BEN are not to be used after December 31, 2007 to read: "While every effort should be made to use the 2008 version of Form W-8BEN after December 31, 2007, a withholding agent may accept the prior version of the form within a reasonable time period should account documentation or renewal processes begun in 2007 dictate such acceptance."***
4. **Instructions Part IV – Capacity in which acting:** While we acknowledge the capacity line should be referenced in the instructions, we believe that, given the wide variation of hierarchy and responsibilities associated with titles within the global corporate community, a published list of acceptable titles would cause confusion and argument. ***We suggest the following wording: "...any person who can reasonably be seen as acceptable to sign on behalf of that entity within that sovereign jurisdiction."***
5. **Instructions re section IV, partnerships:** We believe the form is referring to a hybrid entity, however, think that the wording will cause some confusion for foreign entities that are not hybrid entities, but will mistakenly submit Form W-8BEN rather than the appropriate W-8IMY. ***The IRS may wish to clarify wording accordingly.***
6. **Greater Form W-8BEN usability:** The average foreign person using the form is unaware of U.S. tax rules and unsophisticated in complex corporate and international tax matters. Separating the Part II claims between those applicable to individuals and those applicable to legal entities would provide a better understanding of the form by individual Form W-8BEN users, particularly in the international context. ***Please provide the option to use separate W-8BEN forms for individuals and corporations.***

7. Forms W-8ECI, W-8EXP and W-8IMY: The Notice from Treasury asks for comments on other Forms W-8, but we have been unable to locate drafts for these forms on the IRS website. While we expect that some of the changes on the W-8BEN (e.g., abbreviations) will be carried to other forms, we would like an opportunity to review and comment on drafts of those forms and instructions.

We would be pleased to answer any questions that you may have on our comments and hope to receive notification of the requested changes as soon as possible if the new form(s) is (are) to be implemented at year-end.

Yours truly,



cc:

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