



THE INVESTMENT
FUNDS INSTITUTE
OF CANADA

L'INSTITUT DES FONDS
D'INVESTISSEMENT
DU CANADA



Canadian Life
and Health Insurance
Association Inc.

Association canadienne
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December 19, 2013

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Proposed Collection; Comment Request for Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY (collectively, the “Proposed Forms”)

The Canadian financial services sector welcomes the opportunity to provide further comment on the Proposed Forms¹. This submission has been prepared jointly by the Canadian Bankers Association (CBA), the Canadian Life and Health Insurance Association (CLHIA), the Investment Funds Institute of Canada (IFIC), and the Investment Industry Association of Canada (IIAC) (descriptions of each association are included in Appendix B).

Similar to our previous submissions to the Internal Revenue Service (IRS) dated July 16, 2012 and September 20, 2012, our recommendations in this submission are predominantly technical in nature. However, we would also like to reiterate the underlying theme of balancing complexity, compliance burden and risk. The complexity of the entity classifications under the FATCA regulations directly impacts the operational complexity of the Proposed Forms, particularly the Proposed Forms W-8BEN-E and W-8IMY. We recognize that all foreign entities must identify their entity type and FATCA status on the face of the form and certain foreign entities must certify that the conditions applicable to their status are satisfied. We believe that it will be extremely difficult for many entities to determine which portions of the Proposed Forms are relevant and require completion. As such, we have made a number of comments throughout this submission recommending that the IRS provide clear instructions. Without clear and adequate instructions, entities completing these forms will look to financial institution (FI) staff

¹ In this submission, these forms may be referred to interchangeably as “Forms W-8BEN” or “W-8BEN forms” (to refer collectively to Forms W-8BEN and BEN-E, or by their individual form numbers only).

(located at the FI that is requesting the form) to assist them with the completion of the forms, and in particular, determining which portion of the form to complete. ***We strongly believe that it is not appropriate for FIs to determine or to assist with the determination of the entity accountholder's status for U.S. tax purposes.*** Furthermore, it is extremely difficult for industry to comment on the general utility and burden of completing the Proposed Forms without having seen the accompanying draft Instructions to the Forms. ***We strongly urge the IRS to release for review and comment the proposed Instructions as soon as possible.***

Given that Canada is a bilingual country, we also reiterate our previously made point that the Proposed Forms will need to be understood and completed by people who do not speak English or for whom English is a second language, and as such we believe it will be important to have translated versions of all W-8 forms and the instructions available in all major languages. We would appreciate receiving clarification as to whether the IRS will provide or sanction translated versions of the W-8 forms and instructions and recommend that as part of the "intergovernmental agreement" (IGA) process with potential Partner Jurisdictions, a translated version of the W-8 forms and the instructions should be made available in the local language. In jurisdictions where there is not an IGA, there will need to be a process to ensure the availability of an IRS-sanctioned translation of the W-8 forms and instructions.

We appreciate that the IRS has provided the financial industry time to review and provide constructive feedback on the Proposed Forms. However, it is difficult to provide useful comments on how the Proposed Forms can best accommodate information that must be collected for the purposes of both Chapter 3 and Chapter 4 without a greater understanding of how these two regimes (and more importantly, entity status under these regimes) will be coordinated, how IGAs will affect implementation (including a possible reduction in the number of entity FATCA classifications) in Canada and other countries, and without having access to the proposed instructions that will accompany the forms. Further review and comment on proposed instructions by the financial industry will be critically important to reduce future problems encountered by FIs, accountholders and the IRS upon implementation.

We strongly urge Treasury and the IRS to provide the necessary coordinating guidance between Chapters 3, 4 and 61 ("Coordinating Guidance") as soon as possible. This lack of Coordinating Guidance is impeding preparation for FATCA implementation by FIs who are QIs, as is the lack of instructions for the Proposed Forms. As we are now approaching the end of 2013, and will soon be only six months from the July 1, 2014 effective date, there simply will not be enough time for FIs to review, provide comment on, digest and incorporate the Coordination Guidance and draft form instructions into their FATCA implementation plans. In particular, the form instructions will be critical to developing client account opening processes to collect the necessary information with the least possible burden and confusion for the client.

We have additional comments that apply to all of the Proposed Forms and some specific comments with respect to particular forms as set out in Appendix A to this submission.

We would be pleased to speak with you further about our recommendations and, more generally, about FATCA and its impact on Canadian financial institutions and their clients.

Sincerely,

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APPENDIX A

TECHNICAL COMMENTS AND RECOMMENDATIONS

Comments Applicable to all Forms

1. **Validity Period of Forms:** Although the general rule provides for a three-year expiration period for Forms W-8BEN, W-8BEN-E, W-8EXP and W-8ECI, we welcome the revised rules in the final Chapter 4 regulations that provide for an indefinite validity period for W-8 forms where certain conditions are met (e.g. where certain US indicia is not present for forms completed by individuals). In these cases, a new Form W-8 would only be required where there is a change in circumstances. However, it is not clear that the indefinite validity period, where applicable, will also apply for Chapter 3 purposes where treaty benefits are being claimed. We believe that it would greatly assist with the ongoing compliance obligations of FIs if these same expiration period rules applied for both Chapter 3 and Chapter 4 purposes.
2. **Expiration of Forms W-8 otherwise expiring on December 31, 2013:** IRS Notice 2013-43 provides that Forms W-8 that would otherwise expire on December 31, 2013 will instead expire on June 30, 2014. Many FIs have existing procedures in place to replace expiring forms based on a year-end expiry date. Deviating from this schedule on an exception basis will create additional cost and burden, particularly if FIs maintain their existing renewal schedules for W-8 forms that will expire on December 31, 2014. Given the delay in the release of the revised W-8 forms, in order to complete the renewal process by June 30, 2014, FIs will have to use the existing versions of the W-8 forms which don't include FATCA status. FIs may then be required to obtain new W-8 Forms from many account holders after July 1, 2014 in order to obtain the necessary FATCA status information. We request that this expiration date be further extended to December 31, 2014.
3. **Substitute Forms:** §1.1471-3(c)(6)(v)(B) of the regulations requires that a substitute W-8BEN form include "all countries in which the individual is resident for tax purposes". However, this is not a requirement on the Proposed Form W-8BEN. We request additional clarification regarding why this difference currently exists or request that the information required on the official IRS W-8BEN form be consistent with the substitute form.

Additional guidance is also required on the acceptability of prepopulating certain sections of the substitute form, as well as confirmation that any extraneous information not applicable to groups of accountholders not be required on the substitute form.

4. **Abbreviations:** We recommend that the IRS amend all of the forms, removing the restriction on country abbreviations provided there is no ambiguity regarding the country identified. In the case of permanent and mailing addresses, other information collected on the form or in connection with the account will generally remove any ambiguity that may exist with respect to a country abbreviation used in isolation. An FI will need to know an accountholder's country of residence or country associated with a

mailing address for purposes of properly administering the account and the use of an abbreviation on a W-8 form should not create any confusion. We have similar concerns about the “Country of incorporation or organization” with respect to abbreviations.

5. **Foreign TINs:** While it may be useful for US FIs to obtain Foreign TINs (if any) for purposes of sharing information with Partner Jurisdictions under reciprocal IGA agreements and other future exchange of information agreements, this line should remain optional on forms received from account holders whose Foreign TINs would not be reported to the IRS (e.g., accounts not subject to reporting under FATCA or reported on a pooled basis under the QI regime). We also recommend that the IRS provide clear guidance in the forthcoming instructions as to how this line is to be completed as individuals may have more than one Foreign TIN and confirmation that FIs are not required to engage in any additional due diligence or validation check with respect to the Foreign TIN provided by the client.
6. **Transmission of Forms W-8:** We agree with the IRPAC recommendation (in their “Information Reporting and Withholding Subgroup” Report for 2013) that the electronic transmission requirements for Chapters 3 and 4 be modified to provide that the W-8 forms will be acceptable where they are transmitted via e-mail or facsimile, except where the FI knows that the form has been transmitted by a person who does not have the authority to transmit the W-8 form. We agree with IRPAC that all of the other authentication requirements with respect to faxed and e-mailed W-8 forms be eliminated.
7. **Due Diligence Requirements:** Guidance is required regarding the specific due diligence to be carried out by an FI when reviewing the validity of the W-8 forms. The “Due Diligence Requirements” section of the “Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY” should be updated to incorporate the revised forms, including the new W-8BEN-E form.
8. **New FATCA Entity Statuses:** There are additional FATCA entity statuses that have been added since the current versions of the forms were released. These include Direct Reporting NFFEs, Sponsored Direct Reporting NFFEs and Trustee Documented Trusts. The final version of the W-8 forms should incorporate any additional entity statuses not currently on the Proposed forms.

Proposed Form W-8BEN (Individual)

Part I, Line 2: Our primary comment with respect to this item (“Country of Citizenship”) is that it is not required for Chapter 3 or Chapter 4 purposes, and is not required on the current Form W-8BEN. A U.S. person will be required to complete a Form W-9. In fact, the existing and Proposed W-8BEN forms both have a prohibition at the top of the form stating that a U.S. citizen must NOT use the W-8BEN form.

While it may be anticipated that non-U.S. citizenship may be useful for purposes of sharing information with Partner Countries under future “intergovernmental agreements” (IGAs) for the implementation of FATCA, very few countries other than the U.S. tax on this basis and gathering

non-U.S. citizenship is not a requirement under the model IGAs. It would be more appropriate to change this line to “Country of Tax Residency”. This would also be consistent with the requirements noted above for substitute forms where all countries of tax residency must be identified.

Part II Line 9: Since the country of tax residence is often entered on this line even where there is no treaty in place between that country and the U.S., we recommend that the IRS provide confirmation that where the individual provides the name of a non-treaty country on this line, the form would not be invalidated.

Part II Line 10: Although “Special rates and conditions” apply to certain entities (such as Canadian charitable organizations), it’s not clear when this line will apply for individuals. If this will potentially apply to certain individuals, some guidance or examples should be included in the Instructions to Form W-8BEN.

Part III, Certification 1: We recommend that the portion of the certification which states “or am using this form to document myself as an individual that is an owner of a foreign financial institution”) should be changed to “or am using this form to document myself as an individual that is an owner of a foreign entity” to recognize that this form will also be completed by owners of passive NFFEs.

We also question whether now that the W-8BEN form is being used for both Chapter 3 and Chapter 4 purposes, the references to “income” are now too narrow and should be changed to “payments”.

Part III, Certification 5: We question whether the reference to “withholding agent” is too narrow, as it may cover payments and assets for which a PFFI is not a withholding agent.

Proposed Form W-8BEN-E (Entity)

General recommendation:

We are concerned that the complexity of the certifications made on the Proposed W-8BEN-E form for FATCA purposes will result in confusion for our entity accountholders and could result in errors or misclassifications. We urge the IRS to provide clear guidance that the FI will not be held responsible for a misclassification or error on the W-8BEN-E form completed by an accountholder for either Chapter 3 or FATCA purposes, where the FI has no reason to believe that an error or misclassification has been made and where the required due diligence has been performed. We also urge the IRS to make it clear in the instructions and on the face of the form itself that FIs providing the W-8BEN-E to accountholders will not be expected to make the determination of the entity classification for the accountholder.

Part I, Line 4: The instructions should provide clear guidance regarding the “Disregarded Entity” box and clarify that this box should only to be ticked where the disregarded entity is a hybrid making a treaty claim. Otherwise, the classification of the entity entered on line 1 should be ticked. This would represent the classification of the underlying owner and not the disregarded entity.

Part I, Line 5: It is also not clear why the box in Line 5 marked “Not receiving withholdable/passthru payment” with the instruction “Must Enter Code” has been added. This requirement is confusing since this is a statement of fact and may change at any point in time in the future. It is unclear why this is included because it does not represent a Chapter 4 status of an entity. Similarly, there is an instruction in Line 5 to “Check one box only unless otherwise indicated”; however, there is no “indication” of when the entity may check more than one box.

We also request clarity around which box to tick when an entity is an “Active NFFE” under an IGA. Under Annex I, section VI.B.4 of the Model 1 & 2 IGAs, the term Active NFFE encompasses many entity categories under the Chapter 4 Regulations. When an entity that fits into one of these categories is in an IGA jurisdiction, should they tick “Active NFFE” or the category that applies under the regulations? Based on the IGA definition, it appears that “Active NFFE” should be ticked. However, by ticking this you are directed to Part XXIV of the W-8BEN-E Form which only sets out the Active NFFE requirements as set out in the Chapter 4 regulations.

Part IX: This section indicates that the owner-documented FFI status only applies if the US FI or PFFI to which this form is given has agreed to treat the FFI as an ODFFI. It should also indicate that Reporting Model 1 and Model 2 FFIs can also agree to such treatment.

Part XI: There is significant uncertainty around the entity classifications to assign to this type of entity and it is currently unclear as to what information is expected to be entered on the lines under the two bullet points.

Parts XXV & XXVII: We note that FIs in IGA countries are required to identify U.S. “Controlling Persons” of Passive NFFEs rather than “substantial U.S. owners”. The comments should be expanded to provide for the identification of substantial U.S. owners or U.S. Controlling Persons, as appropriate. The separation between Parts XXV and XXVII is confusing and directing the reader to a different section of the form only used by Part XXV serves no purpose. The Certification section should be the final section of the W-8BEN form in order to ensure it is effortless to locate and complete.

Proposed Form W-8IMY

General recommendations:

Similar to comments made above with respect to the Proposed W-8BEN-E Form, we are concerned that the number and complexity of the certifications made on the W-8IMY form for FATCA purposes will result in confusion for entities completing the form and could result in errors or misclassifications. FIs receiving the Form W-8IMY should not be held responsible for a misclassification or error on a form completed by an entity account holder, where the FI has no reason to believe that an error or misclassification has been made. We also urge the IRS to make it clear in the instructions and on the face of the form itself that FIs providing the W-8IMY to entities for completion will not be expected to make the determination of the entity classification.

We also reiterate our comments made above for the W-8BEN forms for clear guidance that FIs providing this form for completion are not required to engage in any additional due diligence where country of incorporation or organization provided by the taxpayer on the form does not match permanent residence or mailing address.

Part I, Lines 4 & 5: Similar to comments made above with respect to the W-8BEN-E form, we also recommend that the IRS provide clear guidance in the instructions about the completion of Lines 4 and 5. In particular, it is not clear what is intended by the box in Line 5 marked “Other status (see instructions for applicable code)”.

Part XXVII: We recommend a “print name” line associated to the signature be added, for consistency across all forms.

Also refer to comments made above with respect to the W-8BEN-E Form for an “Active NFFE” where the entity is in an IGA jurisdiction.

Draft Form W-8ECI

Part I, Lines 1, 3 & 4: Where the form is completed for a disregarded entity, the instructions should provide clarity that the entity type to be ticked on line 4 is in relation to the entity on line 1 (i.e. the underlying owner of the disregarded entity) and is not in relation to the status of the disregarded entity entered on line 3.

Draft Form W-8EXP

Refer to general comments above applicable to all forms.

APPENDIX B

Participating Associations

Canadian Bankers Association (CBA)

The Canadian Bankers Association works on behalf of 57 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 275,000 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada's economy. The Association also promotes financial literacy to help Canadians make informed financial decisions and works with banks and law enforcement to help protect customers against financial crime and promote fraud awareness.

Canadian Life and Health Insurance Association (CLHIA)

The CLHIA is a voluntary association of Canadian life and health insurers, with members accounting for 99% of Canada's life and health insurance business. The industry provides protection to about 27 million Canadians (representing over 75% of Canada's total population) through a wide variety of individual and group insurance products. At the end of 2012, CLHIA members administered over 13 million individual Canadian life insurance policies, as well as group life insurance policies covering nearly 36 million Canadian certificate holders. Members also administered more than 3 million individual Canadian annuities, as well as group annuities and pension plans covering over 5 million Canadians. In addition, Canadian life and health insurers have international operations in over 20 other countries, with 15% of their worldwide premiums (amounting to about \$20 billion) coming from countries other than Canada and the United States.

Investment Funds Institute of Canada (IFIC)

The Investment Funds Institute of Canada is the voice of Canada's investment funds industry. IFIC brings together 150 organizations, including fund managers and distributors and industry service organizations, to foster a strong, stable investment sector where investors can realize their financial goals. By connecting Canada's savers to Canada's economy, our industry contributes significantly to Canadian economic growth and job creation. The organization is proud to have served Canadian financial consumers for more than 50 years.

Investment Industry Association of Canada (IIAC)

The Investment Industry Association of Canada (IIAC) is the national association representing the investment industry's position on securities regulation, public policy and industry issues on behalf of our 166 IIROC-regulated investment dealer Member firms in the Canadian securities industry. These dealer firms are the key intermediaries in Canadian capital markets, accounting for the vast majority of financial advisory services, securities trading and underwriting in public and private markets for governments and corporations. The IIAC provides leadership for the Canadian securities industry with a commitment to a vibrant, prosperous investment industry driven by strong and efficient capital markets.