



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

September 28, 2009

Canada Revenue Agency
(via email only)

Re: Proposed declaration process for applying treaty benefits to income paid to non-residents (Forms NR301, NR302 and NR303)

The Investment Industry Association of Canada (**IIAC**) appreciates the opportunity to submit its comments to the Canada Revenue Agency (**CRA**) on the proposed declaration process to support the administration of withholding tax requirements in Part XIII of the Income Tax Act.

The IIAC represents over 200 investment dealers employing 42,000 individuals across Canada. The IIAC Tax Reporting Committee (the “**Committee**”) reviews proposed amendments to federal and provincial tax legislation from an operational perspective, comments on proposed tax reporting forms and develops securities industry positions on practical and conceptual matters surrounding tax reporting, tax-sheltered investment plans and other tax-related matters.

The Committee reviewed proposed Forms NR301, NR302 and NR303 (the “**Proposed Forms**”), and respectfully submit the following comments to the CRA for its consideration.

General Comments

Mandatory vs. Optional

It was noted on the “Public comments invited” cover page that “a payer will not have to receive a form from a non-resident before reducing Part XIII tax withholdings according to the applicable tax treaty”. Yet, the cover page also asks for comments on what would be considered a “reasonable transition period”, which has led to confusion amongst our members as to whether the forms are optional or mandatory. It would be appreciated if CRA could provide clarification on its intention in this regard.

In general, the Committee expressed support for the Proposed Forms as an optional tool to assist Canadian payers in determining the appropriate application of reduced rates of withholding; however, the Committee strongly preferred that Proposed Form NR301 not be mandatory for ‘individuals’ who have accounts directly with a payer. Specifically, our

members are concerned about the potentially small amount of additional revenue that would be collected by CRA from clients who declare themselves ineligible for full treaty benefits. In our opinion, the revenue that could be gained would not justify the amount of work and the considerable costs involved in having individual non-residents fill out the Proposed Form NR301, including the development of internal systems and the tracking and monitoring that would be necessary.

Additionally, as CRA already notes on the back of the NR301 Proposed Form, “It is normally expected that an individual resident of a particular country for treaty purposes will fully satisfy the requirements of an applicable LOB (Limitation on benefits) provision”. We fully concur with this statement and therefore do not believe that this Proposed Form NR301 should be required for completion by individual non-residents.

Implementation Issues

There will be enormous costs, both in terms of dollars and human resources, to implement the completion of the Proposed Forms, and to process the information being collected. While there are particular problems associated with the completion of Proposed Form NR301 by individuals, our Committee believes that the implementation issues identified in this submission also apply to Proposed Forms NR302 and NR303.

For example, processing effective withholding rates on income paid to partnerships and hybrid entities would not be practically possible without development of automated solutions. Service providers will need to build the systemic solutions that would facilitate this processing. Such a large project would impact several different internal systems and involve complicated programming. If the Proposed Forms become mandatory, the industry would require substantial transition time to complete the projects necessary for implementation, and would like to be able to provide industry input to streamline the process and reduce costs wherever possible.

Over-complication of the withholding process may lead to unintended consequences if firms are unable to facilitate the processing of information received on the Proposed Forms. These consequences include situations where payers automatically default to the maximum withholding rate, ultimately creating more work for taxpayers and CRA to deal with increased reclaims. Our Committee recommends that, if CRA wants to develop an enhanced reporting regime, to consult more comprehensively with industry to better understand what changes can be reasonably implemented, while minimizing unwanted negative side effects.

Liability

The Committee also expressed concern that payers may be held financially responsible by CRA for under withholding where the payer relies on the use of the Proposed Forms.

We would appreciate confirmation that payers will not be liable to the CRA for any alleged under withholding where the payer reasonably relies on the use of the Proposed Forms.

Expiry Dates

The Proposed Forms have a two-year validity period from the date of signature (compared with the Dec. 31 expiry after three years for an IRS “W” Form). The Committee recommends that the Canadian expiry date be synchronized with the U.S. standard of three years with all forms expiring on December 31.

Members who use the IRS forms have found that even the three-year validity period can be a tight timeframe, and believe that a two year period will be too short. Also, having a common expiration date, like December 31st, makes administration and tracking far more efficient.

The Proposed Forms

Incomplete Forms

The instructions for each of the Proposed Forms also state that reduced withholding should not be granted where “the form has not been duly completed”. We would appreciate receiving clarification as to whether there are any fields on this form that are optional. For example, if a client is non-resident, and does not have a Social Insurance Number to provide in Box 3, would this omission invalidate the claim? It should be made clear on the form that information need only be included where applicable.

Mailing and Residence Address

Proposed Form NR301 includes an example (under the section “Expiry Date”) in which the taxpayer’s mailing address changes to a different country than that declared on the original completed form. Taxpayers may reside in a particular jurisdiction but for a myriad of reasons may elect to have mail delivered to an address in another country. For this reason, we recommend that Proposed Form NR301 be amended to recognize the delineation between a mailing address and the client’s permanent residence address.

We would also appreciate receiving clarification in the instructions as to whether P.O. Box addresses will be acceptable to CRA.

Special Treaty Rates

Proposed Form NR301 should include a section where the non-resident can indicate if special treaty rates apply. For example, in the case of a foreign pension plan, there may be an exemption from Canadian withholding for certain types of income under a tax treaty.

Certification for Individuals

On Proposed Form NR301, the information to be written in the “Position” line may not be clear to individuals. It should clearly indicate that it is only to be completed when the person signing the form is not the non-resident taxpayer (and generally would be N/A for individuals).

Worksheets

Our members recommend that the worksheets also allow for the inclusion of resident partners, to allow for a 100% allocation. We suggest that a total box under “Percentage allocation” be included to show that the allocations add to 100%.

We would be pleased to meet with you on this matter to discuss these issues and how they might be addressed. Please contact the undersigned with any questions or meeting requests.

Yours truly,

“Jack Rando”

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