

June 15, 2018

Submitted via the Federal eRulemaking Portal

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2018-43)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Request for Comments Regarding Recommendations for Items that Should be Included on the 2018-2019 Priority Guidance Plan (Notice 2018-43)

Dear Sir/Madam:

The Investment Industry Association of Canada¹ (the IIAC) appreciates the opportunity to provide comments to the Department of the Treasury (the Treasury) and the Internal Revenue Service (the IRS) regarding what items should be included in the 2018-2019 Priority Guidance Plan. The IIAC is the national association representing the investment industry's position on securities regulation, public policy and industry issues on behalf of our 122 IIROC-regulated investment dealer members in the Canadian securities industry. IIAC Members are impacted by US tax policy in a number of areas including as qualified intermediaries, withholding agents and through FATCA.

Section 871(m) Guidance

While the IRS and Treasury have provided the financial industry with relief in the form of Notice 2017-42 and Notice 2018-05 extending the phase-in period and further extending the Qualified Securities Lending (QSL) Regime, there is still need for additional guidance with respect to the section 871(m) regulations. Many aspects of the section 871(m) regulations remain uncertain. Section 871(m) regulations were included in the Treasury and IRS' 2017-2018 Priority Guidance Plan under Part 3 "Near-Term Burden Reduction" and we recommend that section 871(m) regulations continue to be a priority item under the 2018-2019 Priority Guidance Plan. Further, we agree with the Treasury and IRS' assessment that amendments and guidance with respect to these regulations can be provided to reduce the burden on taxpayers and the financial industry. The IIAC made several recommendations in our September 22, 2017

¹ These dealer firms are the key intermediaries in the Canadian capital markets, accounting for the vast majority of financial advisory services, securities trading and underwriting in the public and private markets for government and corporations. For more information visit, <http://www.iiac.ca>

letter² for amendments to section 871(m) based on the mandate of Executive Order 13777 which was aimed at reducing the regulatory burden, while still achieving the regulations tax avoidance objectives. In particular, some of the priority burden reduction amendments that we recommended included: the delta-one framework should be made permanent; Qualified Derivative Dealers (QDD) should not be liable for tax on actual dividends received on physical shares; listed options should be excluded from the combination rules; and securities lending and repo transactions should be removed from the scope of the QDD regime and should be governed by the QSL regime.

Section 305(c) Final Rules and Guidance

Publishing final section 305(c) regulations was included in the 2017-2018 Priority Guidance Plan and we recommend that it be carried over to the 2018-2019 Priority Guidance Plan. There is some uncertainty in the proposed regulations with respect to when a paying agent's withholding obligation arises. There are different understandings within the financial industry as to whether or not under 1.1441-2(d)(4)(i) it determines the withholding agent's liability date as arising on the date that Form 8937 is considered to be reported by the issuer. Additional guidance on this matter would be appreciated.

We greatly appreciate the ongoing work and dialogue with the financial industry on what items should be included in the 2018-2019 Priority Guidance. If you have any questions with respect to the foregoing, we kindly ask that you contact the undersigned at awalrath@iiac.ca or 416-687-5472. Thank you.

Yours sincerely,

"Adrian Walrath"
Assistant Director

² <https://iiac.ca/wp-content/uploads/IIAC-Letter-to-Treasury-and-IRS-re-Executive-Order-13777-Enforcing-the-Regulatory-Reform-Agenda-and-Section-871m.pdf>

