

July 22, 2020

Submitted via the Federal eRulemaking Portal (www.regulations.gov)

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2020-47) 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 2020-2021 Priority Guidance Plan (Notice 2020-47)

Dear Sirs and Mesdames:

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 2020-2021 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 115 IIROC-regulated investment dealer members in the Canadian securities industry. IIAC Member Firms are impacted by U.S. tax policy in a number of areas including, as Qualified Intermediaries (“QIs”), withholding agents and through FATCA.

IIAC Member Firms have identified the specific areas where finalized regulations or guidance would greatly assist the financial industry comply with existing requirements by clarifying requirements and where guidance could reduce the tax regulatory burden. The IIAC has submitted extensive comment letters on the below regulations and in order to avoid duplication, this letter may reference those submissions and does not repeat the in-depth rationale for our recommendations.

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>

Priority Recommendations for 2020-2021:

1. Regulations Under IRC Section 871(m);
2. Finalize Proposed Regulations Under IRC Section 305(c);
3. Guidance Under IRC Section 1441 relating to Section 302/304 distributions;
4. Finalize Regulations Under IRC Section 1446(f); and
5. Permit E-Signature Options for Form W-9.

1. Section 871(m) Guidance

While the IRS and Treasury have provided the financial industry with relief in the form of Notice 2020-2, extending the phase-in period, there is still need for finalized regulations and additional guidance with respect to the section 871(m) regulations. Many aspects of the section 871(m) regulations remain uncertain and we agree with the Treasury and IRS' previous 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 various submissions² to the IRS and the Treasury including pursuant to Executive Order 13777.

In particular, some of the priority burden reduction amendments that we recommended include: the delta-one framework should be made permanent; the temporary rules for Qualified Derivative Dealers ("QDD") not being liable for tax on actual dividends received on physical shares should be made permanent; the combination rules requiring withholding agents to combine only over-the-counter trades that are "priced, marketed or sold" should be made permanent and express guidance should be issued stating that withholding agents are not required to combine non-over-the-counter trades, including listed options; and securities lending and repo transactions should be removed from the scope of the QDD regime and should be governed by the QSL regime.

2. Section 305(c) Final Rules and Guidance

Publishing final section 305(c) regulations was included in the 2018-2019 Priority Guidance Plan and we recommend that it be carried over to the 2020-2021 Priority Guidance Plan. There is still 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.

² <https://iiac.ca/wp-content/uploads/IIAC-Comment-Letter-to-the-U.S-Treasury-and-IRS-re-Section-871m-Regulations-April-16-2018.pdf>

3. Guidance under IRC Section 1441 relating to Section 302/304 distributions

As noted in the IIAC's submission on December 23, 2016³, the financial industry has been able to identify a number of serious challenges while using best efforts to comply with the unclear requirements contained within the proposed withholding procedures under Section 1441 for certain distributions to which Section 302/304 applies. The lack of published, finalized rules create a great deal of regulatory uncertainty for Canadian QIs with respect to the certification process required to release the escrowed amounts. In addition, it has also caused uncertainty and confusion among clients, who are required to execute complex calculations, sometimes without adequate or consistent information from issuers.

4. Finalize Regulations under IRC Section 1446(f)

The IIAC has raised concerns with respect to the regulations under 1446(f) outlined (REG-105476-18) in a July 2019 letter⁴, and we support the additional concerns raised by SIFMA in their December 20, 2019 letter⁵, as well as their July 2019 letter⁶. Without additional guidance or amendments to the proposed regulations under 1446(f) there may be significant burdens imposed on firms to comply.

In particular, we would like to reiterate: (i) the need for an extended effective date from 60 days to 18 months following the finalization of all guidance; (ii) the IIAC's support for SIFMA's expanded discussion on the rationale why the executing broker should not be required to collect withholding tax under section 1446(f) and we similarly recommended that the custodial broker who receives the gross proceeds should be solely responsible for collecting withholding tax under section 1446(f); and (iii) the need for clarity that QIs are allowed to pool report such payments as allowed under existing Section 8.01 of the QI Agreement and that the proposed amendments under section 1446(a) and §1.1446-4.

5. Permit E-Signature Options for Form W-9

The IIAC has requested that the IRS and the Treasury release guidance allowing e-signatures for the Form W-9, Request for Taxpayer Identification Number and Certification ("W-9"). This form is crucial to allow Canadian FIs to open accounts for U.S. clients. The IIAC has suggested that the rules regarding the acceptance of electronic signatures permitted for Form W-8s be accepted for W-9s⁷. While the IIAC initially made the request to assist with the immediate COVID-19 concerns, we also believe that this change should be made permanent. This request is in alignment with the IRS' plans to accelerate the use of e-signatures as noted in the 2019 IRSAC Public Report⁸.

³ <https://iiac.ca/wp-content/uploads/IIAC-Letter-to-IRS-Proposing-Simplified-U.S.-Tax-Withholding-Procedures-for-Section-302-Distributions.pdf>

⁴ https://iiac.ca/wp-content/uploads/Submission-to-IRS_Withholding-of-Tax-and-Information-Reporting-with-Respect-to-Interests-in-Partnerships-Engaged-in-the-Conduct-of-a-US-Trade-or-Business_July-12-2019.pdf

⁵ https://www.sifma.org/wp-content/uploads/2020/01/SIFMA-1446f-Follow-Up-Letter_Dec-20.19.pdf

⁶ <https://www.sifma.org/resources/submissions/proposed-regulations-under-section-1446f/>

⁷ Forms W-8 Instructions <https://www.irs.gov/instructions/iw8>

⁸ IRSAC Report <https://www.irs.gov/pub/irs-prior/p5316--2019.pdf>

We greatly appreciate the ongoing work and dialogue with the financial industry on what items should be included in the 2020-2021 Priority Guidance. If you have any questions with respect to the foregoing, we kindly ask that you contact the undersigned at awalrath@iiac.ca. Thank you.

Yours sincerely,

“Adrian Walrath”

Director
Investment Industry Association of Canada

CC:

The Honorable David J. Kautter, Assistant Secretary for Tax Policy, Department of the Treasury

The Honorable Charles P. Rettig, Commissioner, Internal Revenue Service

The Honorable Michael J. Desmond, Chief Counsel, Internal Revenue Service

The Honorable Paul J. Ray, Administrator, Office of Information and Regulatory Affairs

Mr. Thomas A. Barthold, Chief of Staff, The Joint Committee on Taxation