

March 27, 2020

Submitted via Email

The Honorable David J. Kautter
Assistant Secretary for Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

The Honorable Michael J. Desmond
Chief Counsel
Internal Revenue Service
1111 Constitution Ave, NW
Washington, D.C. 20220

Re: Request for relief from information reporting deadlines and other requirements due to COVID-19

Dear Sirs:

The Investment Industry Association of Canada¹ (the “IIAC”) is the national association representing approximately 120 IIROC-regulated investment dealer members in the Canadian securities industry. Many IIAC Members are non-U.S. financial institutions and have entered into Qualified Intermediary Agreements with the Internal Revenue Service (the “IRS”) to become Qualified Intermediaries (“QIs”). They are therefore subject to annual information reporting requirements as well as compliance related certifications under the QI regime. During this unprecedented global COVID-19 crisis, the IIAC is requesting several extensions to provide relief to these QIs as they comply with government mandated work related changes to “flatten the curve” and ensure the safety of their employees and others.

I. Overview

The IIAC appreciates the actions that the U.S. Department of the Treasury (the “Treasury”) and the IRS have already taken to reduce the burden on financial institutions (“FIs”) and taxpayers during this global

¹ For more information visit, <http://www.iiac.ca>

pandemic. IIAC Members are specifically requesting the following extensions to alleviate the burden on FIs associated with COVID-19:

- Automatic extensions for Form 1042-S, Form 1099 and Form 8966 filings to July 15, 2020;
- Automatic extension of 180 days for the QI, WP, WT Certification deadline;
- Automatic extension of 180 for the QDD Certification deadline;
- Automatic extension of 90 days for the FATCA Responsible Officer Certification deadline; and
- Delay information exchange deadlines under FATCA.

We would also like to support the recommendations made in SIFMA's March 25, 2020 letter on *Information Reporting Deadlines and other relief relating to the COVID-19 pandemic*.

As a result of concerns related to the global COVID-19 crisis, many FIs have had to institute business continuity plans. Throughout Canada there are various governmental orders related to social distancing and some provinces and cities have declared states of emergency². This has resulted in a number of changes which are impacting FIs' ability to guarantee that they can meet certain tax filing or certification deadlines. For example, most FIs are trying to have personnel work from home ("WFH") where possible, or personnel may be reduced if remote access is not available. The increased number of personnel working remotely has caused problems related to their ability to have full access to the FI's systems/applications as they would if working onsite, and remote access tends to be slower due to connectivity with the FI's servers, causing delays in reconciliation. FIs are also finding that IT personnel and systems involved in the filing process are limited/constrained due to increase in remote work. There are dependencies on external data feeds (e.g. branches within the FI, third-party filing providers), as well as printing vendors and that may cause delays as other areas are also enacting backup continuity plans. In addition, the current state of financial markets is causing FIs to reallocate resources to address other concerns and to assist clients. These changes necessitate flexibility in the deadlines for several QI related filings and certifications.

II. Extension for Form 1042-S, Forms 1099 and Form 8966 Filings

As a result of COVID-19 and the challenges articulated above, FIs are concerned they will not be able to meet the current filing deadlines for Form 1042-S, Forms 1099 and Form 8966. We request automatic extensions to allow FIs to file the above noted information reports by July 15, 2020. This is in line with other taxpayer relief provided by the Treasury and the IRS pursuant to the IRS guidance under Notices 2020-17 and 2020-18, the Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic. As well, we appreciate the relief provided by the IRS in its FAQ allowing Reporting Model 2 FFIs and Participating FFIs to file the Form 8966 up to July 15, 2020. We request that the relief is extended to include U.S. branches of foreign entities, U.S. withholding agents and financial institutions³.

² For example, the province of Ontario declared a state of emergency on March 17, 2020, and the province of British Columbia declared a state of emergency on March 18, 2020.

³ <https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal>

III. QI, WP, WT Certification Extension

We have a number of QIs, Withholding Foreign Partnerships (“WP”) or Withholding Foreign Trusts (“WT”) who have Compliance Certifications due on July 1, 2020 or who are scheduled to begin their periodic review this year and due to COVID-19 challenges, we believe an extension of 180 days for the QI Compliance Certifications is warranted (for Certification Periods 2017-2019 and 2018-2020).

QI Compliance Certifications require coordination among numerous personnel and for those firms conducting a periodic review, an evaluation based on a sampling of accounts via field work performed by an independent internal or external reviewer. The in-person nature of audits due to privacy concerns and related travel requirements may be problematic given the current travel restrictions and directives from government to work remotely and avoid non-essential travel. These issues could spill over and impact the ability of QIs selecting 2020 as their external review year to satisfy their timelines.

In addition, for those QIs that need the requested extensions above with respect to Form 1042-S, Forms 1099 and Form 8966, it will be very difficult for them to comply with certain requirements related to the QI certification as they would not have all of their required filings completed before the certificate due date. The IRS has previously alerted QIs that all their filings (including Forms 1042, 1042-S, 1099s etc.) and related payments need to be up to date. We believe an extension of 180 days would alleviate potential resource concerns surrounding completing annual filings and undertaking the necessary work to complete a QI Compliance Certification.

IV. QDD Certification Extension

The IIAC has a number of members that have Qualified Derivative Dealer (“QDD”) Certifications due on either July 1, 2020 or December 31, 2020 and we request an extension of 180 days for each date. In addition to COVID-19 related concerns similar to the QI Compliance Certification, there remains confusion with respect to the content of what QDDs would be certifying. IRS Notice 2020-2 did provide some clarity with respect to reliance on good faith and that periodic reviews are not required to be performed, however, there are outstanding questions that further impede the ability of QDDs to complete their certifications. The IIAC has reached out to the IRS requesting an FAQ to assist QDDs.

V. FATCA Responsible Officer Certification Extension

The IIAC requests a 90 day extension for the FATCA Responsible Officer Certification deadline. We have a number of members with entities in jurisdictions where this is applicable. We concur with SIFMA that a 90 day extension is appropriate due to the differences between this Certification process and the QI, WP and WT Certification with respect to lesser travel requirements as there is no need for a formal periodic review.

VI. Extension for information exchange with Model 1 IGA countries

The IIAC requests the information exchange deadlines between countries with Model 1 Intergovernmental Agreements (“IGAs”) and the IRS be extended to at least 180 days beyond the original due date. Information reporting processes at Canadian firms have been adversely impacted by WFH conditions, personnel restrictions, limited access to physical office locations and, most importantly, hindered or restricted access to IT systems. Lack of secure communication channels in WFH offices, coupled with the local network limitations and firewalls in place at firms make remote submissions of information returns very difficult. Even after business operations fully resume, Canadian firms may face backlog in information returns filings, managing multiple priorities and deadlines.

Canada is a Model 1 country with an Intergovernmental Agreement to exchange information with the IRS under FATCA. We believe if the IRS delays the deadline for its information exchange, then that could enable other jurisdictions, such as Canada, to delay their deadlines for FIs to file FATCA information returns. This delay would greatly reduce the burden on Canadian FIs as they struggle to meet numerous filing deadlines. Retaining the original due dates for the FATCA information returns could result in inaccurate reporting and multiple amended filings after the initial submission.

VII. Other Relief Required

While the IRS has electronic signature guidelines for Forms W-8, this has not been extended in full to the Form W-9. IIAC Members have received queries from U.S. clients that have asked whether they can electronically sign the W-9, given requests for self-isolation and no access to printers, and hesitation to enter a branch. There are also concerns around most FIs’ ability to access mail for documents that currently require a wet signature. In particular, we support SIFMA’s request for the following:

- Allow for electronic signatures using approved processes, such as DocuSign, for forms not previously permitted to be signed in this manner;
- Expand the scope of an acceptable electronic signature on any tax return or other tax document by permitting any signature which indicates a form is signed electronically, for example, if it contains any e-signature designation or “S-signature” designation (e.g., “/s/ John Doe”), regardless of whether it contains a date and time stamp; and
- Expand the scope of an approved electronic signature to include an email from the form signer making express reference to the specific tax form (e.g., pdf attached) and individual or entity name (where applicable), confirming capacity to sign such form, and stating “this message shall be treated as signature on such form.” The withholding agent or other party relying on a particular form would be permitted to treat the email as a statement attached to the form.

Further, we share SIFMA’s concerns with respect to the impact COVID-19 on current deadlines and the potential impact on regulatory rulemaking and firms’ ability to implement new regulatory requirements for expected changes under IRC Section 1446(f) and to the QI Agreement.

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VIII. Conclusion

We appreciate your consideration of our concerns in this unprecedented time. In addition, IIAC Members welcome the opportunity to further discuss the operational challenges they face related as a result of COVID-19. Please do not hesitate to contact myself at awalrath@iiac.ca or (416)-220-4648 for any clarifications or additional questions regarding this submission. Thank you.

Yours Sincerely,

“Adrian Walrath”

Adrian Walrath
Policy Counsel
Investment Industry Association of Canada

CC: Mr. Krishna P. Vallabhaneni, Tax Legislative Counsel, Office of Tax Policy, U.S. Department of the Treasury
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