



Canadian Life
and Health Insurance
Association Inc.

Association canadienne
des compagnies d'assurances
de personnes inc.



December 3, 2012

Mr. Steven Musher
Associate Chief Counsel (International)
Internal Revenue Service
Office of the Associate Chief Counsel (Int'l)
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Mr. Musher:

We are writing on behalf of the Canadian Bankers Association (CBA), the Investment Industry Association of Canada (IIAC), the Investment Funds Institute of Canada (IFIC), and the Canadian Life and Health Insurance Association (CLHIA) in response to the IRS Office of Chief Counsel Memorandum AM2012-008 (the Memo) in which you outline the conditions under which electronic submission of a W-8 form is acceptable. We are strongly supportive of the principle of electronic communication and documentation. Electronic production, submission, and storage of forms are commonplace in the business community around the world. It is faster, more secure, and more efficient than paper-based submission and therefore benefits both the individual providing documentation and the financial institution that receives documentation.

While we are appreciative of the attempt that the memorandum makes to clarify the conditions under which electronic delivery is deemed acceptable, we are concerned that the suggested measures in the memorandum to validate whether the person sending the form is the same as the person named on the form are difficult to operationalize. The letter suggests three options as examples:

- Ensuring that the email address of the sender concords with the email address of the person named on the form;
- Ensuring that the email address of the sender concords with the email address that the financial institution has on record for the person named on the form; or

- Confirming in verbal or written form that the sender was the person named on the form and document the confirmation.

We recognize that these are provided “for example”, which suggests that the list provided is illustrative rather than exhaustive. That being said, the examples provided present some significant practical challenges to operationalize. As a practical matter, people often have multiple email accounts (one at home, one at work, a web-based email account, etc.) and the email addresses often (indeed, typically) do not reflect the sender’s name. For privacy and security reasons, many people opt for an email address that is not their name. While the oral or written confirmation option remains available, as a practical matter it somewhat defeats the purpose of electronic submission because it requires that the withholding agent establish live contact with the sender, which is typically one of the challenges that electronic submission is meant to overcome

There are also situations where another party (eg. fund manager, counselor) receives the transmission of the form from the client and then forwards it to the financial institution (FI), for example:

- The client sends the original form to the fund manager and the fund manager sends it electronically to the FI.
- The client sends the form electronically to the fund manager and the fund manager then forwards an electronic copy to the FI or alternatively sends a hard copy.
- The client sends an original or electronic form to the fund manager, and the fund manager electronically stores the form on a database, providing FIs with access to the database.

Unfortunately, in each of these situations, there is no direct link between the FI needing the form and the signatory of the form, who may be a beneficial owner of a fund of funds operated by the fund manager; therefore, an electronic copy is currently not acceptable in these circumstances. However, these are among the most compelling instances for the provision of electronic copies of Forms W-8, as fund managers may deal with a number of payers in connection with these funds and obviously, requesting an investor in a fund to provide dozens of forms W-8 that must be renewed every three years or so, is an inconvenience no fund manager wants to ask of its investors. We propose that the above noted methods of receiving forms electronically should be acceptable.

As a practical matter, the main authentication technique of the W-8 form is the signature on it. The penalty for filing a false statement on a W-8 form is perjury, which is likely sufficient to ensure that people take care to review the form and sign on their own behalf. Trying to match email addresses does not seem like it would generate much additional certainty beyond that created by the penalties for impropriety on the part of those populating and signing the form.

Given that FATCA is likely to increase significantly the number of W-8 forms that may need to be submitted by clients, we recommend that the IRS further examine the issue of

electronic submission of W-8 forms in order to reduce the administrative burden on financial institutions and their clients. Once this examination has taken place, we would appreciate definitive guidance to be published, either as part of the Treasury Regulations or in the form of an official and publicly available IRS Notice, stipulating that electronic submission of W-8 forms is acceptable, and setting out a simplified set of conditions under which electronic submission can take place. We believe that the Memo does not provide a clear enough position on which our members can make changes to their operations and procedures to accept W-8s electronically without running into problems during their QI audits.

It is also our understanding that the IRS has commented publicly that they are not comfortable with accepting faxed or scanned Forms W-8 based on the comments in the Memo. Given this, our members do not feel that they can accept scanned, e-mailed, or faxed Forms W-8 until future regulations or guidance clearly resolve this issue.

We would be pleased to speak with you further about this issue.

Sincerely,

“James Carman”

James Carman
Senior Policy Advisor, Taxation
Investment Funds Institute of Canada

“Andrea Taylor”

Andrea Taylor
Director
Investment Industry Association of
Canada

“Darren Hannah”

Darren Hannah
Director, Banking Operations
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“Peggy McFarland”

Peggy McFarland
Director, Corporate Taxation
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Cc: Danielle Nishida, Office of the Chief Counsel (International), IRS