

April 19, 2021

Submitted via email and mail

Kinna Brewington
Internal Revenue Service, Room 6526
1111 Constitution Avenue NW
Washington, DC 20224

**Re: Comment Request for Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, W-8IMY and Tax Treaty
Limitation of Benefits**

Dear Sirs and Mesdames:

The Investment Industry Association of Canada (the “IIAC”) is the national association representing the investment industry’s position on securities regulations, public policy and industry issues on behalf of our 115 IIROC-regulated investment dealer members in the Canadian securities industry.¹ The IIAC appreciates the opportunity to provide comments to the Internal Revenue Service (“IRS”) on this initiative to reduce paperwork and respondent burden through this consultation on the Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY.

The IIAC supports burden reduction efforts and we believe that our recommendations will enable firms to comply with the various Forms W-8 requirements in a more efficient manner. Our specific recommendations are set out below.

Consistent Validity Periods

The current validity periods for the various Forms W-8 and underlying tax documents are inconsistent, which complicates system builds and documentation processing for withholding agents who must track documentation expiry dates and implement costly programs to solicit clients for Forms W-8 renewals. Consequently, the IIAC requests to have the 3-year validity period for Forms W-8BEN, W-8BEN-E, W-8ECI, and W-8EXP extended, ideally to an indefinite validity period similar to the Form W-8IMY and the W-9, Request for Taxpayer Identification Number and Certification. This would greatly reduce unnecessary paperwork associated with annual outreach efforts for renewals where there was no known change in information, which often includes costly print and mailing processes, and places burden on respondents to re-supply Forms W-8 that usually contain the same information as the form being renewed. This will also reduce the compliance burden on withholding agents who currently have to hire teams to process

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

renewal Forms W-8 (which, due to the timing of expiries, can amount to one-third of all beneficial owners supplying Forms W-8 to the firm annually), and update systems to track the new expiry dates for these Forms W-8.

In instances where there has been no change in circumstances to suggest that the information on the Forms W-8 are unreliable or incorrect, it is onerous for the withholding agent to get these Forms W-8 updated every 3 years. We believe that Forms W-8 will continue to be accurate and reliable with indefinite validity as a result of the requirements related to a change in circumstance since a Forms W-8 would still expire if a withholding agent has knowledge or a reason to know that any information on the client's current Forms W-8 is unreliable or incorrect for purposes of chapter 3 or 4 (to the extent applicable).

In addition, to further address the inconsistent expiry dates, we believe that indefinite validity should be applicable to treaty claims for entities. Based on IIAC Member experience, the tax residency of entities is generally stable. Again, we believe that treaty statements will continue to remain accurate and reliable as a result of withholding agents' obligations related to changes in circumstances.

In the event that the IRS declines the IIAC's request to provide indefinite validity to Forms W-8, we request to have the IRS clarify that the validity period for treaty statements can align with the validity of the W-8BEN-E. Under the existing rules, the validity period for a treaty statement is measured from the date that the treaty statement is provided to the withholding agent. On the other hand, the validity period for Form W-8BEN-E uses the signature date. We are aware that many Canadian QIs collect both treaty statements and W-8BEN-Es from their entity account holders. Aligning the validity periods would allow QIs to re-document both documents via a single request to the account holder resulting in both a reduction in paperwork and compliance related tracking.

Suggestions to Reduce Form Error

In order to facilitate completion of the Forms W-8BEN and W-8BEN-E, withholding agents should be allowed to pre-complete information on the Forms W-8 where this is already information on file (e.g. the information is otherwise on record with the withholding agent). The client would still have the opportunity to review the form and be responsible for ensuring the information is correct prior to certifying on the Form W-8.

In particular, withholding agents would like to be able to pre-complete the Claim of Tax Treaty Benefits section, where applicable. If our request for an indefinite validity period is not accepted, this would be particularly helpful for beneficial owners of accounts who have previously submitted Forms W-8BEN or W-8BEN-E, and are submitting a new Form W-8 for renewal purposes only. Firms believe this would help simplify the overall form renewal process for beneficial owners.

Another suggestion to reduce errors related to the Limitation of Benefits ("LOB") statement on the Form W-8BEN-E is to reinstate a single checkbox to indicate that the entity qualifies. The expanded list asking entities to populate their LOB provision in order to qualify for tax treaty benefits is confusing for many account holders. Particularly of note are estates and trusts that qualify under many tax treaties with the U.S., but have to specify the specific Article and paragraph they qualify under instead of simply checking

a box. This often requires the executor or trustee to be knowledgeable on income tax treaties, or hire accountants to assist them in completing the form. LOB instructions are quite complicated and withholding agents cannot provide advice on how clients should complete this section. IIAC Members note it would be exceptionally rare for entities to not qualify under their tax treaty's Limitation on Benefits, and so we do not believe this change would compromise the information provided to the IRS.

Signatory Authority

The IIAC requests the removal of the capacity checkbox on Forms W-8BEN-E, W-8ECI and W-8EXP to reduce the number of forms with errors that withholding agents receive. While we understand that the checkbox was recently added and we appreciate the intent of the checkbox, IIAC Members note that often clients will sign the forms, yet the checkbox may be missed. Consequently, the withholding agent would have to go back to these clients to re-complete the form. We believe the signature line note can provide the same assurance that the individual signing has the capacity to sign the Form W-8 as the checkbox will.

Supplementing Forms W-8 Information

If a withholding agent receives a Form W-8 with missing information, the IRS should permit that withholding agent to treat the Form W-8 as valid if the withholding agent has sufficient documentation on file to supplement the information missing from the Form W-8. For example, certain account holder data is already collected for regulators under AML, KYC, FATCA, CRS and other due diligence and information reporting regimes, and re-collecting this information on Forms W-8 is often duplicative. These regimes are significantly regulated with high due diligence standards. The IRS would still receive complete and accurate information as required, and this would greatly reduce unnecessary back-and-forth between withholding agents and their account holders to receive information withholding agents already have on file.

Other

The IIAC requests a 60-day notice and comment period prior to the finalization of any changes to Forms W-8 and their corresponding instructions. We believe potential confusion can be avoided if the financial industry has an opportunity to review potential changes and converse with the IRS with respect to any aspects of the proposed changes that we may view as unclear.

We appreciate the ongoing consultation with financial industry participants. If you need any clarification or have questions regarding this letter, we kindly ask that you contact the undersigned at awalrath@iiac.ca. Thank you.

Sincerely,

"Adrian Walrath"

Adrian Walrath
Director
Investment Industry Association of Canada