

May 27, 2020

*Submitted via email*

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***Re: Request for Relief from Backup Withholding where TIN is “Applied for” but pending as a result of COVID-19 delays***

Dear Sirs and Mesdames:

The Investment Industry Association of Canada (the “IIAC”)<sup>1</sup> 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 who have entered into QI Agreements with the IRS to

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

become Qualified Intermediaries (“QIs”) and are required to obtain a Form W-9, Request for Taxpayer Identification Number and Certification (“W-9”), from a U.S. non-exempt recipient receiving a payment potentially reportable on a Form 1099 or must otherwise backup withhold under section 3406 and report the payment on Form 1099.

This is normally a straight-forward process, however, some U.S. account holders have applied for, but have not received their U.S. TINs due to delays resulting from closures of some IRS/Social Security Administration offices as a result of the global pandemic COVID-19. While understandable given the need for measures to reduce the spread of COVID-19, the office closures and related delays have resulted in unfair situations for both QIs and taxpayers related to backup withholding requirements.

As per the Instructions for the Requester of Form W-9, QIs can accept a W-9 with “applied for” written in Part I in lieu of a U.S. TIN being provided<sup>2</sup>. However, that W-9 will only be valid for 60 days, and then the QI is required to backup withhold if they don’t receive the U.S. TIN after this grace period. Backup withholding amounts can be very substantial as it can potentially include 24% of gross proceeds on sales and redemptions (in some cases, this includes sales of worldwide assets). Further, the IRS does not allow QIs to apply for refunds on behalf of U.S. account holders, even if the client returns at a later date with their U.S. TIN.

In the case of applying for an individual taxpayer identification number (“ITIN”) from the IRS, if the taxpayer does not wish to mail their proof of identity and foreign status documents, they must apply in person at a Taxpayer Assistance Center, an option that is unavailable at this time, as all centers are temporarily closed until further notice in response to the COVID-19 pandemic<sup>3</sup>. Further, even for those taxpayers willing to accept the mailing option, given the postal delays, and delays as a result of IRS office closures, it is reasonable to expect that the ITIN application process would extend beyond the 60-days grace period for the W-9.

We believe the circumstances related to delays in obtaining a TIN during COVID-19 are reasonable and out of the control of the taxpayer and the potential consequences of the backup withholding unduly harsh. As a result, we are requesting that W-9 forms be treated as valid for 2020 for purposes of withholding, in instances where they are missing the TIN information but indicated they have applied for an a TIN. We request that firms be able to rely on the “applied for” status until the end of 2020, as long as the information is communicated in writing by the end of the year. We believe that period of time is appropriate given that it is not clear how long office closures for IRS and Social Security Administration offices will continue for, and as offices begin to reopen, we would still expect a backlog or delays that still merit relief. However, we do want to note that future discussions may need to occur about extending relief, depending on COVID-19’s continuing impact and what QIs would be required to do if they do not receive a U.S. TIN by December 31, 2020.

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<sup>2</sup> Instructions for the Requester of Form W-9 (Rev. October 2018): <https://www.irs.gov/pub/irs-prior/iw9--2018.pdf>

<sup>3</sup> Taxpayer Assistance Center Statement (March 20, 2020): <https://www.irs.gov/newsroom/taxpayer-assistance-center-statement>

We appreciate your consideration of our request 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](mailto:awalrath@iiac.ca) or (416)-220-4648 for any clarifications or additional questions regarding this submission. Thank you.

Yours Sincerely,

*"Adrian Walrath"*

Adrian Walrath  
Director  
Investment Industry Association of Canada

CC: Ms. Adrienne E. Griffin, Branch Chief, Office of Associate Chief Counsel (Procedure and Administration), Internal Revenue Service

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