



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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June 6, 2008

Ms. Catherine Koch
Chief Tax Counsel, Committee on Finance
219 Dirksen Senate Office Building
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Dear Ms. Koch:

Re: Urgent Request for Meeting on Basis Proposals

John Buckley, Majority Chief Tax Counsel, met with the Chair and Vice-Chair of the Qualified Intermediary Committee of the Investment Industry Association of Canada ("IIAC") and me on June 2, 2008 regarding the basis reporting proposals that have passed from the House of Representatives to the U.S. Senate as part of *American Housing Rescue and Foreclosure Prevention Act of 2008* (H.R. 3221). He had been unaware that the provisions would affect foreign intermediaries and suggested we contact you with our request that a provision be added to give Treasury regulatory authority to provide for limited exceptions to exclude, if justified, foreign intermediaries from being subject to the rules and to deal with them separately. **Could we arrange a call with you as soon as possible to discuss our concerns regarding basis reporting proposals under Internal Revenue Code s. 6045?**

The IIAC is Canada's equivalent to the U.S. Securities Industry and Financial Markets Association. All but a handful of Canada's 200 investment dealers are members, and all larger Canadian investment dealers (based on size of assets under custody) have entered into Qualified Intermediary Agreements with the U.S. Internal Revenue Service ("IRS").

Qualified Intermediaries

Revenue Procedure 2000-12, *The Qualified Intermediary Agreement*, has been in effect since January 1, 2001. All foreign intermediaries entering into this Agreement with the Internal Revenue Service are Qualified Intermediaries ("QIs"). A QI is a withholding agent under chapter 3 of the Code and a payor under chapter 61 and section 3406 of the Code for amounts that it pays to its account holders. Except as otherwise provided in the Agreement, a QI's obligations with respect to amounts paid to account holders are governed by chapter 3, chapter 61 and section 3406 of the Internal Revenue Code and related regulations. There are approximately 6,500 QIs throughout the world.

Among the global QI population, Canadian QIs (which also include Canada's largest banks and custodians) will likely be most affected by the basis reporting proposals due to the proximity of our two countries, but even here, clients for whom the proposals would apply represent less than one per cent of our members' total number of accounts subject to their QI Agreements. Restrictions on Canadian brokers servicing clients in the U.S. limit the number of U.S. resident account holders – for one of the top 10 Canadian firms, U.S. residents' accounts that would be captured by the basis proposals represent only .13 of one per cent of all accounts at the firm (a ratio of .0013:1).

Canadian QIs, more so than QIs in other jurisdictions, are likely to have accounts for U.S. non-exempt recipients for which the QI is required under the terms of the QI Agreement to report sales proceeds for both U.S. and non-U.S. assets. As it is, Canada's population, at barely 10 per cent of the U.S.'s, often makes provision of new services or implementation of new requirements uneconomic due to lack of economies of scale.

Why foreign intermediaries have problems

You will find enclosed our correspondence to John Buckley and others, which explains our concerns with the proposed legislation and our members' obligations as Qualified Intermediaries in greater detail, however, the most serious additional challenges QIs will face that U.S. firms will not include:

- Canadian tax law requires use of the weighted average cost method for tax purposes, while U.S. law demands the first in/first out method.
- Canadian tax law, in contrast to U.S. tax law, does not allow different methods to be used for different types of assets, does not permit individual taxpayers to elect to use different methods, does not require short- and long-term capital gains to be treated differently and does not require different calculations for corporate actions taking place in other countries.
- Calculations would be required in U.S. dollars, which further complicates basis calculations for QIs that are likely maintaining a large number of their accounts in other base currencies.

As the same client could require different bases on different assets, payments to be treated in different ways, different currencies, and different treatment for tax and securities regulatory purposes, the programming scenarios increase exponentially for a very small percentage of clients.

The basis reporting provisions were discussed with U.S. industry groups for quite some time, however, most of the Canadian QI community only became aware of these provisions in early 2008. Patty McClanahan of SIFMA is aware of and had no concerns with our efforts to seek an amendment to give Treasury authority to provide for limited exceptions to deal separately with foreign intermediaries. This would allow time for consultation to understand the additional challenges faced by foreign intermediaries, and to discuss alternatives and timeframes. I will call you shortly to seek a convenient time to meet with you.

Yours truly,



Note: For the attachment, see

http://www.iiac.ca/Upload/Basis_Reporting_Proposals_Internal_Revenue_Code_S_6045.pdf