



March 14, 2023

Submitted via email

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Dear Madam/Sirs:

**Re: U.S. TIN Solicitation Requirements in the New QI Agreement**

The Investment Industry Association of Canada (IIAC) is the national association representing investment firms that provide products and services to Canadian retail and institutional investors.

We appreciate the IRS response to comments recognizing the difficulties Qualified Intermediaries (QIs) encounter in obtaining U.S. Taxpayer Identification Numbers (U.S. TINs) from non-U.S. account holders receiving Publicly Traded Partnership (PTP) distributions or amounts realized.

We are writing on behalf of our members regarding two issues related to U.S. TIN requirements in the new QI Agreement.

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## **Recommendations**

The IIAC requests:

1. Confirmation of whether the new QI Agreement includes a requirement to request a U.S. TIN from non-U.S. account holders of foreign and inter-listed PTPs where no effectively connected income (ECI) or excess of cumulative net income (ECNI) payments have been made during the calendar year. If there is currently a requirement, we ask the IRS to eliminate it.
2. An additional 60 days for QIs to reach out for the annual solicitation of U.S. TINs.

## **Basis for Recommendations**

### **I. Solicitation of U.S. TINs – Foreign PTPs**

Section 2.91(J) of the Agreement defines a “PTP distribution” as a distribution made by a publicly traded partnership. Section 5.01 of the Agreement states that, “If QI makes a payment of an amount realized on a sale of a PTP interest or a payment of a PTP distribution, QI also agrees to use its best efforts to obtain the documentation that is described in section 5.02 of this Agreement.

For purposes of obtaining a U.S. TIN from an account holder that is a partner with respect to documentation required under section 5.02(B) or (C) of this Agreement, QI is treated as using its best efforts when QI makes a written solicitation (initial solicitation) for the account holder’s U.S. TIN.”

A literal reading of the text could lead to a broader interpretation than the IRS may have intended.

Because “PTP distribution” is not limited to distribution of ECI, PTP distributions of any kind may still trigger the “best efforts” U.S. TIN solicitation requirement – even when distributions are made by foreign and foreign inter-listed PTPs that have issued Qualified Notices claiming that an exception has applied.

We respectfully request that only PTP distributions subject to IRC Section 1446(a) or (f) trigger the U.S. TIN solicitation requirement – if that is not already the current interpretation of the IRS.

Soliciting U.S. TINs from foreign account holders that have an interest in foreign PTPs, including those inter-listed on a U.S. stock exchange, that do not have effectively connected income with the U.S. is confusing to account holders and a significant and unnecessary burden on QIs.

Many retail investors do not require a U.S. TIN, since they are not investing in U.S. securities or receiving any U.S. business income that would give rise to an income tax filing obligation. Hence, they have no U.S. tax filing obligations. Soliciting U.S. TINs from these clients will create a lot of enquiries and lead to difficult and time-consuming conversations, significantly increasing the administrative burden on QIs.

To demonstrate the potential impact on investors and QIs, we provide the following example. On December 5, 2022 Brookfield Infrastructure Partners LP (TSX: BIP.UN, NYSE: BIP) issued a [Qualified Notice](#). The Notice states that it has not been, nor does it expect to be engaged in a U.S. trade or business and has issued a 92-day Qualified Notice certifying that units of the PTP qualify for the “10-Percent Exception” from U.S. withholding tax under subsection 1446(f) of the Internal Revenue Code.

It is our belief that clients holding this partnership do not need to be solicited for their U.S. TINs.

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One IIAC member shared that it has close to 100,000 accounts that hold this PTP alone. Extrapolating, Canadian QIs likely have over 500,000 clients holding this PTP.

The overwhelming majority of the large Canadian QIs likely hold PTPs that are inter-listed on both Canadian and a U.S. stock exchanges and have issued Qualified Notices. It is likely that Canadian QIs have close to a million partners who they will need to solicit for a U.S. TIN even though they will have received no U.S. ECI or ECNI (or have any U.S. tax filing obligation).

As a result, the QI must solicit U.S. TINs annually, for three years, from these account holders, illustrating the extent of the compliance burden for Canadian QIs, while not achieving anything to assist the IRS to ensure that foreign partners of PTPs file U.S. tax returns to report their ECI or ECNI to the IRS.

### **Recommendations:**

That the IRS either confirm that the new QI Agreement does not require the solicitation of U.S. TINs from foreign partners if the PTP does not issue distributions subject to IRC Section 1446(a) and (f) (since filings are not necessary); or provide relief from soliciting U.S. TINs from non-U.S. account holders of foreign PTPs, including inter-listed PTPs, where no ECI or ECNI payments have been made during the calendar year.

Until the QI Agreement can be amended, QIs request this confirmation or relief be published as a FAQ.

## **II. Solicitation of U.S. TINs - Timing**

Section 5.01 (A) of the QI Agreement states:

*“If QI makes a payment of an amount realized on a sale of a PTP interest or a payment of a PTP distribution, QI also agrees to use its best efforts to obtain the documentation that is described in section 5.02 of this Agreement. For purposes of obtaining a U.S. TIN from an account holder that is a partner with respect to documentation required under section 5.02(B) or (C) of this Agreement, QI is treated as using its best efforts when QI makes a written solicitation (initial solicitation) for the account holder’s U.S. TIN in 2023 or the calendar year in which an account holder acquires a PTP interest through QI (if later). If an account holder’s U.S. TIN is not provided based on the initial solicitation, QI is required to make an additional written solicitation for the account holder’s U.S. TIN in the calendar year following the calendar year of the initial solicitation, and, if necessary, a further written solicitation in the calendar year following the year of the additional solicitation.”*

Under Treas. Reg §301.6724-1(e)(1)(ii):

*“The first annual solicitation must be made on or before December 31 of the year in which the account is opened (for accounts opened before December) or January 31 of the following year (for accounts opened in the preceding December) (“annual solicitation period”).”* The pre-amble of the QI Agreement attempted to align the requirement to solicit U.S. TINs with this regulation, yet the timing in the QI Agreement is December 31.

The December 31 annual deadline is not operationally feasible for QIs. To fulfill the requirement, QIs need sufficient time to ensure that they include clients who buy or sell PTPs in late November and December. They then need to run a program that identifies all the PTP partners that need to be reached out to and

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validate the list to ensure it is correct. Given the number of PTP partners that Canadian QIs have, this is not a short and simple process. QIs then need to provide the final list of partners to a print vendor and then do a reconciliation on the print file.

QIs are also working on 1099 and 1042-S reporting at this time and have limited resources with the expertise needed to properly complete all these functions correctly. A 60-day window would be in line with the process of when a W-9 is received and the client states “Applied For” in Part I. (*Instructions for the Requester of Form W-9*).

**Recommendations:**

That the annual solicitation of TINs be made on or before 60 days following December 31 of the year in which the QI makes a payment of an amount realized on a sale of a PTP interest or a payment of a PTP distribution subject to Section 1446.

Alternatively, the IIAC requests that solicitation for U.S. TINs be extended to January 31 of the following year. This deadline would still be challenging for QIs to meet based on operational issues outlined above but would be more feasible than the current December 31 deadline.

Until the QI Agreement can be amended, QIs request this extended deadline be published as an FAQ.

The IIAC appreciates your consideration and would appreciate an opportunity to meet to discuss our recommendations.

Sincerely,

*Laura Paglia*

Laura Paglia  
President & Chief Executive Office