October 10, 2023

Submitted via email to pro.comments@irs.gov

OMB number 1545-2292

Cc.:
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Internal Revenue Service

Re: Comments on Proposed Extension of Information Collection Request with Respect to Withholding Tax and Information Reporting Related to Interests in Partnerships Engaged in a U.S. Trade or Business

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 investment dealer members in the Canadian securities industry. [1]

We are writing on behalf of our members in response to the IRS Notice and Request for comments published on August 11, 2023, in the Federal Register, Vol. 88 No. 154, p. 54709. The IIAC appreciates the opportunity to comment on the collection of information burden, costs and industry impact of the final regulations issued under section 1446(f) (the "Regulations") related to the withholding tax and information reporting with respect to certain dispositions of interests in partnerships engaged in a trade or business in the U.S. Our members include Qualified Intermediaries ("QIs" or "QI") that are impacted by the Regulations when their account holders who are foreign persons hold an interest in a publicly traded partnership ("PTP") that is subject

[1] For more information visit, https://iiac-accvm.ca/

to Section 1446(f) and the Regulations issued under it. As such, the IIAC submits the following comments for your consideration:

I. Simplified Qualified Notice with Validity Period Beyond 92 Days

A. Issue

The 92-day qualified notice posting date requirement that would allow a broker to exempt gross proceeds of a PTP distribution provides too narrow of a window for QIs to monitor, and could frequently result in unnecessary 1446(f) withholding where a PTP has missed the window, specifically, if the PTP will never hold U.S. portfolio companies or generate Effectively Connected Income from the United States.

In addition to the above, if a new qualified notice is posted for a prolonged period of time after the 92-day reliance period of the previous qualified notice, currently there is no rule that the newly posted qualified notice can be retroactively relied upon for a disposition made during that period even if it is confirmed by the PTP that less than 10% of the income is effectively connected with a U.S. trade or business.

B. Discussion

Generally, Treas. Reg. § 1.1446(f)-4(a)(2) requires a broker to withhold if it pays an amount realized to a foreign person (broker or customer) on the transfer of a PTP interest. However, Treas. Reg. § 1.1446(f)-4(b)(3)(ii) allows a broker to exempt a payment from withholding if it is made on the transfer of an interest in a PTP that has less than 10% of income effectively connected with a U.S. trade or business (“ECI”). Treas. Reg. § 1.1446(f)-4(b)(3)(iii) describes the qualified notice a PTP must issue for a broker to rely on stating that it has less than 10% ECI. The notice is only valid if it has been posted within a period beginning 92 days before the transfer and ending on the date of the transfer.

First, if a PTP is not posting a qualified notice confirming that it has less than 10% ECI every 92 days, or accidentally posts a notice a day late, then brokers will be forced to withhold on dispositions of interests in that PTP even if the PTP has no ECI. This could result in foreign investors avoiding investment in both U.S. and non-US PTPs for fear of being unnecessarily withheld upon. In addition, foreign PTPs that do not hold U.S. investments may not know the requirement to issue a Qualified Notice stating the PTP has less than 10% of income effectively connected with a U.S. trade or business. In this circumstance QIs will still be required to complete 1446(f) withholding on the disposition.

Second, requiring brokers to track down the posting of qualified notices, then calculate for each transfer whether the notice falls within each specific transfer’s 92-day window (which will be

different for transfers on different days), is burdensome. In certain instances, it has resulted in brokers and custodians refusing to transact in PTPs to avoid monitoring for each transfer.

A 92-day validity period ending on the date of a particular transfer is a complicated parameter to monitor for and to automate. Any technical issue on 92-day tracking, including coordination rules with the payment and subsequent notice effective dates, require monitoring and manual solutions otherwise brokers will have to default to conservatively including more PTPs in-scope for 1446(f) withholding which are outside of IRS intent since, as we observe the existing population of PTPs, these instances would be happening exclusively on PTPs that are not – and likely will never be – in-scope for this withholding

C. Recommendation

The IIAC recommends a simplified qualified notice with a validity period beyond 92 days. This would be helpful, particularly in a foreign PTP context because a general extension of the validity period would allow for more effective operational implementation. PTPs that will never be engaged in a U.S. trade or business and will never generate or distribute U.S. ECI should be able to provide an 'evergreen' qualified notice stating so which can be relied upon by brokers into perpetuity or until a change of circumstances involving generation of distribution of ECI prompts the PTP to issue a new qualified notice.

As an alternative to an 'evergreen' qualified notice, the IIAC recommends extending the validity period of a qualified notice to the earlier of one-year or the date a new qualified notice is published by a PTP would provide operational relief for organizations. An annual expiration date can be more easily operationalized.

In addition, the IIAC is requesting that when a PTP issues a new qualified notice outside of the window where the previously issued qualified notice may be relied upon (i.e., currently 92-days), that the PTP can make the newly posted qualified notice retroactive to the last day of when the previously issued qualified notice could be relied upon. See below for an example for what we are requesting:

- PTP issues "Qualified Notice A" which is posted on January 1st, 2024 and can be relied upon by the broker for 92 days (including the day of posting). The final day "Qualified Notice A" can be relied upon is April 1st, 2024.

- PTP issues new "Qualified Notice B" which is posted on May 1st, 2024. "Qualified Notice B" states that the PTP has less than 10% of income effectively connected with a U.S. trade or business since the final day of when "Qualified Notice A" could be relied upon.

Under the above circumstance, the broker is requesting that it can refund the applicable amount of 1446 withholding tax on any dispositions or distributions made between April 2nd and April 30th of 2024 so long the retroactive language is provided by the PTP on the newly issued qualified notice.

II. Nominee Reporting Pertaining to non-U.S. PTPs

A. Issue

Under the 2023 QI Agreement (issued in Rev. Proc. 2022-43), a QI that does not act as a disclosing QI for a PTP distribution or amount realized paid to an account holder for a calendar year with respect to the account holder's PTP interest may provide the statement with respect to the account holder specified in Treas. Reg. §1.6031(c)-1T(a) to the PTP in which the interest is held. If the QI does not provide the statement as required, it must issue to each account holder receiving the distribution or amount realized the statement that is described in Treas. Reg. §1.6031(c)-1T(H) for the calendar year with respect to the PTP interest for which the distribution or amount realized was paid. QIs are required to comply with these requirements, regardless of whether the PTP has ECI with a U.S. trade or business, which effectively generates substantial volumes of nominee reporting with respect to their non-U.S. partners.

B. Discussion

One of the primary purposes of Section 1446(f) is to enhance tax compliance with respect to the sale or exchange of partnership interests involving foreign partners. It helps address the challenges in collecting tax on gains realized by foreign partners when they sold interest in partnerships engaged in the U.S. trade or business.

Many non-U.S. PTPs do not make distributions of ECI from a U.S. trade or business. Accordingly, QIs are not required to withhold or perform 1042-S reporting under Section 1446(a) or 1446(f) for their account holders who hold these PTPs. Furthermore, even though foreign PTPs with no ECI may still have U.S. tax filing obligations in some instances, they are not required to issue K-1s to their direct foreign partners or foreign pass-through partners through which no U.S. partner holds PTP interest.

QIs generally do not have the ability to do nominee reporting and their systems are not designed to handle nominee reporting. Nominee reporting was not previously required for QIs with respect to their clients' PTP holdings. Substantial system changes are needed to operationalize large volumes of nominee reporting, most of which will be issued to the non-U.S. partners. If they did not provide their account holders a statement as specified in Treas. Reg. §1.6031(c)-1T(a) to the PTP in which the interest is held, they would be required to issue to each holder receiving the distribution or amount realized the statement that is described in Treas. Reg. §1.6031(c)- 1T(H), even if the PTP does not have any ECI.

The information on non-U.S. account holders in this scenario provided to the account holders and the IRS will not be relevant to the primary purpose of 1446(f) as, most of the non-U.S. account holders may have neither the U.S. TIN nor U.S. tax filing obligations.

The nominee reporting requirement has placed a heavy administrative burden for QIs. It has required an extensive amount of time, resources, and system changes from both QIs and IRS, including such as data collection documentation, coordination etc.

C. Recommendation

The IIAC requests that the IRS consider a presumption rule that foreign PTPs are not subject to nominee reporting if the PTPs have no ECI. The IRS should not require QIs to issue the statement that is described in Treas. Reg. §1.6031(c)- 1T(H) to the non-U.S. partners when a PTP has indicated that it has no ECI or should allow nominee reporting on a pooled basis. Further, the IIAC proposes adding a check the box statement "no nominee reporting required" into the qualified notice issued by the PTP. We request QIs should be considered as in compliance with the QI Agreement if they rely on the "no nominee reporting required" certification for exemption from nominee reporting to the PTP and its non-U.S. partners.

III. Extending "Good Faith Efforts" Standard to QIs to Comply with 1446(f) Related Provisions of the QI Agreement

A. Issue

Canadian QIs, including brokers that are subject to 1446(f), 1446(a) and PTP nominee reporting compliance are expected to strictly adhere to the provisions of the 2023 QI Agreement (Rev. Proc. 2022-43) in discharging their obligations under the QI Agreement and the Regulations. In order to meet these obligations, Canadian QIs are having to fully update their systems to implement related withholding and information reporting. Canadian QIs face operational challenges related to 1446(f), 1446(a) and PTP nominee reporting compliance under the QI Agreement specific to their QI context, including but not limited to foreign PTPs issues, local systems limitations requiring substantial build, as well as extensive additional periodic review requirements. As such, withholding QIs would welcome transitional good faith effort relief with respect to 1446(f), 1446(a) and PTP nominee reporting compliance and related certifications of their responsible officers.

B. Discussion

Canadian QIs, including brokers, would welcome a transitional good faith standard relief with respect to 1446(f), 1446(a), and PTP nominee reporting compliance under the QI Agreement in light of the significant challenges faced by QIs and brokers outside of the U.S. which makes

implementation more difficult. Several specific issues are listed below to support the transitional relief.

First, unlike U.S. brokers (and acknowledging that some foreign persons have been subjected to nominee reporting in the past under IRC rules), QIs were not subject to nominee reporting as per the QI Agreement. Nominee reporting was first introduced in the 2022 QI Agreement. Operationalizing nominee reporting for Canadian QIs, including brokers requires building complex and costly systems that involve significant amount of data, research and privacy considerations to create secure networks to send this data to PTPs and their agents.

Second, unlike U.S. entities, QIs were not allowed to withhold on the 1446(a) payments; 1446(a) withholding was performed at source by U.S. custodians (for example, DTCC) and was remitted by those U.S. custodians directly. As a result, QIs only received net income and had to update systems to actually perform 1446(a) withholding and remit the tax. In addition to 1446(f) changes QIs also need to implement 1446(a) withholding that involves another complex build.

Third, prior to the enactment of 1446(f), QIs never had to obtain data on gross proceeds paid to their non-US account holders. This new requirement involves significant process and systems change to capture the data and implement related withholding and information reporting. Further, QIs must allocate substantial resources to educate their account holders on tax implications of 1446(f) PTPs, as ten percent withholding tax on sales and other dispositions by non-U.S. holders could be significant and has never occurred before.

Fourth, QIs do not typically withhold on registered plan accounts (i.e. the retirement accounts) because these accounts have been exempt from withholding under the Income Tax Convention Between Canada and the United States Yet, registered plan accounts could be in scope of 1446(f) withholding, which creates another complex operational issue for implementation.

Lastly, withholding agents generally require twelve to eighteen months to update systems to implement new regulations. This includes budgeting, clarification of regulatory interpretations, allocating resources and development. 1446 regulations have been “absorbed” by industry with a significantly shortened implementation timeline, given the January 1, 2023 effective date. QI Agreement was finalized and released in December 2022. The new QI Agreement prescribes the review of over fifty data elements related to 1446(f) compliance, among other items, including but not limited to additional testing, disclosures and reconciliations. Notice 2023-8 “Additional Guidance Related to Transfers of Publicly Traded Partnership Interests under Section 1446(f)” was also issued in December 2022. 1042-S instructions were issued on August 2023, and clarification of certain items is still pending.

C. Recommendation

Due to the substantial operational challenges of implementing the 1446(f) related provisions of the QI Agreement, the IIAC recommends a transitional good faith effort standard for Canadian QIs to comply with the new requirements for purposes of periodic review and certifications of responsible officers. Specifically, we would recommend that the period of good faith effort relief last until January 1, 2025 to allow QIs to address operational and implementation challenges.

IV. Waiving Penalties for Amending 1042-S Forms When Requested by Participants

A. Issue

Where a QI has previously issued Forms 1042-S under its withholding rate pool, and then a payee requests a recipient Form 1042-S when the amount was originally allocated to the withholding rate pool Form 1042-S, the QI must issue a new recipient Form 1042-S at the request of the payee and amend the withholding rate pool Form 1042-S. In this circumstance the IRS interprets the new payee requested recipient Form 1042-S as being filed late and issues a late filing penalty notice to the QI despite the QI complying with its obligations under the QI agreement.

B. Discussion

Under the 2023 QI Agreement (issued in Rev. Proc. 2022-43), QIs are generally not required to file Forms 1042-S for amounts paid to each separate account holder for whom such reporting would otherwise be required. Instead, a QI may file a Form 1042-S reporting the pools of income as provided in section 8.03 of the QI Agreement. However, Section 8.02(P) of the 2023 QI Agreement says that a QI must file a separate Form 1042-S (rather than as a pool) where an account holder requests a recipient Form 1042-S from the QI. To receive the recipient Form 1042-S, the account holder must make a written request and provide its U.S. TIN within three full calendar years following the year of the relevant payment for 1446 (a) or (f) withholding and two full calendar years following the year of the relevant payment for U.S. FDAP amounts.

The regulations, QI Agreement, and form instructions do not describe how the separate Form 1042-S must be filed. Generally, as outlined in Treas. Reg. § 1.1461-1(c)(1), a Form 1042-S must be filed for each recipient and a copy sent to the IRS. The IRS copy is required to be filed with the IRS on or before March 15th of the calendar year following the year in which the relevant payment is made.

As a result of the requirement in Section 8.02(P), a QI can be in a situation where it must file, for the first time, a recipient Form 1042-S years after the original Form 1042-S deadline as this is considered a ‘new’ Form 1042-S. Correspondingly, the IRS is receiving a first copy of the recipient Form 1042-S after the deadline for which an initial Form 1042-S is required. Not having received an initial recipient Form 1042-S, the IRS assumes the Form 1042-S is late and files a notice of late penalties to the QI with interest. This results in the QI having to file notices

of reasonable cause in response to penalty notices received when all the QI has done is complete its obligations under the QI Agreement.

C. Recommendation

The IIAC requests that Forms 1042-S, its instructions, and the IRS filing systems are updated to account for this situation. There should be a mechanism to file and accept new Forms 1042-S that are issued solely due to requests from accountholders and amendments from the withholding rate pool. Provided that the amount included on the new Form 1042-S was originally included in the pooled Form 1042-S, QIs should not receive a notice of late filing from the IRS. This could be resolved by adding a checkbox to the Form 1042-S indicating "amounts previously subject to pooled reporting".

V. Short Sales: Limiting "substantially identical property" Definition to the Same CUSIP and the Same Account

A. Issue

The IIAC members appreciate guidance provided in the Notice 2023-8 with respect to the withholding exception on short sales of PTP interests (PTP shorts). However, withholding QIs, including Canadian brokers, face substantial challenges with interpretation and implementation of certain aspects of the notice. On January 31, 2023, the Securities Industry and Financial Markets Association ("SIFMA") wrote a comment letter to the IRS in response to IRS Notice 2023-8 regarding 1446(f) withholding on transfers of interests in PTPs. In its letter, SIFMA recommended limiting the "substantially identical property" definition to the same CUSIP and same account in drafting final regulations addressing withholding PTP shorts. Due to the increased burden on Canadian brokers, the IIAC strongly supports and agrees with SIFMA's comments to the IRS and submits the following analogous observations and recommendations, which are specific to the Canadian context.

B. Discussion

Notice 2023-8 clarifies that shorts sales are generally exempt from the 1446(f) withholding and carves out two instances, where withholding is still required. Specifically, withholding under section 1446(f) is required on proceeds from PTP shorts "if on the date that the sale to market is entered on the books of the broker (i) the taxpayer holds substantially identical property (within the meaning of section 1233) in an account with the broker or (ii) the broker has actual knowledge that the taxpayer holds substantially identical property in an account with another broker." Interpretation and operational implementation of substantially identical property determination is not administrable by Canadian brokers - QIs. To address operational issues, as well as client relationship issues, the IIAC proposes limiting identical property determination to the same CUSIP on a same account due to the following reasons.

First, we support SIFMA's assertion that, similar to withholding agents in the US, Canadian brokers cannot operationalize "substantially identical" property verification without a clearer definition. Identification of "substantially identical" property is based on facts and circumstances analysis, while automated withholding and information reporting require clear determination within the limited timeframe. As such, building withholding and information reporting mechanism to identify "substantially identical property" is not feasible. Further, "facts and circumstances" analysis will not result in consistent conclusions should Canadian brokers attempt to undertake it. This could trigger inconsistent withholding practices among the brokers. For example, where PTP issues various securities, i.e. general partnership interests and preferred interests, these securities will be issued under different CUSIPs and may have different entitlements to partnership rights, including ECI allocations. Yet some brokers may be concerned that any two partnership interests in the same partnership would potentially be treated as "substantially identical."

Second, similar to the withholding agents in the US, Canadian brokers have never had to determine whether or not property is "substantially identical." Identification of "substantially identical" property was not required under other tax information withholding and reporting rules. For instance, 1099-B requirements do not include analysis for "substantially identical" property. Further, Treasury Regulations provide "…as applied to stocks or securities, the term has the same meaning as the term substantially identical stock or securities used in section 1091, relating to wash sales of stocks or securities." Brokers must apply the wash sale rules only if both the sale and purchase transactions involve the same CUSIP number and take place in the same account. Accordingly, any withholding or reporting required with respect to any scenario other than involving same CUSIP on one account will require case by case determinations and manual overrides.

Due to interpretation and implementation challenges, Canadian brokers are inclined to follow a conservative approach given their joint and several liability for withholding tax and generally withhold on short sales. This has resulted and will continue to generate over-withholding on their Canadian clients, who may have neither a US TIN nor any US tax filing obligations. Consequently, these clients will be applying for US TINs and filing refund claims, as over-withholding can be material, creating additional burden for the IRS to administer and process these 1446(f) refunds.

We note that unlike the wash sale rules, 1446(f) is not primarily a rule about timing of tax liability, and that any investor who is long a different CUSIP than the CUSIP they have gone short would not generally be able to deliver that CUSIP to close out its short sale, and therefore would still presumably need to eventually sell its long position, at which time 1446(f) would apply. In the meantime, a non-US investor who simultaneously held a long position in one PTP interest and a short position in another PTP interest would potentially be subject to a 47% withholding tax on distributions on its long position, while owing the entire substitute payment on its short position. In other words, this does not seem like a loophole the US tax authorities need to be concerned non-US investors would try to exploit.

C. Recommendations

Therefore, the IIAC joins SIFMA’s request that brokers only be required to withhold on proceeds from short sales if the broker holds identical property, i.e. a security with the same CUSIP number, in the same account, in which the short sale has occurred.

The IIAC further recommends that the IRS limit withholding on short sales to situations where the short seller holds the identical CUSIP long prior to such short sale.

VI. Qualified Notice Stating a Payment is Subject to Withholding Under Both 1446(a) and 1446(f)

A. Issue

Under the 2023 QI Agreement (issued in Rev. Proc. 2022-43), a QI acts as a broker with respect to an amount realized from a transfer of a PTP interest is required to withhold under Section 1446(f) 10% of the amount realized paid to an account holder of the QI that is the transfer and is (or is presumed to be) a foreign partner when the QI assumes primary withholding responsibility for the payment under section 3.03I(1) of the QI Agreement, unless an exception to withholding under Sections 1446(f)-4(b) applies. QIs may withhold the tax based on the qualified notices issued by PTPs.

Some PTPs state on their Qualified Notices that the amounts in excess of cumulative net income (ECNI) payments are subject to withholding under both Sections 1446(a) and 1446(f). This could be because of the difficulty of determining the ECNI breakdown. As a result, QIs generally apply 47% on the payments, which is the total of 37% on the PTP distributions, plus 10% on the amount realized.

B. Discussions

One of the primary purposes of 1446(f) is to enhance tax compliance with respect to the sale or exchange of partnership interests involving foreign partners. It helps address the challenges in collecting tax on gains realized by foreign partners when they sold interest in U.S. partnerships. However, it is not the purpose to make foreign partners subject to double taxation.

When a QI withheld 47% on the ECNI distributed by a PTP, a foreign partner’s return of investment is eroded by unnecessary taxes. The foreign partner may not be able to claim an exemption on the 10% tax under 1446(f) if the tax treaty between their country and the U.S. provides no relief.

This double taxation will create a reporting problem as well. QIs are required to use income code 57 for amount realized under Section 1446(f) and code 27 for PTP distributions subject to 1446(a). Therefore, QIs will likely put two codes on their Forms 1042-S. The IRS will collect more taxes and handle more tax refund applications. This will place a heavy administrative burden to both QIs and the IRS.

C. Recommendation

Given that 10% withholding will be applied on the disposition (i.e., sale or exchange) of the PTP, the IIAC requests that QIs be required to only withhold tax at the rates under 1446(a), being 37% for individuals and 21% for corporations, on any distributions to prevent duplicative withholding on the same payment. This will also aid with the resolution of certain duplicative reporting as mentioned in this document.

VII. Duplicative Reporting of Distributions Subject to 1446(a) and 1446(f)

A. Issue

On August 17, 2023, the IRS released Revised 2023 Instructions for Form 1042-S:

Page 12, the 2nd tip under Publicly Traded Partnerships (Sections 1446(a) and (f) Withholding Tax) should read as follows:

When a partner that is a U.S. person was treated as a foreign partner for purposes of withholding under section 1446(a) or (f) (including an allocation of a payment to the person made on a withholding statement), a Form 1042-S maybe used to report the payment (and withholding) with respect to the U.S. person. In such a case, the applicable form 1099 must also be filed and furnished when otherwise required of the withholding agent with respect to the payment but should not report the withholding that was applied under section 1446(a) or (f). For further information on reporting requirements for Form 1099, see the General Instructions for Certain Information Returns.

Based on these revisions, both Forms 1042-S and Forms 1099 must be issued to account holders who are U.S. persons treated as foreign partners subject to 1446(a) or (f) withholding. This treatment of a single distribution as subject to both 1042-S and 1099 reporting is not present for any other income payment and will create duplicative reporting and undue burden on withholding agents, taxpayers, as well as the IRS.

B. Discussion

Under the QI Agreement, there is a presumption to treat certain U.S. persons as foreign partners for purposes of Section 1446. Therefore, a U.S. person presumed to be a foreign partner will be subject to 1446(a) and 1446(f) withholding, including 1446(f) distributions considered amounts in ECNI.

It is important to note that ECNI distributions are not actual income; when paid, ECNI distributions are classified as other types of income such as dividends, interest, ECI, return of capital, etc. It is common for Qualified Notices to state that a single distribution is classified as 100% ECI (actual income) and also 100% ECNI (not actual income).

If a U.S. person is presumed to be a foreign partner, for a $100 distribution declared as 100% ECI and 100% ECNI, subject to both 1446(a) and 1446(f), based on the revised 1042-S instructions the account holder would be issued:

- $100 ECI and $37 (37%) withholding reported on a 1042-S for 1446(a)
- $100 ECNI and $10 (10%) withholding reported on a 1042-S for 1446(f)
- $100 income reported on a 1099 for 1446(a)*
- $100 income reported on a 1099 for 1446(f)*

*As of the time of this letter, the "*General Instructions for Certain Information Returns*" has not yet been updated to clarify how to report 1446(a) and (f) on Forms 1099, or whether these amounts must be reported separately for each 1446(a) and (f), creating an additional $200 in reporting on top of the $200 required to be reported on Forms 1042-S. This results in up to $400 reported for only $100 of actual income.

As income and withholding will already be reported on Forms 1042-S, the requirement to also report income on Forms 1099 is both duplicative and unnecessary for both the account holder and the IRS. It will also erode the clarity and quality of information being reported as, in this example, up to four times the actual income received can be reported.

Duplicative reporting will result in undue reconciliation burdens for account holders, QIs, as well as the IRS.

It will be significantly operationally burdensome to funnel a single income payment to both Forms 1042-S and 1099. For all other payments, each income and corresponding tax transaction is treated as only reportable on a 1042-S or only reportable on a 1099, depending on account status. There is no other instance where both 1042-S and 1099 reporting is required for a single payment to one account. This will require extensive system builds or manual intervention to duplicate income for certain accounts only, while also excluding withholding, so these payments can be captured on Forms 1099.

C. Recommendation

The IIAC requests that the IRS remove the requirement to also report 1446(a) and (f) on Forms 1099s, and limit reporting to Forms 1042-S. This will provide similar treatment for U.S. persons presumed to be non-U.S. and non-U.S. persons and remove the burden of updating systems to treat a single payment as subject to both 1042-S and 1099 reporting, which does not occur for

any other payment. Alternately, the IIAC requests guidance on how 1446(a) and (f) distributions should be reported on Forms 1099 and allow QIs a 12 to 18-month grace period to update reporting systems to meet the revised instructions.

VIII. Solicitation of U.S. TINs – Timing[2]

A. Issue

QIs are required to solicit U.S. TINs from foreign account holders that have an interest in PTPs in the calendar year in which an account holder acquires a PTP interest. This means the QI must solicit foreign TINs by December 31st. There is insufficient time to solicit U.S. TINs from account holders who acquire PTPs late in the calendar year.

B. Discussion

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

[2] Please refer to the IIAC's letter to the IRS, dated March 14, 2023, regarding U.S. TIN Solicitation Requirements in the New QI Agreement. We hereby resubmit this letter as Appendix A.

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 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).

C. Recommendations

The IIAC recommends 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, as stated in the preamble of the QI Agreement. While this deadline would still be challenging for QIs to meet based on operational issues outlined above, it 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.

IX. Requirement to Obtain U.S. TIN

A. Issue

Currently, the only way for a non-U.S. person who receives payment of a PTP distribution under 1446(a) or payment of an amount realized under 1446(f) to obtain a U.S. TIN is to file a U.S. tax return. To resolve this dilemma, we request that the IRS consider revising Form W-7, Application for IRS Individual Taxpayer Identification Number to allow for the non-U.S. persons that hold a PTP to obtain a U.S. TIN.

B. Discussion

Section 5.02 (B) and (C) describes the documentation requirements for a foreign partner receiving payment of a PTP distribution under 1446(a) or receiving a payment of an amount realized under 1446(f). Such documentation requires the provision of the account holder's U.S. TIN.

Section 5.01 (A) of the QI Agreement requires a QI 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.

Section 8.02 (P) of the QI Agreement requires a QI to file a separate Form 1042-S for each amount reportable that was paid to an account holder for the calendar year to report a payment of an amount subject to withholding under section 1446(a) on a PTP distribution or an amount subject to reporting under section 1446(f). Account holders may request a separate Form 1042-S for up to 3 full calendar years. Further, any request by an account holder for a separate Form 1042-S referenced in this section 8.02(P) requires that the account holder provide its U.S. TIN to QI.

Most non-US account holders will not have a U.S. TIN and will seek to obtain one to meet their U.S. tax obligations. QIs in Canada have been informed that Form W-7, Application for IRS Individual Taxpayer Identification Number does not foresee requests for this purpose. As a result, the only way for an account holder to obtain a U.S. TIN is to file a tax return. They will require a separate Form 1042-S to do so, requiring the QI to issue these slips without a U.S. TIN.

C. Recommendation

The IIAC recommends that the IRS consider revising Form W-7 (Application for IRS Individual Taxpayer Identification Number) to allow for the non-U.S. persons that hold a PTP to obtain a U.S. TIN. This will allow non-U.S. investors to request a U.S. TIN and timely provide it to QIs. QIs will then be able to provide a separate Form 1042-S that includes a U.S. TIN to an account holder that requests it, enabling that account holder to file their U.S. tax return. We believe this will meet the IRS's objective to improve tax compliance of foreign holders of Publicly Traded Partnerships.

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The IIAC members have a vested interest in being able to comply with and operationalize the Regulations under Section 1446(f). We appreciate the IRS's invitation to submit comments and willingness to consider the perspective of financial industry participants. If you need any clarification or have questions regarding this letter, we kindly ask that you contact the undersigned at srosier@iiac.ca.

Respectfully,

Sandra Rosier
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Investment Industry Association of Canada