

August 29, 2022

Submitted via Email

Attention:

Sasha Lanes
Electronic Products & Services Support Director
Internal Revenue Service

John Sweeney
Special Counsel, Office of Associate Chief Counsel (International)
Internal Revenue Service

Re: Recommendations to address the impact of updates to the IRS Information Return (“IR”) Application for Transmitter Control Code (“TCC”) for Foreign Filers who will lose access to e-filing

Dear Sirs and Mesdames:

The Investment Industry Association of Canada (the “IIAC”) is the leading national association representing investment firms that provide products and services to Canadian retail and institutional investors.¹ Many IIAC Member Firms have entered into Qualified Intermediary agreements with the U.S. Internal Revenue Service (“IRS”) to become qualified intermediaries (“QIs”), or are financial institutions (“FIs”) that are otherwise involved in transactions that require withholding, reporting and filings to be submitted to the IRS.

The IRS FIRE System changes, announced in 2021², will prevent foreign FIs from complying with their IRS prescribed e-filing requirements, and for those foreign FIs that are also QIs, it will also impact their ability to comply with their QI Agreement. The IIAC and SIFMA outlined this serious problem in our respective submissions³ in September of 2021. IIAC Member Firms are concerned that this issue has not been adequately addressed, as it has been over one year since the announcement and there is still no viable option to enable foreign FIs to access the e-filing system to comply with their regulatory obligations. Existing foreign FIs only have until August 1, 2023, to complete an IR-TCC Application or they will be unable e-file. New foreign FI filers will be unable to obtain a SA Account as of August 2022.

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

² <https://content.govdelivery.com/accounts/USIRS/bulletins/2ea1ae9?reqfrom=share>

³ <https://iiac.ca/wp-content/uploads/IIAC-Response-IRS-Electronic-Filing-Requirements-for-Specified>Returns-and-Other-Documents.pdf>

I. IRS Requirements to file electronically

The volume of information returns that IIAC Member Firms are required to file with the IRS necessitates the use of electronic filings and we have been supportive of rule changes recently requiring certain forms to be filed electronically. However, these rules are now structured to result in non-compliance for foreign FIs. The Instructions for Form 1042-S⁴ state that: Forms 1042-S filed for tax year 2022 must be filed electronically if - You are a financial institution (whether U.S. or foreign) regardless of the number of Forms 1042-S required to be filed. In addition, for foreign FIs filing 250 or more Form 1099s, they must do so electronically⁵. Foreign FIs need electronic access to apply for commonly utilized automatic extensions. Further, if the foreign FI fails to file either Form electronically, they will be subject to an automatic penalty, unless they are able to establish reasonable cause for the failure.

II. Impact on QI Compliance

QIs have specific documentation, withholding, reporting, obligations under the QI agreement and their Responsible Officials (“ROs”) have to complete a periodic certification of internal controls. We are concerned that the inability for foreign FIs to file Form 1042-S and Form 1099s electronically will result in filing delays, late penalties and potentially be considered an event of default under the QI Agreement.

Sec. 11.06. Event of Default. For purposes of this Agreement, an event of default occurs if QI fails to perform any material duty or obligation required under this Agreement:

A) QI fails to implement adequate procedures, accounting systems, and internal controls to ensure compliance with this Agreement.

Currently, QIs will be unable to satisfy this requirement, as there is no procedure or internal control that can be implemented to enable them to comply with the electronic filing requirements in 2023. Foreign FIs take their QI obligations very seriously and the changes to the FIRE system will prevent them from being able to meet their obligations.

III. 2021 IRS Requirements Challenges

The IRS Fire System changes announced in 2021 require two ROs to be listed on the IR Application for TCC and each must have an SA Account. In order to obtain an SA Account, a user is required to provide the following information:

1. An email address;
2. The user's Social Security number (“SSN”) or Individual Tax Identification Number (“ITIN”);
3. The user's tax filing status and mailing address from the most recently filed tax return;
4. A financial account number linked to the user from one of these accounts
 - a. Credit card (other than American Express, debit cards, or corporate cards);
 - b. Student loan;
 - c. Mortgage or home equity loan;
 - d. Home equity line of credit (“HELOC”); or
 - e. Auto loan;

⁴ [2022 Instructions for Form 1042-S \(irs.gov\)](https://www.irs.gov/irm/part34/340101_01_001.pdf)

⁵ [2022 General Instructions for Certain Information Returns \(irs.gov\)](https://www.irs.gov/irm/part34/340101_01_001.pdf)

5. A U.S. based cell phone in the name of the user (for faster registration) or a mailing address where the user can receive an activation code by mail.

These requirements are a significant barrier for foreign FIs to maintain their accounts. Many foreign FIs will not have employees who can satisfy the requirements to have a SSN or U.S. ITIN. Further, there are privacy concerns requesting sensitive and personal information from employees for the purpose of completing corporate tax filings. It is also unlikely that employees, who reside outside of the U.S., will have the type of financial accounts required. Finally, maintaining a U.S. based cell-phone for the sole purpose of maintaining a SA account is not practical, and many foreign FIs will not have a U.S. mailing address where they can receive an activation code as an alternative.

While these requirements may be operationally possible for U.S. based corporate filers, there must be amendments to the onboarding process for foreign FIs.

IV. IRS 2022 FAQ

On March 3, 2022, the IRS released FAQ 17:

17. What is a non-US person/filer supposed to do if they don't have a United States Tax Identification Number (TIN)? (updated March 3, 2022)

- A. Customers who cannot authenticate through Secure Access are provided with the option to enlist a third party to file on their behalf.

It is not feasible to require all foreign FIs to solicit third-party vendors to file all their Form 1042-S and Form 1099s on their behalf. In addition to volume and timing concerns, there are significant privacy concerns that foreign FIs must consider before providing sensitive client information to a third-party. Foreign FIs also have liability concerns using third-party providers to complete sensitive filings that impact their compliance with IRS and QI requirements.

We do not believe this is a realistic option and the IRS must consider alternative onboarding processes to enable foreign FIs to file electronically themselves.

V. Recommendations

We understand the need to improve security requirements related to accessing the FIRE system, however, we believe that accommodations are necessary for foreign FIs and can be made without compromising the security objectives. We have the following recommendations to address this issue:

1. For foreign FIs, in lieu of providing the details stated above, we recommend considering the use of the Centralized Authorized File (“CAF”) number. In order to obtain a CAF number, employees must provide specific information when applying for one which should assist in ensuring appropriate security.
2. Until the IRS is able to change the SA Account process to accommodate foreign FIs, we recommend that Form 1042, Form 1099 or Form 1042-S electronic filings be exempt from the new SA Account process

We would appreciate ongoing dialogue with foreign financial industry participants to develop potential solutions. If you need any clarification or have questions regarding this letter, we kindly ask that you contact the undersigned at cclimo@iiac.ca. Thank you.

Sincerely,

“Chris Climo”

Chief Operating Officer
Investment Industry Association of Canada