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Dear Ms. Schermann:

Re: NR301, NR302 and NR303 Eligibility Declaration for Tax Treaty Benefits

As requested, and further to our letters and our September 29, 2011 teleconference, we are providing additional detail to explain better the challenges that the members of our three associations are facing – as well as new issues that are emerging – with respect to non-resident treaty eligibility requirements. **In view of these difficulties, we request that the CRA delay implementation of the requirements until January 1, 2013. Due to the nature of year-end processing and reporting, our members would deeply appreciate notification of CRA's decision on this matter as soon as possible.**

As we have explained, while we believe that there are few problems with respect to non-resident reporting relative to individuals, there are significant issues that must be addressed to implement the protocol in a methodical way in other areas. Our members must systematically collect and as necessary correct information, refine systems, input amendments, test systems and procedural changes, complete documentation and effect communications. Moreover, changes must be co-ordinated not only in English and French within the many branches and across thousands of advisors in Canada, but also in multiple languages and time zones worldwide due to the prevalent use of subcustodians and reliance on other third parties.

The complexity of this has been re-enforced by questions some members are receiving from people in other countries and by errors in some forms that are being voluntarily provided. As an example, a form already received records two taxpayers of a joint account on the same form, only one signature, no social insurance or foreign tax number for either and no income type identified. What receipt of such errors underscores is that payers will have to resend requests for information, sometimes to thousands of underlying clients, some of which may be financial

institutions that would in turn have to send out a further information request to their clients. Given the cascading impact of the data collection, what might first take 6-12 months to obtain, if it could be obtained, will require a further 6 or more months to get completed correctly. This is one explanation of why a January 1, 2012 effective date is an impossibility, even had payers been in a position to start implementation this past April.

Below is a summary of what makes the January 2012 date more challenging, followed by recommendations and questions we would like to discuss during our teleconference next week. Also attached, to help possibly in our discussions, are two hypothetical examples.

Form-related issues

As members have proceeded with planning, additional matters have been identified that suggest that a number of the forms' fields should be deleted, changed or allowed to be left blank. The information requested for these fields, in fact, will make it more difficult for clients to respond. Furthermore, firms that choose *not* to collect the forms would not have, or have reason to collect, this information. Additionally, global financial institutions have been receiving many questions from clients due to differences in terminology and practice, making it difficult for subcustodians to understand the Canadian requirements. These questions pertain to one or more of the following:

- The non-resident taxpayer or authorized person is required to certify that he/she/the taxpayer is entitled to the benefits of the tax treaty on the income listed. Clients may not understand the character of the payments – type of income – for purpose of treaty benefits. Information in the instructions and on the CRA website may not be helpful to some as certain places mention interest and dividends, some capital gains, some just interest, some investment income, some trust income.

- Our members would like to know how to explain to their clients the purpose of requiring by form or other means the type of income the investor effectively "expects" to receive as it may and indeed will frequently change: in the past five years, many investors will have moved from large amounts of equities to more debt and other fixed-income investments. Moreover, how can the requirement for a taxpayer to provide a new certification if income changes from what is on the form be explained (especially when the form is not required to be passed to the CRA and the information is not needed by the payer/financial institution)? Privacy legislation applicable to even parts of government allows the requester of the information only to collect the minimum of information required for a legitimate purpose. While the CRA's request for treaty eligibility is clearly legitimate, how can a payer explain why the CRA needs to know information about an investor's *expected* revenue types, when it is the payer that determines and applies withholding tax based on the *actual* payments received?

- Many investors may not understand "treaty benefits". For those payers trying to use the forms, it should be sufficient to ask clients to identify the country to which they must declare investment income and/or to which they pay or would pay taxes. This is because the payer manages the appropriate treaty withholding requirements.

- The forms are not clear as to how an investor must report when they do not fall into either of the individual, corporation or trust categories; as well, what 'corporation' means in the NR301, 302 and 303 context will be unclear to many.

- The certification on the NR301 to the effect that "I certify that the non-resident taxpayer is the beneficial owner of all income to which this form relates." is confusing for any individual completing the form on his or her own behalf.

- While text under the signatory line asks for an authorized person to sign, the instructions speak only of "the non-resident taxpayer if an individual, authorized officer if a corporation, trustee, executor, administrator for a trust or authorized partner in the case of a partnership". We are advised that many clients assign powers of attorney to someone and these powers do seem to fall under the categories identified.

- The forms state that those completing the NR301, 302 or 303 forms must recomplete the form when there is a change of rate or after three years. A CRA webpage (http://www.cra-arc.gc.ca/formspubs/frms/nr301-2-3-eng.html) says that where draft forms were used, they must be re-signed in no more than two years. We believe that the only reason for refreshing the form is if a client's eligibility residency status changes. Otherwise, there will be considerable additional administrative work to be done for very little benefit.

Alternatives to Forms

We appreciate that the CRA has clearly made the NR300 series forms voluntary, permitting payers to use an alternative to the forms as there may be other methods of obtaining the required information. For example, for many of our members, obtaining the three pieces of required information could be undertaken at account opening for new clients, when periodically updating KYC ("know your client") information and in complying with anti-money-laundering (AML) demands. If the KYC and/or AML regulatory information sources fulfill the information requirements for the beneficial owners, the NR301 form may not be considered necessary. However, the CRA guidance that the payer may choose to apply reduced withholding tax without obtaining the forms or equivalent information, if all of the following are true, puts the ability to use this option in question due to the third bullet:

- You know that the payee is an individual, or the payee is an estate and the trustee has an address in the United States
- You have a complete permanent address on file that is not a post office box or care-of-address
- **You have no contradictory information** *[emphasis added]*
- You have no reason to suspect the information is inaccurate or misleading
- You have procedures in place so that changes in the payee's information (for example, a change of address or contact information that includes a change in country, or returned mail) will result in a review of the withholding tax rate.

Specifically, the most likely case where a payer would choose *not* to obtain "equivalent information" is where the individual is known to be a long-term resident of Canada, although may choose to winter in the south: this, for example, could be considered "contradictory" information on audit and thus does not provide a payer with the necessary certainty.

Refund issues

A fundamental taxpayer right, and the first of the CRA's stated commitments to taxpayers, is that a taxpayer is "... to pay no more and no less than what is required by law." It is our understanding that a number of parties are intending to unilaterally withhold at 25% at the start of the year without reflecting information available. We believe that this will significantly increase workload for the CRA and payers/financial institutions, as well as inconvenience investors due to the large number of NR7-Rs that will need to be processed. It is our understanding that currently the time spent waiting for refunds may average a year, and despite new CRA hires it may be that this time delay will increase. While this represents no change in policy, subjecting more people to these delays would have a negative and inappropriate impact on Canadian citizens, businesses, governments and not-for-profits, as well as foreign parties, and have a correspondingly negative effect on the CRA's reputation for applying tax legislation fairly.

Systems and operational issues

There are several systems issues that will make this implementation difficult and lengthy, and this is not just from the perspective of individual payer firms, but of service providers and supporting infrastructure, such as clearing and settlement organizations, as well. To the extent that some financial institutions have some systems used for U.S. reporting that can be used, changes will have to be made and new fields will have to be added (e.g., a different date to renew forms than the date for U.S. requirements).

- Most of the industry determines the residency of an account by what is known as a GEO (geography) code that ties to the account address. This code 'tells' the system whether an account should receive a T-slip or an NR4 form and determines the rate for tax withholding purposes. The new protocol creates the possibility that an account holder could be a non-resident of Canada for NR4 purposes, but not eligible for the treaty rates of the country in which they reside in the NR301, 302 or 303 context. Currently, few if any firms in the industry have the systems capabilities to distinguish between different statuses for non-residents and they would have to build the capacity to do so. For this reason, the protocol requires systems changes to be developed that will allow financial institutions to retain the GEO code for year-end tax reporting, but allow use of a different non-standard rate for withholding purposes.

- Before starting major systems change, firms need to understand how reporting of withholding tax for non-individual accounts is to take place. It is our understanding that reporting of withholding tax for non-individual accounts is still to occur at the account level.

- The practical alternative for payers in Canada and elsewhere to avoid liability would be to charge 25% to an *entire* account and then clients, financial institutions and CRA employees would have to, respectively, fill out, verify and process the NR-7Rs on a payment-by-payment security-by-security basis to provide clients with the refunds that they are entitled to. As you are aware, many of the partnership and hybrid accounts have many underlying owners.

- As there is continual turnover in the holders of certain hybrid entities and partnerships, it is not clear how the process will work. A point-in-time calculation of the withholding rate makes practical sense, but would disadvantage investors in a fund that gains investors entitled to 0% or 15% withholding rates.

For Discussion by CRA and Industry

Recommendations/Proposals

1. ***Forms:*** We request that the NR form be amended and/or the related instructions be clarified to address the following (note that we may have further comments in this regard and we apologize for any of these issues that should have been identified at the time of the 2009 consultations):

    - The question regarding the expected type of income and applicable treaty benefit should be replaced with one asking the completer to identify the country to which the taxpayer is required to declare investment income and/or pay taxes. As the bare minimum, the form should be amended to clarify what fields do *not* have to be completed and *not* to require a client to submit an updated form if the information in certain fields, and especially type of income, changes.

    - Powers of attorney should be added to the list of authorized signatories in the form instructions.

    - To the extent that certain parties may serve as power of attorney for multiple people, the form instructions should allow for a single signature applying to all appended forms.

    - The form instructions should be clarified to explain how parties that do not fall into either individual, corporation or trust categories (for example, LLCs and partnerships) are to respond and each term, in particular, 'corporation' should be defined.

    - While minor, for easier review of forms received, the form number should be at the top right of the form rather than in small print at the bottom left.

2. ***More information for taxpayers:*** We recommend that additional plain language information be put on the CRA website for non-residents and for Canadian residents whose investment

income may be withheld on at a non-resident withholding rate. We would be pleased to work with you on wording for the website (and form instructions).

3. ***More payer information:*** We suggest that additional Qs and As for resident and non-resident payers be added to the CRA website as we believe that further questions will arise and that all payers subject to the new rules should have access to the same information. For example, the Qs and As could clarify:

   i. What entities are or may be exempt from the rules, such as certain tax-exempt entities, including pension or retirement accounts (such as IRAs) .

   ii. That firms that choose to obtain an NR301, 302 or 303 at some point can chose *not* to continue getting a new form every three years (in particular, we recommend that requiring payers to seek re-completion of forms NR301 be abandoned unless a firm receives notice of a change of country when a client updates his or her address, in which case the firm may obtain treaty-related information in a manner other than the form).

   iii. That fields left blank (with the exception of that establishing the individual's eligibility for treaty benefits) do *not* diminish the weight of the documentation.

   iv. That auditors considering what penalties to apply in cases of underwithholding will consider the eligibility information obtained by a non-NR300-series-form, but equally rigorous, process with the same weight as NR301, 302 and 303 forms as to a payee's eligibility for treaty benefits.

   As well, the phrase "You have no contradictory information" should be deleted from *Pending updates to IC76-12, Applicable rate of Part XIII tax on amounts paid or credited to persons in countries with which Canada has a tax convention related to forms NR301, NR302, and NR303* for two reasons: first, it is unnecessary as the following bullet – "You have no reason to suspect the information is inaccurate or misleading" – makes it redundant and, second, as it would cause uncertainty. If it is not removed, we would appreciate clarification of what is considered contradictory information and what documentation can be used to resolve any conflict under the new requirements. As a minimum, knowledge that a Canadian resident chooses to winter in the south should not be considered "contradictory".

4. ***Efficient access to withholding tax changes:*** To further help payers, treaty exemption rates under Part XIII of the *Income Tax Act* per income type per country, which is available on or through the CRA website, should be information that is made available by the CRA in an electronic file and automated fashion to all parties that request it, with the file being resent to them as withholding rates are amended. This is because the CRA is in a better position than payers/financial institutions to obtain the information on an accurate and timely basis.

5. ***Grandfathering:*** The U.S. provided implementation time and grandfathered all then-existing accounts in the case of the qualified intermediary (QI) regime implemented over a decade ago. As a minimum, we recommend the CRA consider grandfathering all existing individual

accounts, including registered plan types of accounts, from the requirements and that administrative relief be available in the case of existing non-individual accounts to align data collection with requirements to obtain similar information under the U.S. *Foreign Account Tax Compliance Act*. This could avoid the need for systems to capture NR300 series update dates that are different from those of FATCA requirements and a double set of mailings.

6. ***Refunds:*** IIAC had requested the CRA in the past to improve the refund process (see attached excerpt from March 31, 2011 submission). We would like to initiate the discussion in this regard as soon as possible, in particular, no longer requiring that an NR7-R be required to be completed by the taxpayer and signed by the payer on a payment-by-payment, security-by-security basis.

Questions

1. Is the CRA expecting to make additional changes to any in the NR series of forms in the next three years of which payers might wish to be aware before making current changes to assist payers in making the most efficient systems development and operational decisions longer term?

2. How will the CRA be able make refunds for partners or beneficial owners of hybrid entities where a blended rate is withheld? How many refund requests are currently filed and paid and what number of filings and payments are forecast under the new rules?

3. Fund managers and dealers appear to differ in views of their respective responsibilities; accounting firms and firms inside and outside Canada appear to have differing perceptions of requirements as well. Investment dealers believe that fund managers, for nominee accounts of an investment dealer, should be able to rely on a declaration from the investment dealer regarding their clients' treaty eligibility status, rather than requiring individual non-resident documentation of their own. Could the CRA arrange a meeting with multiple groups and accounting firms together to review the forms and achieve a common understanding of obligations? We would be pleased to facilitate such a seminar in Toronto and by webinar for those in other locations.

Request

Our 2009 submission said that there would be extensive systems and operations changes required to be implemented. The April 2011 announcement for a year-end 2011 effective date did not, unfortunately, provide the time to allow for the changes to be implemented and tested efficiently. We are hearing that most organizations in Canada and elsewhere are not in a position to implement effectively the new requirements by the end of the next two weeks, even by defaulting to rates of 25%. Three-quarters of IIAC members, and a good number of IFIC members, are small businesses and the CRA has made its first commitment to such enterprises a promise "… to administering the tax system in a way that minimizes the costs of compliance for small businesses." While the cost of implementing the changes will be material for all payers, the expense appears to be proportionally more for small member firms.

Based on more recent consultations, including a recent letter from the Securities Industry and Financial Markets Association (SIFMA), we believe that the CRA is now broadly aware of the extent of the problems and lack of payer preparedness and strongly request that a pragmatic approach be taken. We respectfully request that the CRA *not* pursue the end-of-2011 implementation date as intended, since to do so will likely result in considerable confusion and an extensive volume of refund requests that will be problematic for all stakeholders, including government authorities, investors and financial institutions.

We ask, instead, that the CRA immediately announce (before year-end 2011) that implementation of the requirements will be postponed to January 1, 2013. This would allow all involved parties to implement requirements in a systematic and methodical way that will reduce errors and problems, not discourage people from investing in Canadian markets, and maintain the CRA's reputation as a tax authority that administers tax legislation even-handedly.

We appreciate your willingness to meet and look forward to the December 21 teleconference with you and your colleagues to address our recommendations/proposals and learn the answers to the questions above.

In the meantime, please do not hesitate to contact any one of us at the e-mail addresses or phone numbers listed below.

Yours sincerely,

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NR 302 and 303 Examples for Discussion

Example 1 -

		Income =	*2,500*							
Residency	**Assets held**	**% of Total**	**Income**	**Withhold Rate**	**Tax Withheld**	**Tax Slip**	**If all charged 25%**	**Tax Slip**	**But…**	**Implications**
Canadian	100,000	44%	1,111	11%	117	T5	278	?	Can an FI issue a NR4 to a Canadian resident? Would need another box on Canadian T5 forms for non-resident tax paid by Canadian resident?	Assumes solution must be in place for Jan. 1, 2012 for withholding purposes at time of distribution. If reported on a bulk basis, how do Canadians claim their refund?
American	75,000	33%	833	11%	88	NR4	208	NR4	1% underwithheld	If the average withholding rate exceeds 15%, how do Americans claim refunds from CRA for amounts overwithheld?
Cayman Islands	50,000	22%	556	11%	59	NR4	139	NR4	14% underwithheld	
	225,000	100%	2,500	11%	264		625			

Example 2 *Income =* *2,500*

		Income =	*2,500*							
Residency	**Assets held**	**% of Total**	**Income**	**Withhold Rate**	**Tax Withheld**	**Tax Slip**	**If all charged 25%**	**Tax Slip**	**But…**	**Implications**
Canadian	100,000	44%	1,111	0%	-	T5	278	?	Can an FI issue a NR4 to a Canadian resident? Would need another box on Canadian T5 forms for non-resident tax paid by Canadian resident?	Solution must be in place for Jan. 1, 2012 for withholding purposes at time of distrtibution. How will this be reported so Canadians can make a NR7-r equivalent recovery or is it offset automatically when Canadian taxes paid are recorded in the tax retur
American	75,000	33%	833	15%	125	NR4	208	NR4	10% overwithheld	Includes $208 as FTC on income tax return; U.S. will discount to $125; American client will pursue NR7-r recovery of $83 from CRA'
Cayman Islands	50,000	22%	556	25%	139	NR4	139	NR4	Fine	
	225,000	100%	2,500	11%	264		625			

Extract from March 31, 2011 IIAC Submission

Improve Non-resident Tax Process

Problem(s): Many residents of Canada are charged non-resident tax (NRT) when they should not be because clients forget to tell their broker/dealers about a change in residency in a timely fashion or due to system limitations that tie residency codes to physical addresses, which may lead to, for example, "snowbirds" being subject to NRT when they should be subject only to Canadian tax. As or more important, there are issues around specified investment flow-through (SIFT) distributions that are fully taxed at the time of payment, but are re-classified as non-taxable/reportable for NRT purposes when issuers finalize the details of their financials *after* year-end. Asking clients and broker/dealers to fill out NR7-Rs to request a refund is very time-consuming and inconvenient for all concerned, and the government is not in the business of wanting to over-tax Canadians.

As well, a notional income distribution is paid to unitholders by the issuance of additional trust units. The outstanding trust units will then be consolidated with the additional trust units so that afterwards, each holder will have the same number of trust units as the holder had before the distribution. A notional distribution to a non-resident unitholder is subject to Canadian withholding tax of up to 25%, unless the rate is reduced under an applicable income tax treaty between Canada and the non-resident unitholder's jurisdiction of residence. Broker/dealers may not know all the details at the time of distributions and when they do know, it could be after the remittance due date and they could be charged penalties and interest.

Solution(s):

1. Develop and implement mutually acceptable simplified process(es) for non-resident tax refunds
2. Clarify that the issuer is the one who should be responsible for non-resident withholding tax on notional/in-kind trust income distributions made to non-resident unitholders

Cost-benefit analysis:

Costs	Benefits
• **Minimal impact on government revenues** (timing only or government was collecting tax that it should not have been)	• **Improvement in tax system efficiency** • Investors treated more fairly • CRA benefits from a reduced need to manage refunds • Financial institutions incur no unnecessary costs

Conclusion: Benefits outweigh costs.