

CIBC MELLON

*U.S. Internal Revenue Code
Section 1446(f) comes into effect on
January 1, 2023*

DECEMBER 2022





BY SIMON LEE
Vice President, Tax

Simon Lee is Vice President, Tax at CIBC Mellon. Simon is responsible for CIBC Mellon's tax advisory, including planning and analysis, and sharing insights and considerations to the organization on tax legislation. He has over 20 years of experience in the taxation of financial services.

As communicated in CIBC Mellon's Tax Forum in May 2022 and Straight Talk articles on September 7, 2021, and December 1, 2020, the U.S. Treasury Department (Treasury) and the U.S. Internal Revenue Service (IRS) have released final regulations under U.S. Internal Revenue Code (IRC) Section 1446(f) with respect to the withholding tax on a transfer by a non-U.S. person of an interest in a partnership that carries on a trade or business in the U.S. or otherwise realizes income effectively connected with such a trade or business (ECI). These regulations will come into effect on January 1, 2023.

Below is a summary of some of the key requirements that will impact CIBC Mellon and some of its clients:

TYPES OF PUBLICLY TRADED PARTNERSHIPS THAT ARE IN-SCOPE

All publicly traded partnerships, U.S. or Non-U.S. (including Canadian PTPs), are in scope for U.S. withholding tax under Section 1446(f), unless an exception applies.

Clients are responsible for reviewing their holdings report to determine if they or their clients hold any PTP assets. The IRS has not published a PTP list, and there is no current industry-wide list available in the U.S.

At the end of this article, clients will find a list of ETFs that are PTPs in the U.S. While there is no industry list of ETF-PTPs, the list below was compiled using reasonable efforts by BNY Mellon based on a publicly available list of Commodity and Currency ETFs. This may not be an exhaustive list of all ETFs that are PTPs with respect to non-U.S. partnership assets. The classification is based on local law and may differ in the U.S.

We recommend that you review your holdings report through NEXEN with your appointed U.S. tax advisor.

TRANSACTIONS IN-SCOPE FOR WITHHOLDING

Section 1446(f) applies to all sales of PTP shares and distributions from the PTP.

WITHHOLDING AGENT RESPONSIBILITY

Brokers and custodians that are acting on behalf of the seller (including the seller's clearing broker and/or custodian) are generally responsible for withholding the 10% tax under section 1446(f).

Any broker or custodian that makes a payment to a non-U.S. seller of an in scope PTP, must withhold 10% of the gross proceeds paid on a sale, or on any amount in excess of cumulative net income of the partnership included within a distribution, unless an exception from withholding applies.

Note: Once the Section 1446(f) 10% withholding is applied it cannot be reversed, and it will be reported on Form 1042-S

Non-foreign status – CIBC Mellon may rely on a Form W-9 from the holder to document their U.S. status.

Qualified Notice exception

- For sales, CIBC Mellon may rely on a Qualified Notice (QN) issued by the partnership that states that a sale is not subject to 1446(f) withholding.
- For distributions, CIBC Mellon is only required to withhold if the partnership issues a QN indicating that a portion of the distribution is an amount in excess of cumulative net income.

Documentation exception

The holder provides a Form W-8 that qualifies for an exception to 1446(f) withholding.

Some examples include:

- W8BEN/W8BENE with treaty claim
- W8-IMY Full withholding Qualified Intermediary
- W8-ECI with Line 12 checked

SCHEDULE K-1

Holders of PTP assets may have a requirement to file a U.S. tax return and include income reported on Schedule K-1 issued by the PTP, to support this filing. BNY Mellon has established an automated process for transmission of account and ownership data to a third-party vendor who makes this information available to the issuers to form the basis of their Schedule K-1 reporting. This Schedule K-1 service is available to Direct Beneficial Owner (BO) and Non-Withholding Foreign Partnerships (NWFP)/Non-Withholding Foreign Trust (NWFT) account holders with no need to segregate.

Qualified Intermediary (QI)/Non-Qualified Intermediary (NQI) account holders will be required to segregate PTPs in order to support the Schedule K-1 process. QI/NQI's will need to set up a segregated PTP account per underlying BO that will only hold PTPs on behalf of that single BO. Where PTPs are held in an omnibus account, Section 1446(f) withholding will still apply, but the Schedule K-1 will be in the account holder's QI/ NQI name, and not the name of the BO.

Please note, a BO holding a PTP requiring a Schedule K-1, will require a U.S. Tax Identification Number (TIN) for Schedule K-1 purposes.



DOCUMENTATION REQUIRED

Updated documentation must be received by December 19, 2022.

Intermediary Status	Documentation	Notes
Withholding QI	Updated (2021) W8-IMY; Updated Withholding Statement (WHS) if applicable	complete boxes 15b and/or 15c as applicable
Non-Withholding QI	Updated W8-IMY; revised WHS	
Disclosing QI	New (2021) W8-IMY; Disclosing QI WHS; Underlying BO Tax Doc with US TIN	Requires Segregated Account per BO, holding only PTPs. Underlying BO Must have US TIN
Non-Qualified QI	Updated (2021) W8-IMY; Underlying BO Tax Documents with US TIN; NQI Agreement Letter (Contact Client Services)	Requires Segregated Account per BO, holding only PTPs. Multiple BO's result in K-1/1042S for 1446(f) issued to NQI

a. Qualified Intermediary (QI)

A QI may assume primary withholding responsibility for purposes of Sections 1446(f) and 1446(a), by completing boxes 15b and/or 15c as applicable. Otherwise, CIBC Mellon will withhold at the applicable rate as designated by the QI. If a QI chooses to be a Disclosing QI, it will need to open separate segregated accounts for each BO and may only hold PTP interests in those accounts, and each underlying BO must have a U.S. TIN.

b. Non-Qualified Intermediary (NQI)

An NQI is subject to the 10% Section 1446(f) withholding on the NQI's entire position unless a QN exception applies. Note that this includes positions held by the NQI's U.S. and non-U.S. customers per the IRS guidance. NQIs are also required to complete an NQI agreement. Please contact your client service representative for the NQI Agreement and for the Non-withholding Foreign Partnerships (NWFP) and Non-withholding Foreign Trusts (NWFT) as these are subject to the 10% Section 1446(f) withholding on the entire position unless a QN exception applies.

c. NWFP and NWFT

Regardless of whether a QN exception applies, the NWFP or NWFT may submit a Modified Amount Realized (MAR) on its WHS to receive a documentation exception for underlying partners and beneficiaries. For example, a NWFP or NWFT may indicate the portion of a payment allocated to U.S. holders with Forms W-9 to receive a 0% rate of 1446(f) withholding.

Similarly, a NWFP or NWFT may indicate the portion of a payment allocated to non-U.S. holders making a treaty claim for a 0% tax rate on Section 1446(f) withholding on Forms W-8BEN or W-8BEN-E (see more information below).

To be eligible for the MAR, the NWFP or NWFT must provide its U.S. TIN on its Form W-8IMY. To claim a 0% tax rate for any portion of income allocated to non-U.S. holders, the Forms W-8BEN and W-8BEN-E associated with those non-U.S. holders must include those non-U.S. holders' U.S. TINs. Additional requirements are provided in more detail below.

d. Beneficial Owners (BO)

W8-BEN/BENE – BO's that provide a Form W-8BEN or W-8BEN-E may request a treaty exemption when completing the special rates and conditions line within the applicable treaty section (line 10 of the W-8BEN or line 15 of the W-8BEN-E). To be considered eligible for a treaty exemption, the BO providing the form (i) must include a U.S. TIN, (ii) must enter the name of each PTP for which a treaty exemption is being claimed, and (iii) must state which conditions within the applicable treaty article are being satisfied. CIBC Mellon will then review the claim to determine whether a treaty exemption may be granted.

Form W-8ECI – BO's that provide a Form W-8ECI may request an exemption from Section 1446(f) withholding by completing line 12 (if eligible) of the version of the Form revised by the IRS in October 2021.

Form W-8EXP – BO's that provide a Form W-8EXP are not eligible to claim an exemption from Section 1446(f) withholding.

DISTRIBUTIONS

In addition to the current imposition of tax withholding at the rate of 21% or 30% on corporate entities and the rate of 37% on non-corporate entities receiving PTP distributions under Section 1446(a), there may be an additional withholding on distributions if the PTP has an amount in excess of cumulative net income (“ECNI”).

A PTP may issue a QN at time of distribution, indicating a portion of the distribution is ECNI subject to section 1446(f). Depository Trust & Clearing Corporation (“DTCC”) will use the Tax on Non-Distributed Proceeds (“TNDP”) event type to announce market standard events of deemed distributions subject to Section 1446(f) withholding. DTCC will announce these events when they receive a QN from a PTP. The deemed cash rate will represent the distribution per unit amount subject to the new 10% withholding tax. The deemed cash rate will be zero if a PTP states there is no ECNI.

TIMING OF WITHHOLDING

Section 1446(f) withholding will be debited from the account after settlement date. Sales proceeds will be paid gross, with a corresponding debit equal to the Section 1446(f) withholding. Furthermore, Section 1446(f) withholding may also apply to corporate action events.

CIBC MELLON DOCUMENTATION REQUIREMENT DEADLINE

Clients invested in PTPs and impacted by Section 1446(f) are encouraged to provide their new U.S. tax forms to CIBC Mellon if they want to be able to take advantage of the new features on the new forms. Updated documentation must be received by December 19, 2022.

REPORTING

Per the IRS instructions, Form 1042-S Income Code 57 will reflect amounts realized under section 1446(f): <https://www.irs.gov/pub/irs-pdf/i1042s.pdf>

Key Considerations for CIBC Mellon Clients:

- Updated documentation must be received by December 19, 2022.
- Clients are responsible for reviewing their holdings report and making the determination whether they or their clients hold any PTP assets.
- Clients may make a determination to support or block holding of PTP assets after January 1, 2023.
- Clients are encouraged to update their U.S. Withholding Tax Documentation to ensure that the latest version of withholding tax form is complete, and that it is consistent with their status. Updated U.S. WHS may also need to be completed. Clients are further encouraged to review their account structure to check that it covers any new withholding rate pools, and segregate account holders, as needed.
- Client that support PTPs, are responsible for determining if account holders are currently segregated or held omnibus. If the current account structure is omnibus, clients can consider moving to a segregated account structure for PTP holders to support correct withholding, reporting and Schedule K-1 distribution.
- Clients that choose to maintain their PTP holdings in an omnibus account will be responsible to update their documents, provide WHS and determine if additional pooled accounts are necessary for considering the 10% or 0% Section 1446(f) tax rate pools.
- NQIs should determine if any BO is a U.S. resident or is treaty-eligible. These accounts will be subject to the 10% withholding even if they would be exempt and NQI may consider whether to block PTP holdings.
- QI/NQI should update documentation for underlying clients that hold PTPs, to support having a valid treaty claim, and all necessary information for K-1 purposes, if opening segregated accounts for that purpose.

ETF – PTPS

The following list of ETF – PTPs was compiled using reasonable efforts based on a publicly available list of Commodity and Currency ETFs and may not be an exhaustive list of all ETF's that are PTPs. This list does not include non-ETF PTPs or non-US PTPs:

Symbol	ETF Name	ISIN
BDRY	Breakwave Dry Bulk Shipping ETF	US26923H2004
DBC	Invesco DB Commodity Index Tracking Fund (DBC)	US46138B1035
DBV	Invesco DB G10 Currency Harvest Fund (DBV)	US46139B1026
DBA	Invesco DB Agriculture Fund (DBA)	US46140H1068
DBS	Invesco DB Silver Fund (DBS)	US46140H2058
DBE	Invesco DB Energy Fund (DBE)	US46140H3049
DBO	Invesco DB Oil Fund (DBO)	US46140H4039
DBP	Invesco DB Precious Metal Fund (DBP)	US46140H5028
DGL	Invesco DB Gold Fund (DGL)	US46140H6018
DBB	Invesco DB Base Metals Fund (DBB)	US46140H7008
UDN	Invesco DB US Dollar Bearish Fund (UDN)	US46141D1046
UUP	Invesco DB US Dollar Bullish Fund (UUP)	US46141D2036
AGQ	ProShares Ultra Silver	US74347W3530
GLL	ProShares UltraShort Gold	US74347W3951
UGL	ProShares Ultra Gold	US74347W6012
KOLD	ProShares UltraShort Bloomberg Natural Gas	US74347Y8214
ZSL	ProShares UltraShort Silver	US74347Y8479
SCO	ProShares UltraShort Bloomberg Crude Oil	US74347Y8628
BOIL	ProShares Ultra Bloomberg Natural Gas	US74347Y8701
UCO	ProShares Ultra Bloomberg Crude Oil	US74347Y8883
CORN	Teucrium Corn Fund	US88166A1025
CANE	Teucrium Sugar Fund	US88166A4094
WEAT	Teucrium Wheat Fund	US88166A5083
SOYB	Teucrium Soybean Fund	US88166A6073
BNO	United States Brent Oil Fund LP	US91167Q1004
USCI	United States Commodity Index Fund	US9117171069
CPER	United States Copper Index Fund	US9117181043
UGA	United States Gasoline Fund LP	US91201T1025
UNG	United States Natural Gas Fund LP	US9123183009
USO	United States Oil Fund LP	US91232N2071
USL	United States 12 Month Oil Fund LP	US91288V1035
UNL	United States 12 Month Natural Gas Fund LP	US91288X1090

If You Have Further Questions

CIBC Mellon is not able to provide tax advice, and this document is provided for information purposes only in order to support clients as they consult their legal, tax and compliance advisors with respect to their specific obligations and duties. If you have questions regarding CIBC Mellon's role as an asset servicing provider, please do not hesitate to reach out to your relationship manager.

About CIBC Mellon

CIBC Mellon is dedicated to helping Canadian institutional investors and international institutional investors into Canada service their financial assets throughout the investment lifecycle. Founded in 1996, CIBC Mellon is 50-50 jointly owned by The Bank of New York Mellon (BNY Mellon) and Canadian Imperial Bank of Commerce (CIBC). CIBC Mellon delivers informed investment services for investment funds, pension plans, insurance companies, banks, foundations, endowments, corporations, and global financial institutions whose clients invest in Canada. As at September 30, 2022, CIBC Mellon had more than C\$2.3 trillion in assets under custody and/or administration. CIBC Mellon is part of the BNY Mellon network, which as at September 30, 2022 had US\$42.2 trillion in assets under custody and/or administration.

www.cibcmellon.com

CIBC MELLON

➤ A BNY MELLON AND CIBC JOINT VENTURE COMPANYSM

<https://www.cibcmellon.com>

©2022 CIBC Mellon. CIBC Mellon is a licensed user of the CIBC trade-mark and certain BNY Mellon trade-marks, is the corporate brand of CIBC Mellon Trust Company and CIBC Mellon Global Securities Services Company and may be used as a generic term to reference either or both companies.