



IRS updates two FAQs relating to Certification and Periodic Review and announces upcoming revision of the EIN application rules

Closing the distance

Recently, the IRS updated two FAQs in the Certification and Periodic Review section of its [FATCA General FAQ](#) page. One update relates to the independence standard for an external review of a qualified intermediary ("QI"), withholding foreign partnership ("WP"), and withholding foreign trust ("WT"); another update covers the application for the formation of a consolidated compliance group ("CCG"). The IRS also announced a revision of the EIN application rules due to security concerns. Details of these FAQs are set forth below.

FAQ about group of QIs or WPs applying to form CCG

On March 9, 2019, the IRS updated [FAQ5](#) about the formation of a CCG. Updated FAQ5 states that for certifications due in calendar year 2019, an application to form a CCG should be submitted by the Compliance Entity's responsible officer or other authorized person no later than April 1, 2019. After submission of the CCG application, the IRS will request from the applicant compliance entity additional information to determine if the CCG is acceptable for the IRS. The IRS will also raise questions about the final composition of the CCG members and the sample design for any statistical sampling to be utilized for the periodic review.

Updated FAQ5 further states that the CCG should select 2017 or 2018 as the periodic review year; the IRS will not approve a CCG application that selects 2016 as the periodic review year for the certification due in 2019.

FAQ about independence standard for an external reviewer

On April 5, 2019, the IRS updated [FAQ2](#) on its [FATCA General FAQ](#) page about the independence standard for an external reviewer. Section 10.04 of the QI Agreement and section 8.04 of the WP and WT agreements require that an internal and external reviewer must be independent. The preamble to the QI agreement clarifies that the reviewer must be independent enough to conduct the review objectively and states that the reviewer cannot review his or her own work or the work of others in the same "firm." The QI Agreement, however, does not define the term "firm". To this respect, the updated FAQ states that the IRS will permit an external reviewer to apply the standards of independence that would otherwise apply to its engagement with a QI, WP, or WT to conduct the periodic review (such as the standards for an agreed-upon procedures engagement by a certified public accountant) for the years preceding 2019. The IRS intends to update this FAQ to provide further guidance on the independence standard for reviews in 2019 and later.

Tightening EIN application process

On March 27, 2019, the IRS [announced](#) that rules on the application for the EIN number will be tightened for security reasons.

An EIN is a nine-digit tax identification number assigned to sole proprietors, corporations, partnerships, estates, trusts, employee retirement plans and other entities for tax filing and reporting purposes. Under the new rules, the entities will not be able to use their own EIN to obtain additional EINs (e.g., WP EIN or the QI EIN). Instead, from May 13 on, only individuals having a tax identification number may request an EIN as the “responsible party” on the EIN application. Specifically, such individuals will be required to provide either a Social Security number (SSN) or an individual taxpayer identification number (ITIN).

According to the [Form SS-4 instructions](#), the responsible party is the person who ultimately owns or controls the entity or who exercises ultimate effective control over the entity. Where more than one person meets this definition, the entity applying for the EIN may decide which individual should be the responsible party.

The new requirement described above will apply to both [paper Form SS-4](#) as well as for the [online EIN](#) application. If the responsible party changes, the entity can change the responsible party designation by completing [Form 8822-B, Change of Address or Responsible Party](#). This form must be filed within 60 days of the change.

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