



IRS releases draft Form W-8IMY

Closing the distance

On July 6, 2016, the IRS issued an early release draft of [Form W-8IMY, "Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting."](#) As a draft version, this form should not be used or relied upon, as the form may undergo additional changes prior to its official release. The draft form updates the [current version of the form](#) (released on April 30, 2014) based on recent changes to Form W-8BEN-E as well as the release of the [Proposed QI Agreement in Notice 2016-42](#) (previously discussed [here](#)). The changes in the draft Form W-8IMY are set forth below.

Part I, Line 5 – Chapter 4 Status

- Added clarification that "Chapter 4 Status" refers to FATCA status and instructs users to refer to instructions for details and to complete the certification for the entity's applicable status.
- Added status for Certified Deemed-Compliant Investment Advisors and Investment Managers.
- Nonparticipating FFI – Changed language of parenthetical to include an FFI related to a Reporting IGA FFI other than a deemed-compliant FFI, participating FFI, or exempt beneficial owner; removed limited branch from the parenthetical.
- Registered Deemed-Compliant FFI – Changed language of parenthetical to exclude a nonreporting IGA FFI covered in Part XIX.
- Removed clause accompanying references to Sponsored FFIs which stated "that has not obtained a GIIN."

Part II – Disregarded Entity or Branch Receiving Payment

- Added language "Complete only if a disregarded entity *with a GIIN*" to header instructions (italicized language is the addition).
- Line 11 – Added parenthetical to Limited Branch to "see instructions."

Part III – Qualified Intermediary

- Line 14a – Added certification that the QI is either (1) not acting for its own account, (2) a qualified derivatives dealer, and/or (3) a QI assuming primary withholding responsibility for payments of substitute interest, as permitted by the QI Agreement.

- Added Line 14g certification that the entity meets the requirements to act as a qualified derivatives dealer and assumes primary withholding responsibility for the payments associated with the form and/or identified on a withholding statement.
- Added Line 14h certification that the entity is acting as a QI and assumes primary withholding responsibility under Chapters 3 and 4 and primary Form 1099 reporting and backup withholding responsibility for all payments of substitute interest associated with the form as permitted by the QI Agreement.

Part VIII – Nonwithholding Foreign Partnership, Simple Trust, or Grantor Trust

- Added Line 19b certification that the entity is a foreign partnership that is a partner in a lower-tier partnership and is providing the form for purposes of section 1446.

Part X – Sponsored FFI

- Removed clause accompanying references to Sponsored FFIs which stated “that has not obtained a GIIN.”
- Line 21a – Added line for GIIN of sponsoring entity.
- Line 21b – Simplified certification language to read “is an investment entity.” Previously, it read “is an FFI solely because it is an investment entity.”

Part XVI – Certified Deemed-Compliant Investment Advisors and Investment Managers

- Added Part XVI and certifications for this newly-added FATCA status.
- Added Line 27 certification that the entity is an FI solely because it is an investment entity described in section 1.1471-5(e)(4)(i)(A) and does not maintain financial accounts.

Part XIX – Nonreporting IGA FFI

- Added checkboxes to indicate whether the IGA is a Model 1 or Model 2 IGA.
- Added language and line to indicate treatment under the Treasury Regulations.
- Changed certification language and added line to require trustee documented trusts and sponsored entities to provide the name of the trustee or sponsor whose GIIN is provided on Line 9a. Previously, this certification related to FFIs “treated as a registered deemed-compliant FFI under an applicable Model 2 IGA.”

Part XXVII – Sponsored Direct Reporting NFFE

- Line 39 – Added line for GIIN of sponsoring entity.

Renumbering of Parts

Due to the addition of Part XVI for the newly-added FATCA status, other certification sections have been renumbered as follows:

- Restricted Distributor – Changed from Part XVI to Part XVII.
- Foreign Central Bank of Issue – Changed from Part XVII to Part XVIII.
- Nonreporting IGA FFI – Changed from Part XVIII to Part XIX.
- Exempt Retirement Plans – Changed from Part XIX to Part XX.
- Excepted Nonfinancial Group Entity – Changed from Part XX to Part XXI.
- Excepted Nonfinancial Start-Up Company – Changed from Part XXI to Part XXII.
- Excepted Nonfinancial Entity in Liquidation or Bankruptcy – Changed from Part XXII to Part XXIII.
- Publicly Traded NFFE or NFFE Affiliate of a Publicly Traded Corporation – Changed from Part XXIII to Part XXIV.
- Excepted Territory NFFE – Changed from Part XXIV to Part XXV.
- Active NFFE – Changed from Part XXV to Part XXVI.
- Passive NFFE – Changed from Part XXVI to Part XXVII.
- Sponsored Direct Reporting NFFE – Changed from Part XXVII to Part XXVIII.
- Certification – Changed from Part XXVIII to Part XXIX.

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