



IRS updates FATCA General FAQs with QI/WP/WT agreement and withholding certificate guidance

Closing the distance

On March 31, 2017, the IRS added two new frequently asked questions ("FAQs") to the FATCA General FAQs [webpage](#) addressing the Qualified Intermediary ("QI"), Withholding Foreign Partnership ("WP"), and Withholding Foreign Trust ("WT") agreement renewal process. The first FAQ provides the information that a renewing QI/WP/WT should consider in response to the question of whether the QI/WP/WT is in compliance with all applicable withholding and reporting requirements, including filing of Forms 945, 1042, 1042-S, 1099, and 8966, as applicable. The renewing party should answer the question with respect to the calendar years covered by the agreement they are renewing, and the question should be answered "No" if the form was filed but the taxes due were not paid and "N/A" if the form was not required to be filed for all covered tax years. The second FAQ outlines the recent extension for renewal of QI/WP/WT agreements, allowing renewals to be submitted by May 31, 2017, to be granted an effective date of January 1, 2017. Additionally, all new QI applications that contain a request for Qualified Derivatives Dealer ("QDD") status are granted the benefit of the extension. All other new QI/WP/WT applications are not given the same treatment and needed to be submitted by March 31, 2017, to be treated as effective on January 1, 2017.

On April 6, 2017, the IRS added three additional new FAQs addressing foreign Tax Identification Number ("TIN") collection on withholding certificates. The first FAQ outlines the circumstances under which a foreign TIN must be collected on a withholding certificate: 1) when a foreign person is claiming a reduced withholding rate under a tax treaty on an income type requiring a TIN and does not provide a U.S. TIN and 2) when a foreign person is an account holder of a financial account maintained as a US branch or office, provided the withholding agent is a financial institution. The second FAQ explains the applicability of the foreign TIN and date of birth collection rules to withholding certificates obtained during the 2017 calendar year. A withholding agent is not required to invalidate a withholding certificate obtained in 2017 for failure to provide a foreign TIN, and, although it must collect a date of birth for an individual beneficial owner, a withholding agent can rely on a date of birth in its files rather than invalidating the certificate. The third FAQ explains the process for obtaining a foreign TIN when it is not provided on an otherwise valid withholding certificate. A withholding agent is permitted to obtain the TIN or a reasonable explanation for its absence on a written statement, including via email, provided by the beneficial owner.

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