New revision of Form W-8BEN-E and instructions released by IRS

Closing the distance

Form W-8BEN-E updated to reflect final regulations

On July 19, 2017, the IRS released a revised version of Form W-8BEN-E, “Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)” and its corresponding Instructions. This revision updates the prior version (released on April 16, 2016) to incorporate changes from the final and temporary regulations released by the IRS and Treasury on December 31, 2016.

GIIN Requirements for Sponsored Entities

Under the final regulations, Sponsored FFIs, Sponsored Direct Reporting NFFEs, and certain Nonreporting IGA FFIs must obtain their own GIINs. Withholding certificates used to document such entities must now include the GIINs of these entities, as sponsoring entity GIINs are no longer acceptable. Accordingly, the form includes the following modifications:

- The Instructions have been updated to clarify which entities are required to enter a GIIN on Line 9a, adding a Sponsored FFI described in the Treasury Regulations, a trustee of a Trustee-Documented Trust that is a foreign person, and a Nonreporting IGA FFI that is treated as a Registered-Deemed Compliant FFI under a Model 2 IGA or the Treasury Regulations.
- Line 16 of Part IV (Sponsored FFI) removes the language to record the GIIN of the Sponsoring Entity. The Instructions specify that only the name of the Sponsoring Entity is required to be entered and that the GIIN included on Line 9a should be that of the Sponsored FFI.
- Line 26 of Part XII (Nonreporting IGA FFI) removes language requesting the GIINs of the trustee/sponsor and Trustee-Documented Trust/Sponsoring Entity. This line adds a certification to indicate whether the trustee is U.S. or foreign. The Instructions now refer to the Line 9a guidance on when a GIIN is required.
- Line 42 of Part XXVIII (Sponsored Direct Reporting NFFE) removes the language to record the GIIN of the Sponsoring Entity. The corresponding Instructions clarify that a Sponsored Direct Reporting NFFE must provide its own GIIN on Line 9a.

Collection of Foreign TINs

The updated regulations require a Foreign TIN from anyone documenting themselves as an account holder with respect to a financial account maintained at a U.S. office or branch of a Financial Institution. The July revision includes the following updates to the Instructions to reflect this requirement:
The Instructions for Line 9b clarify that a Foreign TIN issued by the country of tax residency indicated on Line 6 must be provided with respect to a financial account held at a U.S. office of a financial institution where the payee receives U.S. source income reportable on Form 1042-S. Three exceptions are enumerated: the account holder (1) has not been issued a TIN (including if the jurisdiction does not issue TINs), (2) identified itself as a government, central bank of issue, or international organization, or (3) is a resident of a U.S. possession.

Where a TIN is not entered and none of the exceptions apply, the Instructions require the account holder to provide an explanation of why a TIN has not been issued. The revised Instructions specify that this explanation may be a separate attached statement or a statement written on Line 9b or in the margins of the Form W-8BEN-E.

**Limited FFI and Limited Branch Status**

The Limited FFI and Limited Branch statuses expired on December 31, 2016. The final regulations removed and updated references to these statuses. Likewise, references to Limited FFIs and Limited Branches have been removed from the revised Form W-8BEN-E on Lines 5, 11, and 41.

**Clarification of Investment Advisor and Investment Manager Status**

The final regulations updated the Certified Deemed-Compliant FFI category under section 1.1471-5(e)(4)(i)(A) to refer to “certain investment entities that do not maintain financial accounts” instead of “investment advisors and investment managers.” This change reflects that an investment entity may qualify for such status under the regulatory requirements notwithstanding whether it is an investment advisor or manager. The updated form includes this same change, renaming the status under Line 5 and Part IX.

**Other Updates for Clarification**

In addition to the above changes, the revised Instructions for Form W-8BEN-E include the following modifications:

- The definition of **Financial Institution** adds language regarding Territory NFFEs.
- The definition of **Participating FFI** clarifies that such status refers to an FFI that has agreed to comply with the terms of an FFI Agreement with respect to all of its branches, other than a branch that is a Reporting Model 1 FFI or U.S. branch.
- A definition for **Nonreporting IGA FFI** has been added.
- Language is added regarding the use of **electronic signatures** with respect to the final certification under Part XXX.
- Language is updated to clarify when the use of Line 3 is mandatory for **disregarded entities**. It is also now specified that the name of a disregarded entity holding the account may be included on Line 3 for informational purposes even if the disregarded entity is not reported on Line 1 or in Part II.
- As the deadline for **preexisting entity account** due diligence has passed, language stating that entities are not required to provide a Chapter 4 status prior to July 1, 2016 has been removed.
- Language indicating that only a Reporting Model 1 FFI or Reporting Model 2 FFI could provide an **alternate certification** has been removed.
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