



IRS Opens QI Portal and Releases Updated QI/WP/WT Application and Account Management System FAQs

Closing the distance

On April 4, 2018, Deloitte released a brief statement announcing that the [QI Portal](#) is open to accept QI periodic certifications and applications for renewal. Additionally, we note that the IRS has added or updated 10 [FAQs](#) with respect to the Qualified Intermediary (QI), Withholding Foreign Partnership (WP), Withholding Foreign Trust (WT) System Application and Account Management System and that these new and updated FAQs provide guidance on the QI 'periodic certification' process. The following is a detailed summary of key considerations below.

Executive Summary

The newly opened QI portal provides a comprehensive web-based platform for QIs, WPs, and WTs to exchange compliance documentation with the IRS. Under the entity's 'Activity Center' there are a number of critical options including a QI, WP, and WT certification option, an option to apply to create a consolidated compliance group (CCG), links for managing and updating contact/account information, a link for filing a notice of termination, and links for managing branch information, PAI agreement information, and EIN information.

The 'QI, WP, WT certification' itself is divided into seven substantive parts which mirror closely the terms of the QI/WP/WT Agreements and their appendices. Detailed eligibility requirements with respect to entities seeking a waiver of the periodic review requirement are set out in the certification instructions contained within the QI portal. The seven-part certification comes with some minor technical glitches including that it is impossible to logout of the QI portal and later return to a partially completed certification. Put differently, an entity's 'QI, WP, WT certification' must be completed and submitted within a single login.

With respect to the application to create a consolidated compliance group ('CCG'), the QI had to submit the application to the IRS on or before April 1, 2018. The CCG application process requires the compliance entity submitting the application to certify that it and the other members of the proposed CCG meet the requirements for forming a CCG that are set out in the QI Agreement. Similar to the situation with the 'QI, WP, WT certification,' a CCG applications must be completed and submitted within a single login.

Summary

The QI/WP/WT system is a secure web-based platform for users to apply to become a QI, WP, or WT, renew, or terminate an existing QI, WP, WT agreements, complete periodic compliance certifications and manage their QI, WP, or WT information online. Click on this [Link](#) to access the QI/WP/WT system.

The QI Portal serves as a single comprehensive platform for interaction between the IRS and QIs/WPs/WTs. Submissions that must be made via the QI portal include: i) applications for QI/WP/WT status; ii) renewal requests; iii) applications to create a consolidated compliance group ('CCG'); iv) notices of termination; and v) the required QI/WP/WT periodic certification.

As the deadline for QIs/WPs/WTs to submit their periodic certifications is now near,¹ entities with QI/WP/WT status, focus is on the certification process in the QI portal. A key 'high-level' overview follows:

- 1) If the entity's contact email address is correct in the system, points of contact will receive an email and a notification on the portal message board that the certification submission period is open as well as the due date to submit. For accounts terminated by the entity or the IRS, the certification period opens immediately and is due six months from termination.
- 2) The certification section consists of seven parts. QIs/WPs/WTs are directed to the sections that require completion based on their status.

A. QI Periodic Certification (Part 1: General Info)

To start the certification process, click the QI, WP, or WT certification link on your entity's QI portal account home page. The link will redirect you to the seven-part certification. *Note: The remainder of this summary is from the perspective of an entity accessing the QI Portal as a QI (as opposed to a WP/WT). However, the framework outlined below is broadly applicable to WPs and WTs as well.

- 1) Part one of the certification ("General Info") first requires an entity to select the calendar year of its periodic review. Note that once the year is selected it may not be changed. A warning screen will ask you to confirm your selection of periodic review year. In addition to selecting a calendar year for the periodic review, QI will also use part one of the QI portal periodic certification to:
 - i. Confirm whether QI assumed primary chapters 3 and 4 withholding responsibility for any calendar year covered by the certification period;
 - ii. Confirm whether QI assumed 1099 reporting and backup withhold responsibility for any calendar year covered by the certification period;
 - iii. Confirm the number of PAIs with whom QI has a PAI Agreement and additional PAI associated information;
 - iv. Confirm the number of partnerships and trusts to which QI applied the joint account option or agency option.

B. QI Periodic Certification (Part 2: Certification)

- 1) Part two of the QI Portal periodic certification contains the certification language required under the QI agreement and requires the applicable Responsible Officer ('RO') to complete either a 'Certification of Effective Internal Controls' or a 'Qualified Certification.' If the RO elects to complete a 'Certification of Effective Internal Controls,' RO will certify as follows:

¹ For QIs selecting the 2015 or 2016 calendar years to complete their periodic review, the certification deadline is September 1, 2018. For QIs selecting the 2017 calendar year to complete their periodic review, the certification deadline is March 1, 2019.

- i. QI has established a compliance program that meets the requirements described in section 10.02(A) or 10.02(B) (if applicable) of the QI Agreement;
- ii. Based on the information known (or information that reasonably should have been known) to the responsible officer, QI maintains effective internal controls over its documentation, withholding, and reporting obligations under the QI Agreement and according to its applicable FATCA requirements, with respect to accounts for which it acts as a QI;
- iii. Based on the information known (or information that reasonably should have been known) to the responsible officer there are no material failures, or, if there are any material failures, they have been corrected as of the date of the certification. Failures and actions taken to remediate them and prevent their reoccurrence must be specifically identified as part of the certification;
- iv. With respect to any failure to withhold, deposit, or report under the QI Agreement, QI has corrected such failure by paying any taxes due (including interest and penalties) and filing the appropriate returns (or amended returns).
- v. All PAIs of QI and partnerships and trusts to which QI applies the agency option have either
 - (a) Provided or will provide, documentation and other necessary information for inclusion in the QI's periodic review; or
 - (b) provided the RO of the QI with a certification of effective internal controls that represents to QI that there were no material failures; or, if there were such failures, what they were and that they have been corrected as of the time of this certification and actions have been taken to prevent reoccurrence.
- vi. QI's policies, procedures, and processes are applied consistently to all branches covered by the QI Agreement (except as otherwise required by a jurisdiction's AML/KYC procedures, as applicable)
- vii. If QI has assumed primary withholding responsibility with respect to payments of substitute interest, a statement that the QI has assumed primary withholding responsibility for all such payments covered by the QI Agreement;
- viii. The QI has conducted a periodic review of one year of the certification period and the results of the review are reported to the extent required.

If the RO is required to make a 'Qualified Certification,' the RO must certify as follows:

- i. The responsible officer has identified an 'event of default', or has determined that, as of the date of the certification, there are one or more material failures with respect to QI's compliance, a PAI's compliance, or the compliance of a partnership or trust to which QI applies the agency option which have not been addressed as of the certification date. There is space for QI to certify which actions have been or will be taken to prevent such failures from reoccurring. The system provides the QI with a comprehensive checklist for indicating the various material failures identified. Equivalent fields are provided with respect to 'events of default,' and for 'significant changes in circumstances.'
- ii. With respect to any failure to withhold, deposit, or report, to the extent required under the QI Agreement, QI will correct such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return);
- iii. The responsible officer (or an officer of the PAI or partnership or trust to which QI applies the agency option if the PAI or partnership or trust performs its own periodic review) will respond to any notice of default (if applicable) or will provide (either directly or through QI) to

the IRS, to the extent requested a description of each material failure and a written plan to correct each such failure.

In addition to the above, the QI is required to certify that it has filed Forms 1042 and confirm its Chapter 4 status.

C. Waiver of QI Periodic Review

If a QI is eligible to apply for a waiver of the periodic review, they may do so via part III of the QI Portal QI Periodic Certification. Eligibility requirements are set out in the 'Instructions for QI Certification' contained within the QI Portal. These provide as follows:

- 1) QI must be an FFI that is not also acting as a QDD;
- 2) QI cannot be part of a consolidated compliance program;
- 3) For each calendar year covered by the certification period, the reportable amounts received by QI cannot exceed \$5 million;
- 4) QI must have timely filed its Forms 1042, 1042-S, 946, 1099, and 9866 as required for chapter 4 purposes;
- 5) QI must have made all periodic certifications and reviews required in Parts 1 and 2 of the QI Portal periodic certification as well as all certifications required pursuant to QI's FATCA requirements;
- 6) QI must have made the certification of effective internal controls described in Part 2-A.

If the IRS approves the QI's request for a waiver of the periodic review requirement, the IRS will notify QI. If waiver request is not approved, QI will generally be granted a six-month extension from the date of denial of the waiver to complete the periodic review. Extension will not be granted if the QI has made the request for waiver in bad faith.

D. Periodic Review, Qualified Derivatives Dealers, Substitute Interest, and Document Upload Feature

Parts 4A-F of the QI Portal periodic certification provides fields for the QI to enter relevant information with respect to its QI periodic review. The information fields are broken into six principal sections. These are: i) external review information, ii) general information (e.g. total accounts reviewed, whether QI assumes primary withholding responsibility, and whether QI used a statistical sampling method in conducting the review of its accounts); iii) documentation information (e.g. total accounts reviewed held by direct account holders); withholding information (e.g. the aggregate amount reported as withheld under chapter 3 by QI on Forms 1042-S; v) reconciliation of reporting on payments of reportable amounts; and (vi) Reconciliation of withholding on payments of reportable amounts.

Part 5 will apply to the QDD regime and is 'not yet available.'

Part 6 applies only to a QI that has assumed primary withholding responsibility for payments of substitute interest.

Lastly, part 7 is a document upload feature, which permits the QI to upload all documents necessary to support its certification. From a drop-down menu, QI may select the following documents for upload: i) Form 872, Form 2848, Organization Chart, Periodic Review Report, Proposed Sample Plan, QDD Related Attachments, Remediation Plan, and other.

For more information please [click here](#) or contact:

[Denise Hintzke](#)

Managing Director, Global
FATCA/CRS Tax Leader
Deloitte Tax LLP
+1 212 436 4792

[Anne Mericle](#)

Senior Manager,
Global Information
Exchange PMO
Deloitte Tax LLP
+1 212 436 3908

[Susan Schultz](#)

Managing Director, FATCA
Global Delivery Center (GDC)
Operations Leader
Deloitte Tax LLP
+1 612 397 4604

[Susan Segar](#)

Managing Director, Global
Information Reporting
Deloitte Tax LLP
+1 703 885 6328

Americas

[Matthew Cahill](#)

Partner, Global Information Reporting
Deloitte Tax LLP
+1 212 436 3420

[James Dockeray](#)

FATCA Leader, Caribbean/Bermuda
Deloitte & Touche Ltd.
+1 441 299 1399

[Peter Larsen](#)

Managing Director, Global Information
Reporting
Deloitte Tax LLP
+1 415 783 4575

[Michael Shepard](#)

Principal, Deloitte Transactions and
Business Analytics LLP
+1 215 299 5260

[Sagun Vijayananda](#)

Partner, Global Information Reporting
Deloitte Tax LLP
+1 212 436 7329

[Steve Chapman](#)

Partner, Global Information Reporting
Deloitte Tax LLP
+1 212 436 2339

[Patty Florness](#)

Partner, Global Information Reporting
Deloitte Tax LLP
+1 212 436 7413

[Anthony Martirano](#)

Managing Director, Global Information
Reporting
Deloitte Tax LLP
+1 973 602 6986

[Kristen Starling](#)

Managing Director, Global Information
Reporting
Deloitte Tax LLP
+1 212 436 4281

[David Charlton](#)

Principal, Global Information Reporting
Deloitte Tax LLP
+1 617 437 2118

[Andrea Garcia Castelao](#)

Senior Manager, Global Information
Reporting-CRS
Deloitte Tax LLP
+1 212 436 3785

[Richard Marcovitz](#)

FATCA/CRS Leader, Canada
Deloitte LLP
+1 416 775 4760

[Greg Thomas](#)

Principal, Global Information Reporting
Deloitte Tax LLP
+1 415 783 5211

Asia-Pacific

[Troy Andrews](#)

FATCA/CRS Partner, New Zealand
Deloitte, New Zealand
+64 93030729

[Michael Velten](#)

FATCA/CRS Leader, Asia-Pacific
Deloitte & Touche LLP
+65 6531 5039

[Alison Noble](#)

FATCA/CRS Leader, Australia
Deloitte Tax Services Pty Ltd
+61 3 9671 6716

[Radish Singh](#)

Forensic SEA for FATCA/CRS
Deloitte & Touche Financial Advisory
Services
+65 6530 8077

Europe, Middle East & Africa

[Brandi Caruso](#)

Tax Transparency Leader, Switzerland
Deloitte AG
+41 58 279 6397

[Owen Gibbs](#)

FATCA/CRS Tax Director, EMEA
Deloitte LLP
+44 20 7007 4819

[Markus Weber](#)

Financial Services Industry Tax Leader,
Switzerland
Deloitte AG
+41 58 279 7527

[Eric Centi](#)

FATCA/CRS Tax Partner, Luxembourg
Deloitte LLP
+352 45145 2162

[Alex Law](#)

FATCA Leader, Middle East
Deloitte LLP
+971 4 506 4700

[David C. Wright](#)

FATCA/CRS Tax Partner, EMEA
Deloitte LLP
+44 20 7303 4641

[Karim Ousta](#)

FATCA Tax Leader, Middle East
Deloitte LLP
+971 4 5064700

[Chris Tragheim](#)

FATCA Tax Leader, EMEA
Deloitte LLP
+ 44 20 7303 2848

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