



IRS updates FATCA FAQs addressing the status of the KYC attachment to 2017 QI, WP, or WT Agreements and provisions of 2017 QI Agreement about reliability of Forms W-8 and validation of claims for tax treaty benefits

Closing the distance

On December 19, 2017, the IRS added three questions to the FATCA FAQs [webpage](#), clarifying whether a qualified intermediary (QI) has reason to know that Form W-8 is unreliable or incorrect if the QI has a current US residence or US mailing address as part of its account information; addressing whether a QI may rely on additional documentation for purposes of treating documentation on the claim of treaty benefits as valid under 2017 QI agreement, when the QI has reason to know that the documentary evidence underlying such claim is unreliable or incorrect; and providing additional guidance about the status of the approved know-your-customer (KYC) attachments to the 2017 QI, foreign withholding partnership (WP) and foreign withholding trust (WT) agreements.

The [first of the FAQs](#) clarifies whether a QI has reason to know that a Form W-8 provided by a direct account holder to establish foreign status is unreliable or incorrect if the QI has, as part of its account information, a current US residence or US mailing address. In this respect, the FAQ references section 5.10(B) of the 2017 QI agreement, according to which a QI that is a financial institution, an insurance company, or a broker or dealer in securities, has reason to know that documentation provided by a direct account holder is unreliable only as prescribed in §1.1441-7(b)(3). The FAQ further notes that §1.1441-7(b)(3) cross-references §1.1441-7(b)(5)(i) under which a withholding certificate provided to establish foreign status is unreliable if the withholding agent has a current US residence or US mailing address as part of its account information. Under §1.1441-7(b)(5)(i), a withholding agent must treat a Form W-8 as unreliable if the withholding agent has a U.S. address in the account information, even if the address is for a person other than the account holder (e.g., an advisor or a fund manager). The FAQ further recalls that under the 2014 and 2000 QI agreements, a QI described above was required to treat a Form W-8 provided by a direct account holder as unreliable for purposes of a claim of foreign status if the QI had a U.S. mailing or a US permanent address for the account holder (i.e., not just a U.S. address in the account file). Finally, the FAQ states that the IRS will allow a QI to continue to apply this requirement from the prior QI agreements to the 2017 QI agreement for direct account holders subject to the QI agreement, notwithstanding the cross-reference to §1.1441-7(b)(3) in the 2017 QI agreement.

[The second FAQ](#) issued on December 19, 2017, addresses additional documentation a QI may rely on, if a direct account holder of a QI claiming treaty benefits provides documentary evidence to establish residence in an income tax jurisdiction

but the QI has reason to know that the documentary evidence provided is unreliable or incorrect. The FAQ notes that under section 5.10(B) of the 2017 QI agreement, a QI that is a financial institution, an insurance company, or a broker or dealer in securities has reason to know that documentation provided by a direct account holder is unreliable or incorrect only as prescribed in §1.1441-7(b)(3); section 1.1441-7(b)(3) cross-references §1.1441-7(b)(9)(i) which provides that documentary evidence furnished in support of the claim for treaty benefit is unreliable or incorrect if: (i) the withholding agent has a current mailing or current permanent residence address for the direct account holder (whether or not on the documentary evidence) that is outside the applicable treaty country, or (ii) when the withholding agent has no permanent residence address for the account holder.

Under prior guidance applicable to QIs, a QI was permitted to rely on a claim for treaty benefits in those cases by obtaining certain additional documentation without referencing whether the QI had a permanent residence address for the account holder in the jurisdiction for which treaty benefits were claimed. Further to this approach, the FAQ clarifies that the IRS will not require a QI to redocument a direct account holder claiming treaty benefits for purposes of section 5.10(B) of the 2017 QI agreement provided that the QI has documented the account holder before January 1, 2018 in accordance with the prior guidance applicable to a QI. According to the same FAQ, however, for direct account holders documented on or after January 1, 2018, a QI must have a permanent residence address for the direct account holder in the jurisdiction associated with the documentary evidence upon which a QI may otherwise rely for a claim of treaty benefits.

[The last of FAQs](#) issued on December 19, 2017, states that a QI, WP, or WT may treat an approved KYC attachment as incorporated into, and as an integral part of, its agreement to the extent the attachment would otherwise apply to the entity (or branch of the entity, if applicable).

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