



IRS updates FATCA FAQs addressing QI, WP, and WT certifications and periodic reviews, WP status application, and FATCA FFI registration status of direct reporting NFFE

Closing the distance

On December 8, 2017, the IRS added three questions to the FATCA FAQs General [webpage](#), providing additional guidance on the application of a non-financial foreign entity (“NFFE”) reverse hybrid entity for withholding foreign partnership status (“WP”) status, waiver of the periodic review of qualified intermediary (“QI”) activities and application of independence standard for an external reviewer of QI, WP, and withholding foreign trust (“WT”). On December 13, 2017, the IRS released one more FAQ addressing FATCA FFI registration of direct reporting NFFE.

One of the [new FAQs](#) clarifies that a foreign reverse hybrid entity that is a NFFE may apply for WP status with respect to payments of personal services income that is income effectively connected with a trade or business within the US if it otherwise meets the requirements of a NFFE under the WP agreement. These requirements include reporting the information on withholdable payments distributed to, or included in the distributive share of, a partner that is an NFFE, as described in section 6.05(B) of the WP agreement. The same FAQ further clarifies that if a WP that is a foreign reverse hybrid entity submitted a WP application without indicating its status as a foreign reverse hybrid entity, it must contact the IRS FI team by email at lbi.fi.qiwpissues@irs.gov to correct its status.

[Another FAQ](#) issued on December 8 states that a QI that is a qualified derivatives dealer (“QDD”) may be required to conduct a periodic review of its non-QDD QI activities for 2017 and 2018. To this point, the new FAQ clarifies that the IRS will permit a QI that is a QDD and that has a certification period ending in 2017 or 2018 to apply for a waiver of the periodic review when such QI otherwise meets the requirements of section 10.07 of the QI agreement with respect to its QI activities that are not QDD activities. To request a waiver, the QDD should complete Part III (Waiver of Periodic Review) of the certification with respect to its QI activities that are not QDD activities and, in Part A (eligibility for waiver), check the box titled “QI is an FFI that is not also acting as a QDD.”

The [last of FAQs](#) issued on December 8, clarifies certain aspects of the application of the independence standard for an external reviewer of a QI, WP, or WT for periodic review years prior to 2018. QI, WP and WT agreements require that an internal or external reviewer must be independent. The preamble to the QI agreement provides that the reviewer must have sufficient independence to conduct the review objectively and cannot review his or her own work or the work of others in the same "firm." The new FAQ states that for review years prior to 2018, the IRS will permit an external reviewer of a QI, WP, or WT to apply the standards of independence that would otherwise apply to its engagement to conduct the periodic review (such as the standards for an agreed-upon procedures engagement by a certified public accountant). The FAQ also indicates the IRS intends to update the FAQ to provide further guidance on the independence standard for reviews of calendar years 2018 and later.

The [FAQ released on December 13](#) addresses the change of FATCA Registration Status from Approved to Registration Incomplete for a direct reporting non-financial foreign entity (NFFE) that is not required to renew the FFI agreement. In this respect, the FAQ clarifies that in order to return such NFFE to its approved status on the FATCA FFI list, the NFFE should log on to the FATCA FFI registration system, verify and update the registration information as needed and re-submit the application.

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