



## IRS updates two FAQs relating to Certification and Periodic Review and announces upcoming revision of the EIN application rules

### Closing the distance

Recently, the IRS updated two FAQs in the Certification and Periodic Review section of its [FATCA General FAQ](#) page. One update relates to the independence standard for an external review of a qualified intermediary ("QI"), withholding foreign partnership ("WP"), and withholding foreign trust ("WT"); another update covers the application for the formation of a consolidated compliance group ("CCG"). The IRS also announced a revision of the EIN application rules due to security concerns. Details of these FAQs are set forth below.

#### **FAQ about group of QIs or WPs applying to form CCG**

On March 9, 2019, the IRS updated [FAQ5](#) about the formation of a CCG. Updated FAQ5 states that for certifications due in calendar year 2019, an application to form a CCG should be submitted by the Compliance Entity's responsible officer or other authorized person no later than April 1, 2019. After submission of the CCG application, the IRS will request from the applicant compliance entity additional information to determine if the CCG is acceptable for the IRS. The IRS will also raise questions about the final composition of the CCG members and the sample design for any statistical sampling to be utilized for the periodic review.

Updated FAQ5 further states that the CCG should select 2017 or 2018 as the periodic review year; the IRS will not approve a CCG application that selects 2016 as the periodic review year for the certification due in 2019.

#### **FAQ about independence standard for an external reviewer**

On April 5, 2019, the IRS updated [FAQ2](#) on its [FATCA General FAQ](#) page about the independence standard for an external reviewer. Section 10.04 of the QI Agreement and section 8.04 of the WP and WT agreements require that an internal and external reviewer must be independent. The preamble to the QI agreement clarifies that the reviewer must be independent enough to conduct the review objectively and states that the reviewer cannot review his or her own work or the work of others in the same "firm." The QI Agreement, however, does not define the term "firm". To this respect, the updated FAQ states that the IRS will permit an external reviewer to apply the standards of independence that would otherwise apply to its engagement with a QI, WP, or WT to conduct the periodic review (such as the standards for an agreed-upon procedures engagement by a certified public accountant) for the years preceding 2019. The IRS intends to update this FAQ to provide further guidance on the independence standard for reviews in 2019 and later.

## Tightening EIN application process

On March 27, 2019, the IRS [announced](#) that rules on the application for the EIN number will be tightened for security reasons.

An EIN is a nine-digit tax identification number assigned to sole proprietors, corporations, partnerships, estates, trusts, employee retirement plans and other entities for tax filing and reporting purposes. Under the new rules, the entities will not be able to use their own EIN to obtain additional EINs (e.g., WP EIN or the QI EIN). Instead, from May 13 on, only individuals having a tax identification number may request an EIN as the “responsible party” on the EIN application. Specifically, such individuals will be required to provide either a Social Security number (SSN) or an individual taxpayer identification number (ITIN).

According to the [Form SS-4 instructions](#), the responsible party is the person who ultimately owns or controls the entity or who exercises ultimate effective control over the entity. Where more than one person meets this definition, the entity applying for the EIN may decide which individual should be the responsible party.

The new requirement described above will apply to both [paper Form SS-4](#) as well as for the [online EIN](#) application. If the responsible party changes, the entity can change the responsible party designation by completing [Form 8822-B, Change of Address or Responsible Party](#). This form must be filed within 60 days of the change.

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 Reporting 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**

[Phillip Brunson](#)

Partner, Global Leader – Information  
Reporting  
Deloitte Tax LLP  
+1 212 618 4041

[Steve Chapman](#)

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

[David Charlton](#)

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

[James Dockeray](#)

FATCA Leader  
Deloitte Caribbean and Bermuda  
Deloitte Ltd.  
+1 441 299 1399

[Patty Florness](#)

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

[Andrea Garcia Castelao](#)

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

[Peter Larsen](#)

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

[Anthony Martirano](#)

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

[Richard Marcovitz](#)

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

[Robert Schlock](#)

Managing Director, Global Information  
Reporting  
Deloitte Tax LLP  
+1 212 436 3541

[Michael Shepard](#)

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

[Kristen Starling](#)

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

[Sagun Vijayananda](#)

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

**Asia-Pacific**

[Troy Andrews](#)

FATCA/CRS Partner  
Deloitte New Zealand  
Deloitte  
+64 93030729

[Alison Noble](#)

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

[Tom Toryanik](#)

FATCA/CRS Leader  
Deloitte Singapore  
Deloitte & Touche LLP  
+65 6530 8024

[Michael Velten](#)

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

**Europe, Middle East & Africa**

[Brandi Caruso](#)

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

[Eric Centi](#)

FATCA/CRS Tax Partner  
Deloitte Luxembourg  
Deloitte Tax & Consulting  
+352 45145 2162

[Karim Ousta](#)

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

[Owen Gibbs](#)

UK FATCA/CRS/DAC Director  
Deloitte United Kingdom  
Deloitte LLP  
+44 20 7007 4819

[Alex Law](#)

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

[Jason McGarvey](#)

UK FATCA/CRS/DAC Director  
Deloitte, United Kingdom  
Deloitte LLP  
+44 20 7303 0412

[Chris Tragheim](#)

EMEA Operational Tax Leader  
Deloitte United Kingdom  
Deloitte LLP  
+ 44 20 7303 2848

[Markus Weber](#)

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

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