



Finalized 2023 QI Agreement released

Global Information Reporting

Overview

The IRS and Treasury Department issued [Rev. Proc. 2022-43](#) on December 13, 2022, finalizing the 2023 qualified intermediary (QI) withholding agreement (2023 QI Agreement). As presently drafted, the agreement encompasses QI responsibilities under chapters 3, 4, and 61, and sections 1446 and 3406.

The 2023 QI Agreement contains significant changes from the 2017 QI Agreement, some of which are incorporations of guidance previously published through FAQs and notices. Many of the updates relate to a QI's compliance obligations under sections 1446(a) and (f). Other notable changes include a best-effort standard for US taxpayer identification number (TIN) collection, clarification on disclosing QI requirements, amendments relating to section 871(m) transition relief, and updates to the QI periodic certification requirements.

The new rules will apply to QI agreements in effect on or after January 1, 2023. A QI agreement currently in effect expires on December 31, 2022, and QIs wishing to renew their agreements must do so through the IRS's QI, WP, WT Application and Account Management System (QAAMS) between January 1, 2023, and March 31, 2023. Similarly, new applicants must apply on or before March 31 to have an effective date of January 1 of the year in which they apply. Regardless of when a QI enters into the new agreement, it will expire on December 31, 2028, unless terminated or renewed. New and renewing applicants will be required to consent to have the QI name, status, and QI-EIN disclosed on a published list on [irs.gov](#) to prevent entities that are not QIs from misrepresenting themselves.

Discussion

In addition to the full text of the 2023 QI Agreement, the Revenue Procedure includes an introduction outlining the changes to the agreement. These changes are found in Section 4 of the release and are summarized below.

4.01 — Section 1446 requirements

US TIN solicitation requirements—In response to public comments noting concerns about obtaining US TINs from non-US account holders on whose behalf the QI holds a Publicly Traded Partnership (PTP) interest, the final agreement includes “best efforts” solicitation requirements. A QI may establish that a failure to obtain or provide US TINs is due to the failure of the QI’s account holders to provide information after the QI has used its “best efforts” to solicit the TINs. As outlined in section 5.01(A), a QI making a payment of an amount realized on a sale of a PTP interest or a payment of a PTP distribution is treated as using its best efforts by making i) an initial written solicitation for the account holder’s US TIN in 2023 (or later, if the PTP interest is acquired in a later year), ii) an additional written solicitation if needed in the following year, and iii) if necessary, a further written solicitation the next year. Note that this allowance does not affect a QI’s requirement to collect valid documentation with a US TIN to apply reduced withholding under sections 1446(a) or (f).

Disclosing QI clarifications—A QI that does not assume primary withholding responsibility under sections 1446(a) or (f) may either provide pooled account holder information or may act as a disclosing QI by providing its withholding statement and specific payee documentation to its withholding agent. A QI acting as a disclosing QI must disclose all payees for the entire amount of a PTP distribution or amount realized from the sale of a PTP interest. This rule prohibits a disclosing QI from acting as a nonqualified intermediary with respect to any account holder and retains the residual withholding requirement that applies where a QI’s withholding agent has underwithheld. To address concerns that a QI would not be permitted to act as a disclosing QI where one or more account holders fails to provide their US TIN despite QI’s best efforts, the final agreement includes a clarification that a disclosing QI may provide a Form W-8 for each non-US account holder receiving the payment regardless of whether the Form W-8 includes a US TIN.

The final agreement also clarifies that a QI may act as a disclosing QI for payments allocable to US account holders by providing account holders’ Forms W-9 to its withholding agent.

Partner reporting rules—In response to comments, the 2023 QI Agreement includes several updates related to the Schedule K-1 reporting issued to account holders holding PTP interests through QIs.

First, a QI not acting as a disclosing QI is permitted to provide to an account holder a copy of the Schedule K-1 issued by the PTP to the QI along with the proper allocation percentage applicable to the account holder in lieu of a separate statement for purposes of Treas. Reg. § 1.6031(c)-1T(h).

Second, a disclosing QI does not need to provide the statement under Treas. Reg. § 1.6031(c)-1T(a) to the QI’s nominee to the extent the nominee maintains fully segregated and disclosed accounts for the disclosing QI’s account holders that include the information for the PTP to issue the statement. Note that, if the statement is required to be provided, it must include a US TIN for a foreign account holder only when the US TIN is provided by the account holder to the QI.

Third, the definition of “nominee” is more clearly defined to include “any entity that holds a PTP interest directly or indirectly for another person” and is not limited to only nominees permitted to assume withholding on PTP distributions.

Documentation validity period—The final agreement includes a provision stating that the validity period for documentation for section 1446 purposes is the same as the general Form W-8 validity period of three years after the year of signing, absent a change in circumstances. This is included to clarify that payment-by-payment account holder documentation solicitation is not required.

Collective refunds—A request was made to permit QIs to file for collective refunds for account holders in cases where overwithholding under sections 1446(a) or (f) occurred. This request was not adopted because of the US income tax return filing requirement applicable to foreign persons receiving effectively connected income.

Presumption rules—The proposed agreement addresses the presumption rules for undocumented account holders only where the nominee also does not receive a qualified notice for a PTP distribution. The final agreement is updated to clarify the presumption rules in all other cases, applying the general section 1446(a) presumption rules for a QI to determine the status of an undocumented account holder as a foreign individual or corporation.

4.02 — QDD and QSL requirements

The 2023 QI Agreement includes several changes impacting Qualified Derivatives Dealers (QDDs) and Qualified Securities Lenders (QSLs). Notably, with the recent IRS publication of Notice 2022-37 extending prior transition relief for section 871(m) rules another two years, the final agreement does not include the QDD periodic certification reporting requirements or the requirement for a sample of QDD accounts. These items are anticipated for release in a future rider to the final agreement.

This extension includes a continuation of the QSL status, and, under the 2023 QI Agreement, until December 31, 2028, a QI not acting as a QDD but acting as a QSL must assume primary withholding and reporting responsibility for all substitute dividends when acting as an intermediary or dealer for securities lending and similar transactions. A QI that is a QDD may only act as a QSL where it is an intermediary for securities lending or sales repurchasing transactions. A QI acting as an intermediary but not as a QSL must assume primary withholding responsibilities on substitute dividends.

The publication and final agreement outline QDD withholding and reporting responsibilities more generally. Although a QDD is not required to perform a periodic review for calendar years 2023 and 2024 with respect to its QDD activities, a QDD must certify that it made a good faith effort to comply with the section 871(m) regulations and relevant provisions of the 2023 QI Agreement. The 2023 QI Agreement clarifies that, to rely on the good faith effort standard, a QI must provide the information previously specified by FAQ #19 – Certifications and Periodic Reviews for the 2017 QI Agreement (see [IRS QI/WP/WT FAQs](#)). It must also include information on dividends received in its equity derivatives dealer capacity on its withholding statements for 2023 and 2024.

There are further provisions in the final agreement addressing the application of the agreement to QDD partnerships, QDD naming conventions, eligible entities, and periodic review waivers, discussed further under section 4.02 of the publication.

4.03 — Response to public comments

This section outlines the Treasury and IRS responses to comments and requests for clarification received since the publication of the 2017 QI Agreement, many of which were addressed in FAQs and are now formally adopted through the final agreement.

- The 2023 QI Agreement adopts the requirements of FAQ #4 - Provisions for 2017 QI Agreement, including a beneficiary of a tax-free plan in the definition of a direct account holder in section 2.02(A).
- A QI may treat an approved know-your-customer (KYC) attachment as incorporated into their agreement. The 2023 QI Agreement incorporates FAQ #3 - Provisions for 2017 QI Agreement by defining “Agreement” to include the KYC rules included in a country attachment on IRS.gov relevant to the QI (or a branch of the QI).
- As outlined in FAQ #11 - Certifications and Periodic Reviews, the final agreement permits a QI to rely upon a valid Form W-8IMY it has on file to determine a permissible chapter 4 status of a partnership or trust for joint account treatment purposes, sparing the QI from obtaining an additional certification of chapter 4 status and the related requirement to make the representation in Appendix I that it received these certifications.

- The 2023 QI Agreement clarifies that QIs are required to report the specific limitation on benefits (LOB) category claimed by an entity account holder only on a recipient-specific Form 1042-S and not for pooled reporting, avoiding the need to report withholding rate pool information on separate Forms 1042-S for each LOB category.
- FAQs #1 and #2 - Provisions for 2017 QI Agreement are adopted in the 2023 QI Agreement, limiting the validity standard for a claim of foreign status to instances where a direct account holder has a US mailing or permanent address on file and permitting reliance on account holder documentary evidence obtained before January 1, 2018, for treaty purposes despite the absence of a permanent residence address. For a direct account holder claiming treaty benefits and documented on or after January 1, 2018, the QI must have a permanent residence address for the direct account holder in the jurisdiction associated with the documentary evidence.
- The 2023 QI Agreement includes the same requirements as the 2020 final regulations regarding when a QI may treat an address subject to a hold mail instruction as a permanent residence address.
- Where a QI has filed pooled Form 1042-S reporting, it must provide an account holder with a recipient-specific Form 1042-S if the account holder makes a written request for the form within two calendar years following the year of the payment for which the form is requested. If, however, a QI files a Form 1042-S to report a payment subject to section 1446(a) or (f) withholding, an account holder has three years to make a written request for recipient-specific Form 1042-S reporting. In such a case, the QI must provide the account holder with a separate Form 1042-S for each reportable amount paid to the account holder for the calendar year, thereby allowing the account holder to properly reflect all reportable income paid by the QI on the account holder's US tax return. To make a request for recipient-specific Form 1042-S reporting, an account holder must provide a QI with its US TIN.
- In the case of a recipient-specific Form 1042-S issued by a QI to an account holder of an underlying disclosing QI, the 2023 QI Agreement requires that the QI also issue a recipient copy of the Form 1042-S to the disclosing QI.
- A QI choosing to conduct a periodic review for the third year of a certification period is required to submit its periodic certification by December 31 of the year following the end of the certification period. A QI, may, however, seek an extension to this due date, which will be considered on a case-by-case basis by the IRS and granted under appropriate circumstances.
- The IRS will allow an external reviewer of a QI to apply the same standards of independence that would otherwise apply to its engagement to conduct the periodic review (such as an engagement to perform "agreed upon procedures").
- A QI terminating its QI agreement must submit a final certification within six months of termination. The 2023 QI Agreement specifically provides, however, that if a QI terminates its QI agreement in the final year of a certification period, the QI must submit a periodic review report covering one of the two years before the year of termination unless the QI is granted a waiver. Otherwise, no periodic review is required for the final certification period of a QI terminating its QI agreement. If a predecessor QI merges into or is acquired by a successor QI and the predecessor QI is required to submit a periodic review report due to its termination, the predecessor QI may satisfy this requirement through a combined periodic review. The predecessor QI and successor QI must make separate certifications for the period covered by the combined periodic review.
- QIs assuming primary withholding responsibility for payments of substitute interest and that are eligible for a waiver of the periodic review requirement do not need to complete Part VI of Appendix I of the

2023 QI Agreement, which details account information for substitute interest payments. Rather, such QI should include information relating to payments of substitute interest for which they assumed primary withholding responsibility under Part III, which outlines eligibility for a waiver of periodic review.

4.04 — Compliance and certification requirements

The review steps and compliance requirements in the 2017 QI Agreement are generally adopted in the 2023 QI Agreement, with updates to address section 1446(a) and (f) withholding. These updates include i) review of documentation for account holders receiving PTP distributions and amounts realized from the sale of PTP interests, ii) determination of any underwithholding for QIs acting as disclosing QIs, iii) review to ensure compliance with statement requirements to nominees for Schedule K-1 reporting, and iv) confirmation that the QI did not apply the joint account option for section 1446(a) or (f) purposes.

Outside of section 1446 updates, review steps are added i) for the accounts to which the joint account option was applied for valid chapter 4 statuses and to confirm appropriate withholding, ii) for payments included in withholding rate pools, requiring the last payment of each income type made by the QI for the year may (at a minimum) be reviewed for determining any underwithholding, iii) for substitute dividend withholding, to confirm that a QI assumed withholding on all such payments (with a similar review step added for a QI assuming withholding on substitute interest payments), and iv) to determine whether a QI failed to report with respect to any of its US account holders.

The 2023 QI Agreement retains the ability for two or more QIs that are members of a group of entities under common ownership to establish a consolidated compliance group (CCG) subject to IRS approval. In doing so, each QI must designate a Compliance QI to act on its behalf, requiring the responsible officer of the Compliance QI to identify itself as responsible for the CCG in its periodic certification and comply with all corresponding responsibilities. The agreement adds a requirement that each member providing written designation to the Compliance QI to act as its agent to execute Form 872, Consent to Extend the Time to Assess Tax. The Compliance QI must retain these designations and its agreement with the CCG members to act as their agent.

Under the 2017 QI Agreement, submission of the periodic review report with the periodic certification was not required unless requested by the IRS. The 2023 QI Agreement now requires QIs to submit a copy of their periodic review report with their periodic certification. QIs submitting qualified certifications must also submit remediation plan information with their periodic certification.

The requirements for waiver of periodic review are retained in the new agreement with modification to include PTP distributions as reportable amounts in determining whether the \$5 million threshold is exceeded. A QI must also provide information on section 1446 PTP withholding and must complete new Appendix III, discussed below. Finally, QDDs are not ordinarily permitted to obtain the waiver except under the section 871(m) transition relief, which is only available through 2024 absent an additional extension.

Appendix I of the final agreement is revised to include, among other things, a QI's activities related to withholding under sections 1446(a) and (f). It includes a new certification regarding a QI's procedures for complying with sections 1446(a) and (f) and (more generally) that the QI has acted only to the extent permitted under the QI agreement.

Appendix II is also revised to incorporate accounts receiving payments for which withholding may apply under section 1446 within the statistical sampling procedures. Several other minor changes are included to Appendix II, detailed further in the publication.

New Appendix III is added for the purpose of determining whether Forms 1042 and 1042-S were filed accurately for the years of the certification period not covered by a periodic review, or, where a waiver is requested, for all years of the certification period. A QI must provide information it reported on Forms 1042 and 1042-S,

reconciling it against Forms 1042-S issued to the QI. This information is required to be attached as part of the QI's periodic certification or waiver request through QAAMS.

4.05 — Other changes

This section of the publication lists several miscellaneous changes included in the 2023 QI Agreement unrelated to the prior sections. Among the changes are updates to the timing of reimbursement and set-off procedures to align with general withholding agent rules, updates to terminology for consistency and accuracy, and clarification on methods of communication between QIs and the IRS.

Section 5 — Application and renewal of QI status

The 2023 QI Agreement goes into effect on January 1, 2023. All QI agreements currently in effect expire on December 31, 2022, and QIs wishing to renew their agreements must do so through QAAMS by March 31, 2023, for the agreement to be effective as of January 1, 2023, and to avoid disruption of its QI status. New applicants must apply on or before March 31 to have an effective date of January 1 of the year in which they apply. Regardless of when a QI enters into the new agreement, it will expire on December 31, 2028, unless terminated or renewed. New and renewing applicants will be required to consent to have the QI name, status, and QI-EIN disclosed on a published list on [irs.gov](https://www.irs.gov) to prevent entities that are not QIs from misrepresenting themselves.

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