

International Reporting and Withholding Subgroup Report

Below are additional IRPAC recommendations made in connection with FATCA that are not included in the International Reporting and Withholding Subgroup Report itself.

The following are recommendations that have already been adopted in substance by the IRS:

1. Issue guidance promptly (in any form) on the Q3/4 2014 FATCA tax documentation and withholding requirements of a withholding agent paying an intermediary. Common questions in the withholding agent community that this guidance could address were submitted by IRPAC. IRS adopted this recommendation in IRS FATCA FAQ General Compliance Q&A #7 posted 8/8/2014.
2. Issue guidance clarifying whether Treas. Reg. §1.1471-2T(a)(2)(v) provides that a nonqualified intermediary (NQI) branch of a USFI in a Model 2 IGA country must apply the prima facie rules. IRS FATCA FAQ Financial Institutions Q&A #1 updated 7/23/2014 clarifies that such a branch must apply the prima facie rules if it applies the due diligence procedures set forth in Treas. Reg. §1.1471-3, but not if it applies the procedures set forth in Annex I of the applicable Model 2 IGA.
3. Modify Treas. Reg. §1.1441-1T(e)(4)(ix)(C)(1) to provide that an agent may rely on “documentation” (e.g., Forms W-8 and W-9) collected by its principal (so long as the agent validates the documentation), regardless of the status (USWA (U.S. withholding agent), QI, etc.) of the principal. This recommendation was adopted in T.D. 9658 Correction (Jul. 1, 2014).
4. Modify Treas. Reg. §1.1441-1T(b)(3)(iii) to provide that an undocumented entity presumed to be a partnership, and for which the withholding agent has foreign indicia, is presumed to be a foreign partnership. This recommendation was adopted in T.D. 9658 Correction (Jul. 1, 2014).
5. Substitute “other than a preexisting obligation” for “that is a preexisting obligation” in Treas. Reg. §1.1441-7T(b)(2). This recommendation was adopted in T.D. 9658 Correction (July 1, 2014).
6. Modify Treas. Reg. §§ 1.1471-3T(c)(6)(iv) and 1.1471-3T(c)(3)(iii)(B)(1), consistent with Chapter 3, to enable withholding agents to accept faxed and e-mailed Forms W-8 and withholding statements for Chapter 4 purposes. This recommendation was adopted in T.D. 9657 Correction (July 1, 2014).
7. Add back a definition of “prima facie FFI” to Treas. Reg. §1.1471-2(a)(4)(ii)(B). This recommendation was adopted in T.D. 9657 Correction (Jul. 1, 2014).
8. Expand the name field beyond 40 characters, as FFIs would prefer their full legal name, and GIIN matching would be simpler with the full legal name. Effective October 6, 2014, the name field was expanded to accept up to 150 characters.
9. Instructions for the Requester of Forms W-8, pg. 9, under heading “Form W-8IMY,” 1st paragraph, 5th sentence – Eliminate the words “when the QSL (qualified securities lender) provides a written statement that it is not acting as an intermediary with respect

to such payments associated with the form, or certifies its status as a QI.” A QSL that is not a QI should not have to provide such a statement with respect to substitute dividends, since Notice 2010-46 provides that a QSL is to receive substitute dividends gross, regardless of whether the QSL is acting as a principal or an intermediary. This recommendation has been adopted in substance, as described in the [Cover Sheet to Update Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY](#) published October 7, 2014.

The following are other IRPAC recommendations, the majority of which we understand are under consideration by IRS as of the date of the 2014 IRPAC Public Report:

1. Form W-8BEN-E:

- a. Line 5 – Remove the words “unless otherwise indicated,” as multiple Chapter 4 statuses should not be permitted to be entered on Form W-8BEN-E. (IRS has provided an interim solution by clarifying in the instructions for line 15 that only one of the line 5 boxes may be checked.)
- b. Expand line 9a (GIIN) to accept larger numbers.
- c. Line 26, 3rd bullet – Substitute “my GIIN is on line 9a” for “provide your GIIN: _____” to eliminate the same GIIN being entered twice on a Form W-8BEN-E, uncertainty about whether a different GIIN belongs on line 26 and line 9a, and the risk that this form will be rejected because the GIIN is not on both of these lines.

2. Instructions for Form W-8BEN-E:

- a. Pg. 2, under heading “Who Must Provide Form W-8BEN-E,” 5th bullet – Rephrase to clarify that you do not use Form W-8BEN-E for yourself (instead the single owner should provide Form W-8BEN or Form W-8BEN-E) if (A) you are not a hybrid entity claiming treaty benefits and (B) you are either (i) a disregarded entity with a single owner that is not a U.S. person or (ii) a branch of an FFI claiming its status for Chapter 4 purposes.
- b. Pg. 7, instructions for “Line 4” – Add statement that you cannot check the “No” box (regarding whether making a treaty claim) if you are a disregarded entity.
- c. Pg. 7, instructions for “Line 5” – Add instructions that payees will generally need to have their FATCA status in place with withholding agents in advance of the dates listed in these instructions (July 1, 2016 and January 1, 2015) to avoid undue withholding, as withholding agents generally cannot implement a form the same day it is received.
- d. Pg. 9, under heading “Part II – Disregarded Entity of Branch Receiving Payment,” 1st sentence – Eliminate the words “as an intermediary.”
- e. Pg. 14, under heading “Entities Providing Certifications Under an Applicable IGA,” 2nd paragraph – Eliminate 2nd sentence which reads “However, if you determine your status under an applicable IGA as an NFFE, you must still

determine if you are an excepted NFFE (non-financial foreign entity) under the Regulations in order to complete this form,” and enable an entity which is resident in an IGA jurisdiction to determine if it is an excepted NFFE under this IGA and, if it is such an NFFE, apply this status for all FATCA purposes, i.e., regardless of whether it provides its FATCA status to an IGA FFI or an onshore USFI.

- f. Page 3, under heading “Expiration of Form W-8BEN” – These instructions should list specific validity periods. They currently refer the reader to the Treasury regulations for validity periods.

3. Instructions for Form W-8IMY:

- a. Pg. 8, instructions for “Line 11” – Add words “on line 5 of this form” to the end of the last sentence.
- b. Pg. 10, Examples 2-4 – These examples should state how each recipient (not merely a subset of the recipients) should be allocated, which form, if any, must be collected for each recipient, and why. For example, Example 2 should state how recipient C should be allocated, if a Form W-9 is required for recipient D, and why. Also, the cross reference to Treas. Reg. §1.6049(c)(4)(iii) in Example 4 should be changed to §1.16049-4(c)(4)(iii). Consideration should also be given to clarifying in these examples the meaning of the phrases “not subject to withholding under chapter 4 or to backup withholding under section 3406” in §1.16049-4(c)(4)(i) and “not subject to withholding under chapter 3...or backup withholding...” in §1.16049-4(c)(4)(ii); specifically, whether “not subject to” means not required to be subjected to withholding.

4. Instructions for the Requester of Forms W-8 [series]

- a. Add a table listing specific entities for which a GIIN must be obtained and validated. (IRPAC has already submitted a proposed table to IRS)
- b. Pg. 1, last bullet – Substitute “Form W-8BEN-E” for “Form W-BEN-E.”
- c. Pg. 2, right column, 2nd full paragraph, 1st sentence – Eliminate the text “or an exempt beneficial owner under Regulations section 1.1471-6,” as such an owner is not subject to FATCA withholding.
- d. Pg. 6, under heading “Alternative Certifications Under an Applicable IGA” – Add one or two examples to illuminate the 1st paragraph.

5. Qualified Securities Lender:

- a. Clarify in the Instructions for Form W-8IMY that a QSL need not provide a withholding statement with respect to substitute payments.
- b. Add a QSL Chapter 3 status box to Form W-8BEN-E, similar to boxes 14f and 15d on Form W-8IMY, to enable a QSL that receives payments (other than substitute dividend payments) in a principal capacity to be able to provide a

single Form W-8BEN-E to cover, for example, a treaty claim for securities lending fees in addition to substitute dividends.

- c. Clarify whether Treas. Reg. §1.1473-1T(a)(4)(vi) (last sentence) operates to require a Model 1 FFI that is a non-QI QSL acting as a principal to subject substitute payments to FATCA withholding prior to 2017.
6. Instructions for Form W-8ECI, pg. 4, instructions for “Line 10” – These instructions should be made consistent with the corresponding instructions for Form W-8BEN, which provide that a date of birth is only required if a foreign TIN is not provided.
7. Add Form 8966 to the list of forms that are not subject to the rules requiring return preparers to obtain Preparer Tax Identification Numbers (PTINs), as this form is most comparable to the Form 1099 series, which is not subject to the PTIN rules.
8. 2014 Form 1042-S – Renumber the majority of the boxes to make it clearer which boxes are for the withholding agent, the recipient, the primary withholding agent, and the intermediary or flow-through entity. For example, consider using the boxes 13 only for the withholding agent, the boxes 14 for the recipient, the boxes 15 for the primary withholding agent, and boxes 16 for the intermediary or flow-through entity.
9. 2014 Instructions for Form 1042-S:
 - a. Pg. 8, middle column, 1st paragraph, 2nd sentence (regarding when withholding agents are no longer permitted to report multiple types of income on a single form) – Clarify that this provision applies beginning for tax year 2015 reporting, due in 2016, and only for substitute payee statements, as multiple income codes on one official Form 1042-S have never been permitted.
 - b. Pg. 11, under heading “Payments allocated, or presumed made, to U.S. non-exempt recipients, 1st paragraph, last sentence – Clarify that the “certificate” referred to in this sentence is already embedded in Part III of Form W-8IMY, i.e., it need not be included in a separate statement.
 - c. Pg. 15, under the heading “Avoid Common Errors,” 6th bullet from the top – Substitute “16b” for “16g,” and “compliant” for “complaint.”
 - d. Pg. 21, under heading “Boxes 13a-f, Withholding Agent’s Name, Global Intermediary Identification Number (GIIN), Country Code, Foreign TIN (if any), and Address” – Remove the third paragraph (regarding entering your Chapter 3 and Chapter 4 status codes). Also, provide instructions for boxes 13c-f.
 - e. Pg. 25, under heading “Country Codes” – Substitute “box 14b” for “box 16,” and “box 16c” for “box 18.” Also, add text for box 13c.
10. 2014 Form 1042, Section 3 – Consider whether to change the phrase “that reference (in whole or in part) a U.S. security” to “that give rise to Section 871(m) payments.”
11. 2014 Instructions for Form 1042:

- a. Pg. 4, under heading “Chapter 3 and 4 status codes of withholding” – The instructions should explain these codes, rather than referring the reader to the Form 1042-S.
- b. Pg. 6, under heading “Section 2. Reconciliation of U.S. Source FDAP Income,” “Line 2” – These instructions should clarify on which line 2 to enter amounts that could belong on more than one line 2. For example, IRPAC recommends that if an amount of income is paid both “to recipients whose chapter 4 status established no withholding is required” and “with respect to grandfathered obligations,” the amount be includable only on line 2a (“to recipients whose chapter 4 status established no withholding is required”), and that line 2c (“with respect to grandfathered obligations”) be limited to amounts which would be subjected to Chapter 4 withholding but for the grandfathered obligation exception.
- c. Pg. 6, under heading “Section 2. Reconciliation of U.S. Source FDAP Income,” Line 2” – Add instructions for line 2b (regarding excluded nonfinancial payments). (Line 2b of 2014 Form 1042 states “(see instructions),” but the instructions do not exist.)

12. FATCA Registration:

- a. Add an FFI’s GIIN issue date to the IRS FFI list. This would, among other things, enable withholding agents to satisfy Treas. Reg. §1.1471-3T(d)(4)(v) (last sentence) by refunding, when necessary, retroactively to the precise date an FFI became a PFFI/RDCFFI.
- b. For branches, include the name of corresponding financial institution in the “Financial Institution Name” field of the IRS FFI list. (Currently, this field typically merely states “Branch.”)
- c. Enable a discrete FFI branch to separately register, and assign its own responsible officer.
- d. Clarify in an FAQ that Model 1 Annex I entities do not have to register, and certain Model 2 Annex II entities must register.
- e. FATCA Registration System (listed in priority order):
 - i. Add functionality to change large amounts of data for registration, e.g., enable an FFI to upload a file with replacement values for selected fields.
 - ii. Add functionality to edit a point of contact (POC) so that a POC does not need to be deleted and re-entered to make a change.
 - iii. Change the term of the different responsible officers on the registration system to something other than “responsible officer,” as this title should be limited to persons required to certify to the IRS under Treas. Reg. §1.1471-4.

- iv. Enable POCs who are not members of the email address in the registration system for the responsible officer to receive emails.
 - v. Make the field “State/Province/Region” optional when the country is other than the United States.
 - vi. Add functionality to jump from Part to Part by clicking on the top band via a hyperlink.
 - vii. Add functionality to arrive at the Edit/Review page, i.e., the summary page, for each Part to enable a reviewer to review just the three Edit/Review summary pages, rather than have to review every interview screen.
 - viii. Add functionality to enable a reviewer to click on a link from the Edit/Review page to arrive directly at an individual question.
13. Treas. Reg. §1.1471-6 – Provide guidance on what constitutes “foreign law similar to 22 U.S.C. 288-288f” and “a headquarters agreement with a foreign government.”
14. Treas. Reg. §1.1473-1(a)(3)(ii)(C) – Provide guidance on how regulated investment company (RIC) short-term capital gain (STCG) distributions that are not attributable to sales of U.S. securities held by the RIC must be treated for Chapter 4 purposes.
15. Treas. Reg. §1.1441-1T(e)(3)(iv)(C), Example 3 – Clarify that the sentence “Because NQI has certified its status as a participating FFI, withholding under chapter 4 is not required **with respect to NQI**” (emphasis added) does not mean that withholding under Chapter 4 is not required on payments allocated to the pool of recalcitrant account holders in the example.
16. Treas. Reg. §1.1471-5T(f)(2)(v) – Substitute “Investment advisors, investment managers, and certain other investment entities” for “Investment advisors and investment managers.”
17. Treas. Reg. §1.1471-4(d)(3)(ii) – Clarify whether this section requires reporting for each joint owner and, if so, how this can be achieved given that the Form W-9 requires only one TIN with respect to a joint account owned by two U.S. persons.
18. Make Annex I(II)(B)(1)(g) of the Models 1 and 2 Agreements consistent with Treas. Reg. §1.1471-4(c)(5)(iv)(C), which provides that an in-care-of address (even one inside the U.S.) is not U.S. indicia for a low-value account.