

Part III - Administrative, Procedural and Miscellaneous

Timing of Submitting Preexisting Accounts and Periodic Certifications; Reporting of Accounts of Nonparticipating FFIs; Reliance on Electronically Furnished Forms W-8 and W-9

Notice 2016-08

This notice announces that the Treasury Department and the Internal Revenue Service (IRS) intend to amend the regulations under chapter 4 (sections 1471-1474 of the Internal Revenue Code) to: (1) modify the date for submitting to the IRS the preexisting account certifications required of certain foreign financial institutions (FFIs); (2) specify the period and date for submitting to the IRS the periodic certification of compliance described in §1.1471-5(f)(1)(ii)(B) for a registered deemed compliant FFI; and (3) modify the transitional information reporting rules for accounts of nonparticipating FFIs to eliminate the requirement to report on gross proceeds for the 2015 year. The Treasury Department and the IRS also intend to amend the regulations under chapters 3 and 4 to specify the circumstances under which a withholding agent may rely on electronically furnished Forms W-8 and W-9 collected by intermediaries and flow-through entities.

The amendments described in this notice will ease burdens on FFIs and respond to comments regarding certain aspects of the regulations under chapters 3 and 4. Prior

to the issuance of these amendments, taxpayers may rely on the rules described in this notice.

I. Participating FFIs and Reporting Model 2 FFIs Preexisting Account Certifications

A. Background

Section 1.1471-4(c)(7) and section 8.03(A) of the FFI agreement (Rev. Proc. 2014-38, 2014-29 I.R.B. 131) require participating FFIs and reporting Model 2 FFIs to certify to the IRS that they have complied with the due diligence procedures of §1.1471-4(c) for preexisting accounts within the applicable timeframe for complying with such procedures (“preexisting account certification”). The preexisting account certification must be made no later than 60 days following the date that is two years after the effective date of the FFI agreement. For example, a participating FFI or reporting Model 2 FFI that has an FFI agreement with an effective date of June 30, 2014, must submit a preexisting account certification to the IRS by August 29, 2016.

A participating FFI or reporting Model 2 FFI also is required under §1.1471-4(f)(3) and section 8.03 of the FFI agreement to periodically certify to the IRS that it has complied with the terms of the FFI agreement (“periodic certification of compliance”). Section 1.1471-4(f)(3)(i) provides the general rules for the periodic certification of compliance and specifies that it must be submitted to the IRS no later than six months following the end of the certification period. Notwithstanding the regulations, section 8.03 of the FFI agreement allows the periodic certification of compliance to be submitted on or before July 1 of the calendar year following the certification period. The first certification period begins on the effective date of the FFI agreement and ends at the close of the third full calendar year following the effective date of the FFI agreement.

Each subsequent certification period is every three calendar years following the previous certification period. Thus, under the FFI agreement, if a participating FFI or reporting Model 2 FFI has an FFI agreement with an effective date of June 30, 2014, the first certification period for the FFI ends on December 31, 2017, and the FFI's first periodic certification of compliance must be made on or before July 1, 2018.

B. Modification of Timing for Participating FFI and Reporting Model 2 FFI Preexisting Account Certifications

In response to comments, and to reduce compliance burdens on stakeholders and streamline the implementation of the certification requirements, the Treasury Department and the IRS intend to amend the chapter 4 regulations and the FFI agreement to provide that the preexisting account certification must be submitted to the IRS at the same time that the participating FFI or reporting Model 2 FFI is required to submit its first periodic certification of compliance. In addition, the regulations under chapter 4 will be modified to conform with the FFI agreement such that the periodic certification of compliance must be submitted on or before July 1 of the calendar year following the certification period, instead of no later than six months following the end of the certification period. Therefore, the preexisting account certification will be due to the IRS by July 1, 2018, for a participating FFI or reporting Model 2 FFI that has an FFI agreement with an effective date of June 30, 2014, instead of by August 29, 2016.

The changes to the preexisting account certification described in this notice do not affect the deadlines for a participating FFI or reporting Model 2 FFI to complete the due diligence procedures for preexisting accounts under §1.1471-4(c) and the FFI agreement, and FFIs will therefore be required to certify to the completion of those procedures within the time required.

II. Preexisting Account Certifications by Local FFIs and Restricted Funds and Periodic Certifications of Compliance by Registered Deemed-Compliant FFIs

A. Background

A registered deemed-compliant FFI that is a local FFI or restricted fund is required to make a one-time certification regarding its preexisting accounts similar to the certification requirement of a participating FFI. See §§1.1471-5(f)(1)(i)(A)(7) and 1.1471-5(f)(1)(i)(D)(6), respectively. Restricted funds must make this certification by the later of December 31, 2014, or six months after the date the FFI registers as a registered deemed-compliant FFI. The chapter 4 regulations do not specify a time for local FFIs to make this certification.

In addition, each registered deemed-compliant FFI must certify every three years to the IRS that all of the requirements for the deemed-compliant category claimed by the FFI have been satisfied since the later of the date the FFI registered as a registered deemed-compliant FFI or June 30, 2014 (“periodic certification of registered deemed-compliant status”). §1.1471-5(f)(1)(ii)(B). The chapter 4 regulations do not specify a time for submitting the periodic certification of registered deemed-compliant status or the date on which the first certification period begins.

B. Modification of Timing of Preexisting Account Certification by Local FFIs and Restricted Funds and Periodic Certification of Compliance by Registered Deemed-Compliant FFIs

The chapter 4 regulations will be amended to provide that local FFIs and restricted funds must submit their one-time certifications regarding preexisting accounts at the same time that they submit the first periodic certification of registered deemed-compliant FFI status. The chapter 4 regulations will also be modified to provide that registered deemed-compliant FFIs must provide the periodic certification of registered

deemed-compliant FFI status on or before July 1 of the calendar year following the end of the certification period. In addition, the regulations will provide that the first certification period begins on the later of the date the FFI registered as a deemed-compliant FFI or June 30, 2014, and ends at the close of the third full calendar year following such date. Subsequent certification periods will continue to be the three-calendar-year period following the previous certification period. For example, a registered deemed-compliant FFI that is a local FFI and that has such status on June 30, 2014, will be required to make its one-time certification regarding preexisting accounts and its first periodic certification of registered deemed-compliant FFI status on or before July 1, 2018.

III. Transitional Reporting of Accounts of Nonparticipating FFIs

A. Background

Under §1.1471-4(d)(2)(ii)(F) a participating FFI or registered deemed-compliant FFI that maintains an account of a nonparticipating FFI (including a limited branch and limited FFI treated as a nonparticipating FFI) must provide transitional reporting to the IRS of all foreign reportable amounts paid to or with respect to the account for each calendar year 2015 and 2016. A foreign reportable amount means foreign source payments described in §1.1471-4(d)(4)(iv) (which includes gross proceeds).

Alternatively, a participating FFI or registered deemed-compliant FFI may report all income, gross proceeds, and redemptions paid to or with respect to an account held by a nonparticipating FFI, instead of reporting only foreign reportable amounts. Section 1.1471-4(d)(2)(ii)(F). Similar transitional reporting rules apply to reporting Model 2 FFIs

for accounts of nonparticipating FFIs for calendar years 2015 and 2016. Section 6.04 of the FFI agreement.

Under §1.1471-4(d)(7)(ii)(B) and section 6 of the FFI agreement, participating FFIs and reporting Model 2 FFIs are excepted from reporting gross proceeds paid to U.S. accounts and accounts held by owner-documented FFIs for calendar year 2015.

B. Amendments to the Transitional Reporting Rules under §1.1471-4(d)(2)(ii)(F) for Nonparticipating FFIs

Commenters have noted the burdens of requiring gross proceeds reporting for accounts held by nonparticipating FFIs in advance of when such amounts have to be reported for a U.S. account or account of an owner-documented FFI. The transitional reporting for accounts of nonparticipating FFIs under §1.1471-4(d)(2)(ii)(F) was not intended to require more information to be reported than would be required for U.S. accounts or accounts held by owner-documented FFIs under §1.1471-4(d). In response to these comments, the regulations will be amended to provide that, with respect to calendar year 2015, a participating FFI, reporting Model 2 FFI, or registered deemed-compliant FFI is not required to report gross proceeds paid to or with respect to an account held by a nonparticipating FFI.

IV. Electronically Furnished Forms W-8 and W-9

A. Background

Section 1.1441-1(e)(4)(iv) provides that a withholding agent may establish a system for a beneficial owner or payee to electronically furnish a Form W-8, an acceptable substitute Form W-8, or such other form as the IRS may prescribe, and provides requirements for such a system. Section 1.1441-1(e)(4)(iv)(B) requires, among other things, that the electronic system provide that the Form W-8 be signed

electronically and under penalties of perjury by the person whose name is on the Form W-8. When the requirements set forth in §1.1441-1(e)(4)(iv) are met, a withholding agent may accept the electronic version of the Form W-8 as an original. These requirements for an electronic system also apply for chapter 4 purposes as provided in §1.1471-3(c)(6)(iv). Announcement 98-27 (1998-1 C.B. 865) provides similar standards for purposes of establishing an electronic system for the Form W-9.

A foreign intermediary or flow-through entity that has not entered into a qualified intermediary, foreign withholding partnership, or foreign withholding trust agreement is a nonqualified intermediary (NQI), nonwithholding foreign partnership (NWP), or nonwithholding foreign trust (NWT) under the chapter 3 regulations. An NQI, NWP, or NWT that receives a payment on behalf of its account holders, partners, owners, or beneficiaries is required to provide documentation to its withholding agent so that the withholding agent may reliably associate the payment (or portion of the payment) with valid documentation upon which it may rely to determine its requirement to withhold under §1.1441-1(b). The regulations under section 1441 further provide that a withholding agent that receives documentation for a payee or beneficial owner through an NQI, NWP, or NWT (including a U.S. branch or territory financial institution described in §1.1441-1(b)(2)(iv), other than a U.S. branch or territory financial institution that is treated as a U.S. person) may rely on such documentation unless the withholding agent knows that the documentation is unreliable or incorrect as described §1.1441-7(b)(10) (referred to as the standards of knowledge). Similar standards of knowledge rules are provided for chapter 4 purposes in §1.1471-3(e)(4)(vi).

B. Modification of Standards of Knowledge Requirements

Commenters have requested that the regulations specify that a withholding agent may rely on a Form W-8 or W-9 for a beneficial owner or payee that has been indirectly obtained by the withholding agent through an NQI, NWP, or NWT, irrespective of whether the NQI, NWP, or NWT collects the underlying Form W-8 through an electronic system described in §1.1441-1(e)(4)(iv) or Form W-9 through an electronic system described in Announcement 98-27. The commenters note that, in the absence of such guidance, current industry practice is for withholding agents to reject these forms because they cannot confirm the authenticity of the electronic signature. As a result, the payee or beneficial owner may be subject to withholding under chapter 3 or 4 or backup withholding under section 3406 based on an applicable presumption rule.

To reduce burden and avoid unnecessary overwithholding, the Treasury Department and the IRS intend to provide in the standards of knowledge in §§1.1441-7(b)(10) and 1.1471-3(e)(4)(vi)(A)(2) that a withholding agent may rely on a Form W-8 or W-9 that has been collected from the beneficial owner or payee of the payment through an electronic system maintained by an NQI, NWP, or NWT and furnished to the withholding agent by such NQI, NWP, or NWT, provided that the NQI, NWP, or NWT is a direct or indirect account holder of the withholding agent and the withholding agent obtains from the NQI, NWP, or NWT a written statement confirming that the electronic documentation was generated from a system that meets the requirements in §1.1441-1(e)(4)(iv), §1.1471-3(c)(6)(iv), or Announcement 98-27, as applicable, and the withholding agent does not have actual knowledge that such statement is incorrect.

DRAFTING INFORMATION

The principal authors of this notice are Nancy Lee and Tara Ferris of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Ms. Lee or Ms. Ferris at (202) 317-6942 (not a toll-free call).