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FATCA Updates: Substitute W-8BEN-E, non-reporting FFI GIIN Registration, and new FATCA compliant 1099s

By William Byrnes



FATCA Releases of September 25:

- two new Q&As, one addressing whether a nonreporting FFI under the IGA should register for a GIIN, the other addressing whether a substitute W-8, allowed for IGA countries, is FATCA compliant.
- new FATCA compliant 1099s that have a check-box added to identify an FFI filing the 1099 to satisfy its chapter 4 reporting requirement.

Q7. Does an entity in a Model 1 jurisdiction that, relying on the definition of a nonreporting financial institution under the applicable IGA, qualifies as a deemed-compliant FFI or an exempt beneficial owner under relevant U.S. Treasury Regulations, need to register on the FATCA registration website?

A nonreporting financial institution in a Model 1 jurisdiction is treated as a certified deemed-compliant FFI and is not required to register unless it (1) is subject to a registration requirement under its QI Agreement (see Rev. Proc. 2014-39) or its WP or WT Agreement (see Rev. Proc. 2014-47), (2) will act as a sponsoring entity, (3) will act as a lead FI for one or more related entities, (4) is explicitly required to register under the applicable IGA, or (5) has a financial account on which to report to the Model 1 jurisdiction under the requirements of the applicable IGA.

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Q8. Annex I of the IGA **Substitute Withholding Certificate: In General**

provides that, for certain purposes, a self-certification may be made on an IRS Form W-8 or other "similar agreed form."

What would be considered a similar agreed form?

A similar agreed form may include, for example, a substitute Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, or W-8IMY if its content is substantially similar to the IRS's official Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, or W-8IMY (see the instructions to the requestor of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY), and the partner jurisdiction does not decline such treatment. You may develop and use a substitute form that is in a foreign language, provided that you make an English translation of the form and its contents available to the IRS upon request. You may combine Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY into a single substitute form.

You may choose to provide a substitute form that does not include all of the chapter 4 statuses provided on the Form W-8, but the substitute form must include any chapter 4 status for which withholding may apply, such as the categories for a nonparticipating FFI or passive NFFE. See Treas. Reg. § 1.1471-3(c)(6)(v)(A).

You may also provide with the form an alternative certification that reflects the requirements under an applicable IGA instead of the certification of chapter 4 status

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otherwise required by the form. See the Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY and the Instructions for Form W-8BEN-E for the requirements to use alternative certifications with respect to Form W-8BEN-E, which also apply to a substitute version of the form.

You are also required to furnish instructions for the substitute form to the extent and manner provided in the official instructions for the official form.

You may incorporate a substitute Form W-8 into other business forms you customarily use, such as account signature cards, provided the required certifications are clearly set forth. However, you may not:

1. Use a substitute form that requires the payee, by signing, to agree to provisions unrelated to the required certifications, or
2. Imply that a person may be subject to 30% withholding or backup withholding unless that person agrees to provisions on the substitute form that are unrelated to the required certifications.

A substitute Form W-8 is generally valid only if it contains the same penalties of perjury statement and certifications as the official forms and the required signature.

However, if the substitute form is contained in some other business form, the words “information on this form” may be modified to refer to that portion of the business form containing the substitute form information, including any alternative certification under an applicable IGA provided with the substitute form. The design of the substitute form must be such that the information and certifications that are being attested to by the penalties of perjury statement clearly stand out from any other information contained on the business form.

Substitute Withholding Certificate: Non-IRS Form for Individuals

A similar agreed form may also include a non-IRS form used in place of a Form W-8BEN (for individuals). The substitute form must include the information required in Treas. Reg. § 1471-3(c)(6)(v), and the form must be signed, dated, and also certified under penalties of perjury unless the form is accompanied by documentary evidence that supports the individual’s claim of foreign status. For a case in which a withholding certificate is required to be associated with a payment subject to chapter 3 withholding or reportable amount under Treas. Reg. § 1.1441-1(e)(3)(vi), however, see the requirements for a beneficial owner withholding certificate under Treas. Reg. § 1.1441-1(e)(2).

Documenting an Entity’s Chapter 4 Status with a Written Statement

You may use a written statement described in Treas. Reg. § 1.1471-3(c)(4) to document an entity account holder or payee. Such a written statement is valid only to the extent that it is permitted to be used based on the requirements of Treas. Reg. § 1.1471-3(d). Also see Treas. Reg. § 1.1471-3(d) for when a written statement must be supported by documentary evidence of the payee’s foreign status. The written statement may incorporate, rather than a chapter 4 status described in Treas. Reg. § 1.1471-3(d), a certification of status as determined under the requirements of an applicable IGA.

Inst 1099-MISC	Instructions for Form 1099-MISC, Miscellaneous Income	2014 09/24/2014
Inst 1099-INT and 1099-OID	Instructions for Forms 1099-INT and 1099-OID, Interest Income and Original Issue Discount	2014 09/24/2014
Inst 1099-DIV	Instructions for Form 1099-DIV	2014 09/24/2014

FATCA filing requirements of certain foreign financial institutions (FFIs). Beginning in 2014, an FFI with a chapter 4 requirement to report a U.S. account maintained by the FFI that is held by a specified U.S. person may satisfy this requirement by reporting on Form(s)1099. Additionally, a U.S. payor may satisfy its chapter 4 requirement to report such a U.S. account by reporting on Form(s) 1099. A new check box was added to Form 1099-DIV to identify an FFI filing this form to satisfy its chapter 4 reporting requirement.

download for free → LexisNexis® Guide to FATCA Compliance

<http://lawprofessors.typepad.com/intfinlaw/2014/09/fatca-updates-substitute-w-8ben-e-non-reporting-ffi-giin-registration-and-new-fatca-compliant-1099s-.html>

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