Working with Foreign Entities

Forms W-8 and W-8BEN-E

Background:

In 2010, Congress passed the Hiring Incentives to Restore Employment Act of 2010 (the HIRE Act), which added chapter 4 of Subtitle A to the Code, these provisions are commonly referred to as 'FATCA' or 'Chapter 4.' FATCA was passed to target tax noncompliance by U.S. persons with foreign bank accounts. Under Chapter 4, effective July 1, 2014 a withholding agent must withhold 30% on the payment to a foreign financial institution (FFI) with some exclusions. Also, a withholding agent is required to withhold on payments to a nonfinancial foreign entity (NFFI) under certain circumstances. The W-8 series forms were updated to document the withholding status. The new Form W-8BEN-E is an added requirement for U.S. taxpayers doing business with foreign entities or that have foreign subsidiaries. The W-8BEN-E form documents the status of those foreign entities for U.S. income tax, treaty benefits, and FATCA purposes.

Changes to current processes – new form W-8BEN-E:

Effective January 1, 2015 Form W-8BEN is to be used to document information on a foreign individual – *this form can no longer be used for foreign entities*. **Form W-8BEN-E is to be used for payments being made to foreign entities.** The W-8BEN-E form must be received for any nonproduct transaction to determine if the FE is subject to the default 30 percent withholding on payments to FEs or if the FE is eligible for any reduced withholdings related to an applicable treaty.

In addition, Forms W-8ECI, W-8IMY, and W-8EXP still apply for businesses that have effectively connected income in the U.S., are foreign partnerships or simple/grantor trusts, or a foreign government or tax-exempt organization.

Form W-8BEN-E contains 30 parts very few of them will need to be completed. However, all foreign beneficial owners must complete Parts I (identification of Beneficial Owner) and XXIX (Certification). The key element of completing the form correctly is correctly identifying the Chapter 4 status and completing the designated additional part(s).

While it is not our responsibility to advise how to complete the form, I am providing the following for educational benefits. The full instructions for requestors of the W-8 series forms can be found on the IRS web site. The link has been provided below.

Part I requires information related to:

- Entity name and country of incorporation or organization

- Chapter 3 status – This section must be completed to identify the tax status of an entity claiming treaty benefits. Entities requesting treaty benefits must also complete Part III (Claim of Tax Treaty Benefits)

- Chapter 4 status – This section must be completed to identify the FATCA status of the entity.

  The form lists 31 classifications and each entity will fit one – and only one – such classification.

  Some key terms and abbreviations include:

  - FFI – Foreign Financial Institution – if an entity is an FFI they are subject to additional requirements under FATCA

- IGA – Intergovernmental Agreement – The IRS has signed IGAs with several governments that modify how FFIs are required to report information.

- NFFE – Non-Financial Foreign Entity – Typically, if an entity is not an FFI, it is an NFFE.

Determining the correct type of NFFE is an important element of completing the Form. • Address (permanent and mailing) of the entity

- Identification numbers related to the entity:

  - The U.S. identification number is the business number issued to U.S. or foreign businesses with operations in the U.S.

  - The GIIN is the global intermediary identification number assigned to FFIs. The GIIN is a 19character identification string that contains (a) the FATCA ID, (b) financial institution type, (c) Category Code, and (d) country identifier with the format 123456.12345.12.123.

  - Foreign TIN is a foreign taxpayer identification number issued by the entity's home country.

  - Reference numbers are self-assigned numbers for subsidiaries of U.S. companies that do not have U.S. identification numbers. Reference numbers are assigned on Forms 5471 or 8865.