Forms W-8BEN and W-9 Compliance in Foreign and U.S. Business Transactions
Meeting the Demands of the Substantially Overhauled W-8BEN Under New FATCA Rules

THURSDAY, NOVEMBER 12, 1:00-2:50 pm Eastern

IMPORTANT INFORMATION

This program is approved for 2 CPE credit hours. To earn credit you must:

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Forms W-8BEN and W-9 Compliance in Foreign and U.S. Business Transactions

November 12, 2015

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The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.
Newly released Form W-9 and Revised Form W-8BEN

Presented by:
Alicea Castellanos, CPA, TEP, N.P. | acastellanos@iwtas.com
November 12, 2015
Newly Released Form W-9, Request for Taxpayer Identification Number and Certification

• New Form W-9 and Instructions released December 2014

• **Form W-9** – Changes to note since the August 2013 version include:

  • Line 1 has an additional note stating that a name is required and the line cannot be left blank.
  
  • Line 3 federal tax classifications have been amended, changing “Individual/sole proprietor” to “Individual/sole proprietor or single-member LLC”.
  
  • Line 4 clarification on the exemption codes is provided, noting that the codes only apply to certain entities and not to individuals and that the FATCA exemption codes apply to accounts maintained outside the U.S.
Newly Released Form W-9, Request for Taxpayer Identification Number and Certification

• Form W-9 **Instructions** – Changes to note since the August 2013 version include:
  
  • The “Purpose of Form” section has been updated to provide examples of the types of information returns on which requesters of Forms W-9 may have to include reportable amounts.
  
  • The “Backup Withholding” section explicitly states the withholding rate as 28%.
  
  • The “Specific Instructions” section have been reformatted to provide line-by-line instructions.

  • Line 1 (Name) includes guidance for ITIN applicants, instructing them to enter their name as it appears on Form W-7, Line 1a.

    • Line 4 (Exemptions) restates that corporations are not exempt from backup withholding with respect to attorneys’ fees or gross proceeds paid to attorneys and that corporations providing medical or health care services are not exempt with respect to payments reportable on Form 1099-Misc.

    • Line 4 (Exemptions) a requester may write or print “Not Applicable” or a similar statement if an exemption code for FATCA reporting is not required.
Revised Form W-8BEN - The Basics

Purpose of form:

• To establish Chapter 3 status
• To avoid backup withholding
• To establish Chapter 4 status
Revised Form W-8BEN - The Basics

• **When to Use and Not to Use**
  
  - The new Form W-8BEN (revision date 2014) is for use ONLY by non-resident aliens (NRA), that is, foreign individuals.

  - A NRA (non-resident alien individual) is any individual who is not a citizen or resident alien of the United States. A foreign person who has a “green card” and not had it revoked or voluntarily turned it in, or a foreign person who meets the “substantial presence test” for the calendar year is a resident alien, and must submit a Form W-9.

  - An alien who is a bona fide resident of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa is a nonresident alien individual that should fill out a W-8BEN, not a W-9.

  - A sole member of a "disregarded" entity is considered the beneficial owner of income received by the disregarded entity, and thus the sole member must provide a W-8BEN. The sole member should inform the withholding agent if the account is in the name of a disregarded entity. The sole member includes his or her own name in line 1, but must include the name and account number of the disregarded entity on line 7 where it states “reference number”. However, if the disregarded entity is claiming treaty benefits as a hybrid entity, it must instead complete Form W-8BEN-E.
Revised Form W-8BEN - The Basics

• **Expiration**
  
  • In general, the W-8BEN will remain valid until December 31st of the 3rd year after the date of the signature unless there is a change of circumstances.

• **Change of Circumstances**
  
  • If any information on the Form W-8BEN becomes incorrect because of a change in circumstances, then, the NRA must provide the withholding agent, payer, or Foreign Financial Institution (FFI) with a new W-8BEN, within 30 days of the change of circumstances.
Revised Form W-8BEN – Specific Line Items

• **Line 2**
  - On line 2, the NRA must enter the country of citizenship. If the NRA is a dual citizen, then the NRA must enter the country where the NRA is both a citizen and a resident at the time of completing the W-8BEN. If the NRA is not a resident in any country in which the NRA has citizenship, enter the country where the NRA was most recently a resident.

• **Line 3**
  - Line 3 requires the NRA’s permanent resident address in the country where the NRA claims to be a resident for purposes of that country’s income tax. If the Form W-8BEN is to be used for claiming a reduced rate of withholding under an income tax treaty, then the NRA must determine permanent residency in the manner required by that tax treaty. The NRA may not use the address of a financial institution, a post office box, or any of other type of mailing address.

• **Line 5**
  - Line 5 requires a taxpayer identification number, which is the US social security number (SSN), or if not eligible to receive a SSN, then an individual taxpayer identification number (ITIN).
  - To claim certain treaty benefits, either line 5 must be completed with a SSN or ITIN, or line 6 must include a foreign tax identification number (foreign TIN).

• **Line 6**
  - Line 6 requires a foreign tax identifying number (foreign TIN) issued by a foreign jurisdiction of residence when an NRA documents him or herself with respect to a financial account held at a U.S. office of a financial institution. However, if the foreign jurisdiction does not issue TINs or has not provided the NRA a TIN yet, then the NRA must enter a date of birth in line 8.
Revised Form W-8BEN – Special Situations

• **Disregarded Entities**
  • A sole member of a "disregarded" entity is considered the beneficial owner of income received by the disregarded entity, and thus the sole member must provide a W-8BEN.
  • The sole member should inform the withholding agent if the account is in the name of a disregarded entity.
  • The sole member includes his or her own name in line 1, but must include the name and account number of the disregarded entity on line 7 where it states “reference number”. However, if the disregarded entity is claiming treaty benefits as a hybrid entity, it must instead complete Form W-8BEN-E.

• **Treaty benefits**
  • To claim certain treaty benefits, either line 5 must be completed with a SSN or ITIN, or line 6 must include a foreign tax identification number (foreign TIN).

• **ITIN & Foreign TIN requirement (or date of birth for an individual that has no foreign TIN) for forms submitted for accounts with US financial institutions**
  • Line 6 of Form W-8BEN requires a foreign tax identifying number (foreign TIN) issued by a foreign jurisdiction of residence when an NRA documents him or herself with respect to a financial account held at a U.S. office of a financial institution. However, if the foreign jurisdiction does not issue TINs or has not provided the NRA a TIN yet, then the NRA must enter a date of birth in line 8.
Old Form W-8BEN (revision date Feb. 2006 (a.k.a. “pre-FATCA Form W-8”))

• **What if you have an old Form W-8 BEN on file for a NRA individual?**
  - This form will be valid indefinitely as long as you have back-up ID on file. If no back-up ID, you will need a new form every 3 years.

• **What if you have an old Form W-8 BEN on file for a foreign entity?**
  - Forms on file signed prior to December 31, 2014, can be relied on for payments made prior to January 1, 2017 in lieu of obtaining an updated version of the Form if you have the proper documentary evidence. Accordingly these W-8BEN forms are not valid indefinitely even if the proper documentary evidence is in place.

**TO AVOID CONFUSION, IT IS RECOMMENDED TO REQUEST NEWLY SIGNED “W” FORMS FROM EVERYONE WHO IS REQUIRED TO PROVIDE YOU ONE AS THIS IS A GOOD TIME TO REFRESH YOUR RECORDS!**
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Alicea specializes in U.S. tax planning and compliance for non-U.S. families with international wealth and asset protection structures which include foreign trusts, estates and foundations that have a U.S. connection.

Alicea also specializes in foreign investment in U.S. real property, and other U.S. assets, pre-immigration planning, U.S. expatriation matters, U.S. persons in receipt of large foreign gifts and inheritances, foreign account compliance and offshore voluntary disclosures.
Form W-8BEN-E

Presented by:
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November 12, 2015
• Foreign Account Tax Act ("FATCA")

• Enacted under the HIRE Act of 2010 (Mar 18)

• Imposes documentation, withholding and reporting obligations
FATCA: Purpose

- Identify U.S. taxpayers hidden foreign assets
- Compel foreign financial institutions (“FFIs”) to provide information on foreign financial assets
- Penalize non-participating FFIs and NFFEs through a 30% withholding tax regime
FATCA: Goals and Objectives

• Improve tax compliance of U.S. taxpayers with offshore financial assets

• FFIs must enter into compliance agreements
  • Identify accounts with direct or indirect U.S. ownership
  • Annually report ownership information to IRS
  • Close accounts or withhold on payments of non-compliant FFIs
FATCA: Goals and Objectives

- Non-financial foreign entities ("NFFEs") must
  - Certify they have no substantial U.S. ownership, have active business activities, or are a publicly traded (or affiliate) company or NFFE
  - Disclose and report substantial U.S. owners
FATCA: Impact On FFIs

• An FFI must do the following to avail itself of the withholding 30%

• Be compliant under an IGA (intergovernmental agreement) Model 1 or 2

• Be compliant under FATCA regulations
  • Sign and FFI agreement
  • Register and obtain a GIIN
  • Revise account opening procedures
  • Review and obtain, if needed, additional information on existing account holder information
  • Report U.S. account holder information to the IRS
  • Impose 30% withholding tax as required under regulations
FATCA: Impact on NFFEs

• Determine FATCA status

• Prepare applicable Form W-8BEN-E
  • Passive NFFEs
    • Disclose substantial U.S. owners; or
    • Certify that there are no substantial U.S. owners
FATCA: Withholdable Payments

- U.S. source FDAP income (passive income)
- Gross proceeds from the sale of assets generating FDAP income
- Investment advisory fees
- Custodial fees
- Bank and brokerage fees
FATCA: Exempt Payments

• Certain grandfathered obligations
  • Grandfathered obligations generally include a legal agreement that produces, or could produce, a withholdable payment (e.g., FDAP)
  • Obligation must have been created by or before June 30, 2014
  • If the obligation is significantly modified after June 30, 2014 the grandfather status will be terminated
# FATCA: Timeline – key dates

## FATCA Timeline - Certain Key FATCA Dates

<table>
<thead>
<tr>
<th>Date</th>
<th>Action item</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 2014</td>
<td>FATCA withholding at source required</td>
</tr>
<tr>
<td>January 1, 2015</td>
<td>Reporting Model 1 FFIs must provide GIIN numbers</td>
</tr>
<tr>
<td>March 15, 2015</td>
<td>Forms 1042/1042-S due, begin reporting Chapter 4 reportable payments made after July 1, 2014</td>
</tr>
<tr>
<td>March 31, 2015</td>
<td>Form 8966 due with account balance and holder information</td>
</tr>
<tr>
<td>January 1, 2016</td>
<td>End of certain transition periods</td>
</tr>
<tr>
<td>March 15, 2016</td>
<td>Forms 1042 and 1042-S due, begin aggregate reporting on 2015 NFI payments</td>
</tr>
<tr>
<td>March 31, 2016</td>
<td>Form 8966 due, begin reporting income information</td>
</tr>
<tr>
<td>January 1, 2017</td>
<td>Begin withholding on certain gross proceeds and foreign pass thru payments</td>
</tr>
<tr>
<td>March 31, 2017</td>
<td>Form 8966 due, begin reporting certain gross proceeds</td>
</tr>
<tr>
<td>March 31, 2018</td>
<td>Forms 1042/1042-S due, begin reporting certain gross proceeds</td>
</tr>
</tbody>
</table>
FATCA: Definitions

- **Financial institution**
  - Depository institution
  - Custodial institution
  - Investment entity
  - Insurance company (cash value / annuity)
  - Entity engaged in banking or similar business
    - Makes loans or provides credit (personal, mortgage, business, etc.)
    - Purchases, sells, discounts or negotiates A/R, provides installment obligations, etc.
    - Issues letters of credit
    - Provides institutional fiduciary or trust services
    - Finances foreign exchange transactions
    - Leases assets
FATCA: Definitions

• Expanded affiliated group
  • Affiliated with a common parent
    • Directly, or indirectly owns more than 50% of the stock (vote and value)
    • Owns more than 50% of the beneficial interest in a partnership or non-corporate entity
  • A common parent is generally a corporation
  • Partnerships, trusts and other non-corporate entities may elect to be treated as common parent
• **Withholding agent**

  - Any person (U.S. or foreign), that has control, receipt, custody, disposal or payment of an amount subject to withholding chapter 3 and 4 purposes

  - If more than one person or entity qualify as a withholding agent for a payment, the person who makes the original disbursement to the foreign person will be the person responsible to make any necessary withholding
• Intergovernmental agreement
  • Model 1
    • An agreement between the U.S. and a foreign government to implement FATCA through reporting by FFIs to the foreign government followed by automatic exchange of FATCA information.
  • Model 2
    • Reporting by FFIs directly to the IRS supplemented by the exchange of information between the foreign government (or agency) and the IRS

• Global intermediary identification number (GIIN)
  • GIIN is the identification number that is assigned to a participating FFI or registered deemed compliant FFI
FATCA: Definitions

• U.S. Person
  • U.S. citizens, residents, and entities organized under U.S. law, domestic estates and trusts.
  • Includes the U.S. Government, States, the District of Columbia and their agencies.
  • A U.S. person does not include
    • Captive insurance companies electing to be treated as a U.S. taxpayer under IRC § 953(d) who is not also licensed by a State as an insurance company
FATCA: Definitions

• Specified U.S. Persons do not include
  • Publically traded corporations or members of public company’s expanded affiliated group (EAG)
  • Section 501 tax exempt organizations
  • Retirement plans
  • U.S., state and municipal governments and their agencies
  • Banks, REITs, RICs (mutual funds)
  • Dealers or brokers in securities, commodities and derivatives
  • Charitable trusts
FATCA: Form W-8BEN-E

• Establishes foreign entity status
  • Used by financial institutions (domestic and foreign) to establish FFI and NFFE status
  • Used to claim treaty exemption or reduced withholding rate
  • FATCA withholding applicable if not provided FFIs
  • No treaty benefits allowed if not provided FFIs

• Form is not filed with IRS
FATCA: Form W-8BEN-E

• Form is provided and maintained by Withholding Agents

• Valid from date of signature to the last day of the third succeeding year

• Expires upon change of circumstances
FATCA: Form W-8BEN-E

• Part I
  • Part I, Box 4 Chapter 3 withholding status
  • Part I, Box 5 Chapter 4 withholding status

• Part II
  • Complete if:
    • Disregarded entity or branch

• Part III – treaty benefits (chapter 3 withholding only)
• Parts IV through XXVIII
  • Complete appropriate part based on entity type selected in Part I, box 5
• FATCA statuses requiring a GIIN
  • Participating FFI
  • Registered deemed-compliant FFI
  • Reporting Model 1 FFI (beginning Jan 1, 2015)
  • Reporting Model 2 FFI
  • Direct reporting NFFE
  • Sponsored direct reporting NFFE
FATCA: Form W-8BEN-E

• FATCA statuses not requiring further certification
  • Non-participating FFI, including:
    • Limited FFI
    • FFI related to a reporting IGA FFI, except a registered deemed-compliant FFI or participating FFI

• FATCA statuses requiring further certification
  • Sponsored FFIs that have not, and are not required to obtain a GIIN
  • IGA Annex 2 entities
FATCA: Form W-8BEN-E

• IGA Annex 2 entities
  • Certified deemed-compliant entities
    • Local bank (Part V)
    • FFI with low value accounts (Part VI)
    • Sponsored closely held investment vehicles (Part VII)
    • Limited life debt investment vehicles (Part VIII)
    • Investment advisors and investment managers (Part IX)
    • Owner-documented FFI (Part X)
    • Restricted distributor (Part XI)
    • Non-reporting IGA FFIs (including registered deemed compliant FFI under Model 2 IGA)
• IGA Annex 2 entities
  • Certified deemed-compliant entities (continued)
    • Foreign government, government of U.S. possession, or foreign central bank (Part XIII)
    • International organization (Part XIV)
    • Exempt retirement plans (Part XV)
    • Entity wholly owned by exempt beneficial owners (Part XVI)
    • Territory financial institution (Part XVII)
    • Sponsored direct reporting NFFE (Part XXVIII)
    • Non-financial group entity (Part XVIII)
    • Excepted non-financial entity in liquidation or bankruptcy (Part XX)
FATCA: Form W-8BEN-E

• IGA Annex 2 entities
  • Certified deemed-compliant entities (continued)
    • 501(c) organization (Part XXI)
    • Other not-for-profit entity (Part XXII)
    • Publicly traded NFFE or NFFE affiliate of a publicly traded company (Part XXIII)
    • Excepted territory NFFE (Part XXIV)
    • Active NFFE (Part XXV)
    • Passive NFFE (XXVI)
    • Excepted inter-affiliate FFI (Part XXVII)
FATCA: Common Designations and Certifications

• FFI
• Exempt beneficial owners
  • Foreign retirement plans
  • Non-financial group entities
• Active NFFE
• Passive NFFE
• **FFI**

  • Withholding agents must verify GIIN

  • If W-8BEN-E designates GIIN is “applied for” the GIIN must be the GIIN must be received within 90 days to be a compliant FFI

  • If all registration and appropriate designation criteria are not met

    • Form W-8BEN-E is invalid

    • Impose withholding
FATCA: Common Designations and Certifications

• **Foreign retirement plans**
  
  • Need to review subsidiary funds within organization
  
  • Excepted from GIIN registration
  
  • Not all treaty protected plans will be covered, need to verify criteria within regulations and IGAs
• **Non-financial group entities**
  - Includes
    - Holding companies
    - Treasury centers
    - Captive insurance company
  - Does not include
    - EAG entities with less than:
      - Less than 25% gross passive income;
      - Less than 5% of gross income generated from FFIs; and
      - Less than 25% of its assets are passive income producing assets
    - Holding companies are generally exempt from FFI status
• Public company and affiliates
  • Includes
    • Publicly traded NFFE
    • An NFFE that is a member of an EAG which is a publicly traded U.S. or foreign entity
    • Be sure to include the following on W-8BEN-E:
      • Publicly traded parent company information
      • Stock exchange parent is traded on
      • Verify stock is regularly traded
      • If missing any of the above information or verifications, the form is incomplete which requires withholding or request corrected form
FATCA: Common Designations and Certifications

• Active NFFE
  • Includes
    • Not an FFI
    • Less than 50% of entity’s gross income for the preceding calendar year is passive and
    • Less than 50% of the weighted average percentage of assets (test quarterly) are passive income producing assets
    • Must test annually
FATCA: Common Designations and Certifications

• **Passive NFFE**
  - Not an active NFFE
  - Must provide withholding agents with substantial owner information, or certify there are no substantial U.S. owners

• **Substantial U.S. owner**
  - U.S. person who directly or indirectly holds 10% or more ownership interest in the entity; or
  - More than 0% if an investment entity or specified insurance company
FATCA: Certification of Form W-8BEN-E

• **Authorized individual**
  - An authorized individual is a:
    - Representative of the beneficial owner; or
    - Officer of the beneficial owner; or
    - Participating payee; or
    - Account holder
  - An authorized individual must sign, date and check the box certifying legal capacity to sign for entity
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Jack also specializes in foreign investment in U.S. real property, and other U.S. assets, pre-immigration planning, U.S. expatriation matters, U.S. persons in receipt of large foreign gifts and inheritances, foreign account compliance and offshore voluntary disclosures.
Compliance Challenges
W-8BEN, W-9, and Equivalents

William Byrnes
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Compliance Challenges

I. IRS writes regulations and develops forms from the perspective that the recipient/taxpayer/vendor/payee, etc. understand U.S. tax and are U.S. based persons - but most W-8 users do not and are not.

II. Form W-8 and W-9 are difficult for many to complete.

III. 100m minimum but maybe 900m tax certifications (W8s & W9) need collecting and validating by 2018.
“when the Finance Committee began public hearings on the Tax Reform Act of 1969 I referred to the bill as ‘368 pages of bewildering complexity.’ It is now 585 pages . . . . It takes complicated amendments to end complicated devices.”

Senator Russell Long, Chairman, Finance Committee

FATCA law, regs, notices, instructions?
10 pages → 2,000 pages
US Taxpayers Overseas or with Overseas Assets

Overseas US persons approx. 7 million

US res. with Foreign Assets estim. 3 million

Treasury FBAR compliance estimate:
As many as 10 million due but only approx. 800,000 filed = less than 20% compliance
Results of 2013 - 2015

Big 4 Surveys

Paystream Advisors

Democrats Abroad
## Analysis of November 2015 GIIN List

<table>
<thead>
<tr>
<th>FATCA IGA Scenarios</th>
<th>Nov 2015 GIINs</th>
<th>Oct 2015 GIINs</th>
<th>Sept 2015 GIINs</th>
<th>Jurisdictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Model 1A IGA</td>
<td>107,048</td>
<td>106,151</td>
<td>104,755</td>
<td>90</td>
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<tr>
<td>Model 1B IGA</td>
<td>43,134</td>
<td>42,663</td>
<td>42,041</td>
<td>8</td>
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<tr>
<td>Model 2 IGA</td>
<td>19,099</td>
<td>18,978</td>
<td>18,884</td>
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<tr>
<td>No IGA</td>
<td>6,868</td>
<td>6,756</td>
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<td>US</td>
<td>924</td>
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<td>911</td>
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<td>US Territory</td>
<td>74</td>
<td>73</td>
<td>79</td>
<td>6</td>
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<tr>
<td>IGAs signed or agreed</td>
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<tr>
<td>Total</td>
<td>177,147</td>
<td>175,543</td>
<td>173,346</td>
<td>250</td>
</tr>
</tbody>
</table>

LEIs? ap. 400K entities from 189 countries – double the GIINs!
GIINs by Region

Breaking down the 177,147 current GIIN registrations by region:

- EMEA 93,128 (53 percent)
- AMER 60,425 (34 percent)
- APAC 22,633 (13 percent)
- “Other” 961 (1 percent)
## GIINs by Country Examples

<table>
<thead>
<tr>
<th>Country</th>
<th>GIINs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cayman Islands</td>
<td>33,348</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>8,758</td>
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<tr>
<td>Brazil</td>
<td>5,709</td>
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<tr>
<td>Guernsey</td>
<td>5,172</td>
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<tr>
<td>Canada</td>
<td>4,549</td>
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<tr>
<td>Russian</td>
<td>1,306</td>
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<tr>
<td>India</td>
<td>910</td>
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<td>UK</td>
<td>24,545</td>
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<td>BVI</td>
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<td>China</td>
<td>1,082</td>
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<td>Mexico</td>
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**Expanded Affiliate Groups = 5,996**

<table>
<thead>
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<th>Country</th>
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W8 Equivalents

• IGA Equivalents / Substitute Forms
• OECD Common Reporting Standard for AEOI (96 countries so far)
• UK’s Son of FATCA for AEOI
• Expansion of Scope of EU AEOI over Income and Entities
• Multiple W-8 equivalent forms in future
Form W-9 Compliance Challenges

I. Limited liability companies (LLCs) believe themselves to be corporations for tax purposes even though most have not elected corporate tax status - fixed in new W-9

II. Disregarded Entities
   A. IRS previously removed “disregarded entity” checkbox from LLC section of new Form W-9.
   B. LLCs that are DEs must instead include owner’s name in name line, and LLC name in business name/DE line.

III. Instructions for how LLCs and DEs are to complete the form are sent to payees.
Form W-9 Ongoing Compliance Challenges

I. S v C corp designations continue to be cause for confusion.
   A. Questions arise regarding the corporate exemption to Form 1099 reporting.
   B. Some payers believe S corporations are not entitled to the corporate exemption.

II. Name conventions for sole proprietors
   A. Even though sole proprietors have D/B/As or business aliases, the business owner’s name is the name to be used for tax reporting.
   B. In the case of individually owned sole proprietorships, payers can use either the SSN or EIN on the 1099, though the IRS prefers the SSN.
Form W-9 Ongoing Compliance Challenges

I. When a signature under penalty of perjury is required
   A. For payments reported on Forms 1099-B, DIV, INT, OID, and PATR.
   B. In a first “B Notice” situation
   C. To overcome a presumption of foreign status
   D. FATCA certifications (new)

II. Otherwise, signature not required.
   A. Perjury language includes no certification that the payee is of the entity type it claims to be.
   B. E.g., corporation, individual, partnership, etc.
Form W-9 New Compliance Challenges

I. Payees claiming exemption from backup withholding (i.e., Form 1099 reporting) now have a line on the face of the Form W-9 to include an exemption code (found in the instructions).

   I. Most commonly used codes will be 1 (tax-exempt); 2 (federal govt agency); 3 (state govt agency) and 5 (corporation) (but there are 13 choices).

II. Payees claiming exemption from FATCA reporting also have a space to enter a code indicating an exempt FATCA status.

   I. This code is necessary only for certain accounts maintained outside the U.S. by certain foreign financial institutions.
Form W-9 New Compliance Challenges

I. Beginning 1/1/15, because of FATCA, corporations exempt from Form 1099 reporting will be required to provide a Form W-9 (or other allowable documentation per the FATCA regs [such as a copy of the entity’s Articles of Incorporation] to avoid 30% FATCA withholding and reporting on Form 1042-S, even if the payee has a corporate indicator in its name, such as Inc., P.C., corp. and there are no indicia of foreign status (such as a foreign address or other indicator).

II. This requirement effectively renders the domestic “eyeball” test extinct.
Form W-8BEN Compliance Challenges

I. Industry states that 900,000,000 W8 series to be collected over next three years

II. The new Form W-8BEN asks for country of citizenship, rather than country of residency.
   A. Tax treatment, for U.S. purposes, depends on country of residency (except for U.S. citizens, who are subject to U.S. tax on worldwide income regardless of where they reside).
   B. The new Form W-8BEN still asks for permanent residence address.

III. This change may make it easier for the payee to complete.

IV. This change may possibly make it easier for the payer to identify conflicting information and claims, provided the relationship between citizenship, residency, and tax status is understood.

V. Foreign tax identifying number will eventually be required, but DOB can be used currently.

VI. Foreign tax identifying number can now be used to claim treaty benefits; a U.S. TIN is not required.
Form W-8BEN-E Compliance Challenges

I. The new Form W-8BEN-E relies on a high degree of training and care on the part of the person who completes the form for the foreign entity.

II. Many payers frequently encounter some current Forms W-8BEN fail the initial sufficiency review largely because the foreign person did not understand the U.S. regulatory terms used on the form and did not read the “Instructions” for the form.

III. The new W-8BEN-E raises that challenge exponentially for the foreign person as well as the payer/requester.

IV. It also creates great complexities for U.S. payers who must design systems and procedures to accommodate a large number of new status categories, treatments appropriate for each, and detailed written procedures for what we envision as a significant number of W-8BEN-Es requiring individual intervention and review by personnel trained in post-FATCA compliance.