Forms W-8BEN and W-9 Compliance in Foreign and U.S. Business Transactions: Are You Ready?

Meeting the Demands of the Substantially Overhauled W-8BEN Under New FATCA Rules

THURSDAY, JULY 10, 1:00-2:50 pm Eastern

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Webinar Agenda

I. Terms of revised Form W-8BEN draft forms
   A. Form for individuals—major changes (William Byrnes)
   B. Form for entities (Kelley Miller)

II. Significant ongoing compliance challenges with W-8BEN and W-9 (Marianne Couch)

III. Best practices for validating forms (Marianne Couch)

IV. Current IRS audit imperatives (Harold Adrion)
Professor William H. Byrnes, IV
Thomas Jefferson School of Law
“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
Regulatory Milestones

- HIRE Act (FATCA): March 18, 2010
- Draft Regs: Feb 8, 2012
- Final Regs: Jan 28, 2013
- Corrections: Sept 9, 2013
- Final FFI agreement: Dec 26, 2013
- Coordination Regs: Feb 20, 2014
- W-8s, 8966, 1042-S: March / April 2014
- 1st FFI List: June 2, 2014
- W-8BEN-E Inst: June 25, 2014
- QI Agreement: June 27, 2014
- 2nd FFI List: July 1, 2014
- Ch. 4 W/H on NPFFIs from 143 countries
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 in 2003!
## Analysis of July 1\textsuperscript{st} GIIN List

<table>
<thead>
<tr>
<th>Category</th>
<th>Total</th>
<th>IGA</th>
</tr>
</thead>
<tbody>
<tr>
<td>FFIs</td>
<td>87,933</td>
<td>250</td>
</tr>
<tr>
<td>Model 1A IGA</td>
<td>48,265</td>
<td>86</td>
</tr>
<tr>
<td>Model 1B IGA</td>
<td>19,580</td>
<td>2</td>
</tr>
<tr>
<td>Model 2 IGA</td>
<td>15,239</td>
<td>13</td>
</tr>
<tr>
<td>US / US Dep</td>
<td>620/61</td>
<td>1/5</td>
</tr>
<tr>
<td>Non IGA</td>
<td>4,228</td>
<td>143</td>
</tr>
</tbody>
</table>
## Analysis of GIIN List - EAGs

<table>
<thead>
<tr>
<th>Country</th>
<th>Count</th>
<th>Percentage of EAGs</th>
</tr>
</thead>
<tbody>
<tr>
<td>EAGs</td>
<td>3,778</td>
<td></td>
</tr>
<tr>
<td>Cayman</td>
<td>813</td>
<td>(21.5% of EAG)</td>
</tr>
<tr>
<td>UK</td>
<td>290</td>
<td></td>
</tr>
<tr>
<td>Japan</td>
<td>167</td>
<td></td>
</tr>
<tr>
<td>Lux</td>
<td>166</td>
<td></td>
</tr>
<tr>
<td>Switzerland</td>
<td>157</td>
<td></td>
</tr>
<tr>
<td>USA</td>
<td>101</td>
<td></td>
</tr>
<tr>
<td>Jersey</td>
<td>92</td>
<td></td>
</tr>
<tr>
<td>BVI</td>
<td>85</td>
<td></td>
</tr>
</tbody>
</table>

1% of the GIIN List is AXA and its affiliates
Analysis of GIIN List part 2

• Cayman: 19.5% of GIIN registrations (17,207)

• UK: only 6,994 of 75,000 FFIs (est. by HMRC)

• NAFTA - Canada: 2,566 & Mexico: 410 (from 418 in June)

• Brazil: 2,362 Russia: 729 India: 321 China: 213
Analysis of GIIN List part 3

• Europe: France (2,422), Germany (2,894), Netherlands (2,280) and Ireland (2,007)

• Financial Centers: Switzerland (4,279), Luxembourg (4,061), Austria (3,010), Guernsey (2,585), Jersey (1,974), Isle of Man (355), Lichtenstein (291), and Gibraltar (116).

• Caribbean: BVI (2,373), Bahamas (646), Panama (484) + Bermuda (1,579)
IGA Update and Global Information Exchange

- Model IGAs + Annexes: July 6, 2012
- Last Model Updates: June 6, 2014
- 101 IGAs as of July 8, 2014 of 244 possible countries and jurisdictions on FATCA list, W/H from Jan 1
- W/H from July 1 for 143 non-IGAs
IGAs Update as of July 7th

86 Model 1 reciprocal & 2 non-reciprocal

13 Model 2 non reciprocal

143 countries / dependencies without IGAs
IGA Advantages

• GIIN not required until Jan 1, 2015
• Reporting to Home Country instead of IRS
• Replacement of “Substantial U.S. Owner” with FATF “Controlling Persons”
• No Closing & No W/H on Recalcitrant
• Retirement Accounts DCFFI or Exempt BO
• Most Favored Nation Clause / Cherry Pick
TIEAs Still Relevant

(a) identity of the person under examination or investigation;
(b) a statement of the information sought including its nature;
(c) the tax purpose for which the information is sought;
(d) the information is held in the requested party or is in the possession or control of a person within the jurisdiction;
(e) to the extent known, the name and address of any person believed to be in possession of the requested information;
(f) a statement that the request is in conformity with the law and administrative practices of the applicant party,
(g) would be able to obtain the information under the laws of the applicant party;
(h) a statement has pursued all means available, except disproportionate difficulties
GATCA et al

- GATCA = OECD Common Reporting Standard for AEOI (66 countries so far)
- UK’s Son of FATCA for AEOI
- Expansion of Scope of EU AEOI over Income and Entities
- Probable multiple W-8 type forms in future
<table>
<thead>
<tr>
<th>Chapter 3</th>
<th>Taxpayer</th>
<th>Character of Income</th>
<th>Withholding Tax</th>
<th>Withholding Agent</th>
<th>Exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>§1441</td>
<td>NRA Foreign Partnerships</td>
<td>FDAP Income</td>
<td>30% gross</td>
<td>Payor</td>
<td>ECI</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Interest,</td>
<td></td>
<td></td>
<td>most Interest = Portfolio / Bank Deposit</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Premiums,</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td>• Annuities,</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>• Dividends,</td>
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<td>• Compensations,</td>
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<td>• Rents,</td>
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<td>• Royalties,</td>
<td></td>
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<td></td>
<td></td>
<td>• Salaries,</td>
<td></td>
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<td></td>
<td></td>
<td>• Wages,</td>
<td></td>
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<td></td>
<td></td>
<td>• Remunerations,</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>• Emoluments, etc.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>§1442</td>
<td>Foreign Corps.</td>
<td>FDAP</td>
<td>30% gross</td>
<td>Payor</td>
<td>Same as above</td>
</tr>
<tr>
<td>§1445</td>
<td>Foreign Persons</td>
<td>Real Estate Disposition (FIRPTA)</td>
<td>10% gross</td>
<td>Payor</td>
<td>Certificate of Reduced WH</td>
</tr>
<tr>
<td>§1446</td>
<td>Foreign Partner</td>
<td>Partnership ECI to a U.S. Trade or Business</td>
<td>Progressive tax rate</td>
<td>Payor</td>
<td>Income not ECI (FDAP only §1441/41)</td>
</tr>
<tr>
<td>Chapter 4</td>
<td>Taxpayer</td>
<td>Character of Income</td>
<td>Withholding Tax</td>
<td>Withholding Agent</td>
<td>Exemption</td>
</tr>
<tr>
<td>---</td>
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<td>---</td>
</tr>
<tr>
<td>§1471</td>
<td>Non Participating FFI</td>
<td>“withholdable payments”</td>
<td>30% gross proceeds</td>
<td>U.S Payor</td>
<td>Payment whose beneficial owners are: -Foreign governments -International Organizations -foreign central bank of issue</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FDAP</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sale of shares, real estate, bonds</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>U.S. Recalcitrant Account Holders</td>
<td>“pass-thru payments”</td>
<td>30% gross</td>
<td>FFI</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Forms

Form W-8BEN (PDF) Certificate of Foreign Status of BO for Withholding.

Form W-8BEN-E (PDF) Certificate of Foreign Status of BO for Withholding (Entities)

Form W-8IMY (PDF) Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for US Withholding

Form 1042-S Foreign Person's U.S. Source Income Subject to Withholding

Form 8966 FATCA Report
W-8BEN

- Chapter 3, backup withholding, and Chapter 4
- When to Use and Not to Use?
- Expiration?
- Change of Circumstances?
W-8BEN

- Disregarded Entities?

- 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

- Treaty benefits
Important Developments to the Form W-8BEN-E

Kelley C. Miller
July 9, 2014
W-8BEN-E: General Overview of Form

Purpose of Form W-8BEN-E:

• Form is used by foreign entity to document their status for purposes of Chapter 3 and 4

• Foreign persons are subject to U.S. tax at a 30% rate (the foreign-person withholding rate) on income they receive from U.S. sources that consists of:
  • Interest (OID)
  • Dividends
  • Rents
  • Royalties
  • Premiums
  • Annuities
  • Compensation for services performed
  • Substitute payments in a securities lending transaction
  • FDAP
W-8BEN-E: General Overview of Form

30% Withholding Tax

- Imposed on the gross amount paid and is generally collected by withholding under Section 1441 or 1442

- Section 1446 requires a partnership conducting trade or business in the U.S. to withhold tax on a foreign partner’s distributive share of the partnership’s effectively connected taxable income

- A withholding agent or payer of the income may rely on a properly completed Form W-8BEN-E to treat a payment associated with the Form W-8BEN-E as a payment to a foreign person who beneficially owns the amounts paid.

- A withholding agent may also rely on the Form W-8BEN-E to apply a reduced rate of, or exemption from, withholding.
W-8BEN-E: General Overview of Form

Who **Must** Provide Form W-8BEN-E?

- If you are a foreign entity receiving a withholdable payment from a withholding agent, receiving a withholdable payment from a withholding agent, receiving a payment subject to Chapter 3 withholding, or if you are an entity maintaining an account with a Foreign Financial Institution (FFI)
W-8BEN-E: General Overview of Form

You SHOULD NOT use W-8BEN-E if:

1. You are a U.S. person.

2. You are a foreign insurance company that made a Section 953(d) election to be treated as a U.S. person.

3. You are a nonresident alien individual.

4. You are a disregarded entity with a single owner who is a U.S. person and you are not a hybrid entity claiming treaty benefits.

5. You are a disregarded entity with a single owner who is no a U.S. person or a branch of an FFI claiming its status for Chapter 4 purposes and you are not a hybrid entity claiming treaty benefits.
You SHOULD NOT use W-8BEN-E if:

1. You are acting as an intermediary, a QI, or QSL with regard to a payment of U.S. source substitute dividends.

2. You are receiving income that is effectively connected with the conduct of a trade or business in the U.S., unless it is allocable to you through a partnership.

3. You are filing for a foreign government, international organizations, foreign central bank of issue, foreign exempt organizations, private foreign foundation, or government of a U.S. possession.
You **SHOULD NOT** use W-8BEN-E if:

1. You are a flow-through entity receiving a withholdable payments or a payment subject to Chapter 3 withholding.
2. You are a reverse hybrid entity transmitting beneficial owner documentation provided by your interest holders to claim treaty benefits on their behalf.
3. You are a withholding foreign partnership of a withholding foreign trust within the meaning of Sections 1441 and 1442 and the Regulations thereunder.
4. You are a foreign partnership or foreign grantor trust providing documentation for purposes of Section 1446.
5. You are a foreign branch of a U.S. financial institution that is an FFI.
W-8BEN-E: General Overview of Form

When to provide Form W-8BEN-E:

• This form is not provided to the Internal Revenue Service!

• Give the Form W-8BEN-E to the person who requested it before the payment is made to you, credited to your account, or allocated. If the Form is not provided prior to this time, the withholding agent may have to withhold at the 30% rate under Chapter 3 or 4, or the backup rate, or the rate applicable under Section 1446.

• If any circumstances have changed, notify withholding agent or institution within 30 days and file a new Form.
W-8BEN-E: Definitions

The recently released Instructions to Form W-8BEN-E provide the following definitions:

• Account holder
• Amounts subject to withholding under Chapter 3
• Beneficial owner
• Chapter 3 and Chapter 4 (Status)
• Deemed compliant FFI
• Disregarded entity
• Financial account
• Financial institution
• Foreign financial institution
• Fiscally transparent entity
W-8BEN-E: Definitions

The recently released Instructions to Form W-8BEN-E provide the following definitions:

- Flow-through entity
- Foreign person
- GIIN (Global Intermediary Identification Number)
- Hybrid entity
- Intergovernmental agreement (IGA – Model 1 & Model 2 IGA)
- Limited branch
- Nonparticipating FFI
- Participating FFI
W-8BEN-E: Definitions

The recently released Instructions to Form W-8BEN-E provide the following definitions:

- Participating payee
- Payee
- Payment settlement entity (PSE)
- Qualified intermediary (QI)
- Recalcitrant account holder
- Reverse hybrid entity
- Specified U.S. person
- Substantial U.S. owner
- U.S. person
- Withholdable payment
- Withholding agent
W-8BEN-E: Instructions

Part I: Identification of Beneficial Owner

• Line 1: Name of Beneficial Owner
• Line 2: Country of Incorporation
• Line 3: Name of Disregarded Entity Receiving a Payment (if applicable)
• Line 4: Chapter 3 Status
• Line 5: Chapter 4 Status (FATCA)
  • FFIs Covered by an IGA and Related Entities: Reporting Model 1 or Model 2 FFI
  • www.treasury.gov keeps a running list of countries with IGAs
  • Nonprofit organizations covered by an IGA
W-8BEN-E: Instructions

Part I: Identification of Beneficial Owner

• Line 6: Permanent residence address
• Line 7: Mailing address
• Line 8: TIN
• Line 9: GIIN or Foreign TIN
• Line 10: Reference Number
  • Can be used by the withholding agent for internal reference (e.g., Form 8-BEN-E is related to a particular Form W-8IMY). Should you use this?
Part II: Disregarded Entity or Branch Receiving Payment

• You only need to complete Part II if you are a branch of an FFI identified in Line 1 that is receiving a withholdable payment as an intermediary and you operate in a jurisdiction other than the country of residence identified on Line 2.

• Line 11: Chapter 4 (FATCA) Status

• Line 12: Address of the branch or disregarded entity

• Line 13: GIIN of the branch that receives the payment
Part III: Claim of Treaty Benefits

- Line 14a: If an entity is claiming a reduced rate of, or exemption from, withholding under an income tax treaty, it must enter country where the entity identified on Line 1 that it is a resident.
- Line 14b: Certification of reduced rate or exemption from withholding
- Line 14c: Line for foreign corporation claiming treaty benefits.
  - Treaty must have been in place by January 1, 1987
  - Must be a “qualified resident” of a country
    - 4 element test
- Line 15: Used where Line 14 is not applicable.
W-8BEN-E: Instructions

Parts IV through XXVIII: Certification of Chapter 4 Status

• Only one part of Parts IV through XXVIII should be completed that certifies Chapter 4 (FATCA) status

• Look to Line 5

• If you are a NPFFI, PFFI, registered, deemed-compliance FFI, reporting Model 1 or Model 2 FFI, or direct reporting NFFE, you are not required to complete any of the certifications in Parts IV through XXVIII
W-8BEN-E: Instructions

Part IV: Sponsored FFI That Has Not Obtained a GIIN
Part V: Certified Deemed-Compliant Nonregistered Local Bank
Part VI: Certified Deemed-Compliant FFI with Only Low-Value Accounts
Part VII: Certified Deemed-Compliant Sponsored, Closely Held Investment Vehicle
Part VIII: Certified Deemed-Compliant Limited Life Debt Investment Company
Part IX: Certified Deemed-Compliant Investment Advisors and Investment Managers
Part X: Owner-Documented FFI
Part XI: Restricted Distributor
Part XII: Nonreporting IGA FFI
Part XIV: International Organization
Part XV: Exempt Retirement Plans
W-8BEN-E: Instructions

Part XVI: Entity Wholly Owned by Exempt Beneficial Owners
Part XVII: Territory Financial Institution
Part XVIII: Exceptioned Nonfinancial Group Entity
Part XIX: Exceptioned Nonfinancial Start-Up Company
Part XX: Exceptioned Nonfinancial Entity in Liquidation or Bankruptcy
Part XXI: 501(c) Organizations
Part XXII: Nonprofit Organizations
Part XXIII: Publicly Traded NFFE or NFFE Affiliate of a Publicly Traded Corporation
W-8BEN-E: Instructions (Cont.) and Summary

Part XXIV: Excepted Territory NFFE
Part XXV: Active NFFE
Part XXVI: Passive NFFE
Part XXVII: Excepted Inter-Affiliate FFI
Part XXVIII: Sponsored Direct Reporting NFFEs
Part XXIX: Certification
Part XXX: Substantial U.S. Owners of Passive NFFE

• Other special circumstances (e.g., Hybrid entities; IGA certifications; alternate certifications)

• Summary and notes

Kelley C. Miller
Direct 215.851.8855
kmiller@reedsmith.com
SIGNIFICANT ONGOING COMPLIANCE CHALLENGES
Compliance Challenges

I. IRS writes regulations and develops forms from the perspective that the recipient/taxpayer/vendor/payee, etc. knows who and what they are for U.S. tax purposes.

II. Form W-9 is difficult for many payees to complete as it is without the FATCA modifications.

III. Forms W-8 have become even more complicated.
Form W-9 Ongoing Compliance Challenges

I. Many limited liability companies (LLCs) believe themselves to be corporations for tax purposes even though most have not elected corporate tax status.

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 found on page 2 of Form W-9, which few payees receive.
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. We believe completing this code section is optional and payers will be able to honor a claim of exemption (e.g., payee indicates it is an exempt corporation elsewhere on the form) even if the exempt code section is not completed.

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-9 New Compliance Challenges

I. Contrast with the “per se” foreign corporation “eyeball” test.
   A. If a beneficial owner has a per se foreign corporate indicator in its name, the payor/withholding agent must treat the beneficial owner as foreign.
   B. Examples: Ag, SA, PLC
   C. These entities cannot claim, and withholding agents are not permitted to honor a claim of, U.S. status.

II. See Reg. §301.7701-2(b)(8)(i) for list of per se foreign corporate indicators.
Form W-8BEN Compliance Challenges

I. Good news: shorter than current Form W-8BEN as is to be completed by individuals, only.

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 may eventually be required.

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.
What are Companies Wrestling with on the Payment Side?

### Payment Exception
- Non-Financial or Grandfathered Obligation
- Payor to Classify

### Payee Exception
- FATCA Classification
- Payee provides W-8

### Challenges
- Payor must classify payments
- System needed to classify
- Ongoing review of contracts (material modification)

### Incremental efforts
- For financial payments need to collect W-8 forms
- For non-responsive payees, need to determine payment exceptions

### Reporting
- 1042-S reflecting exemption codes
- 1042-S reflecting payee status

### Risk
- Misclassification risk generally on payor
- Misclassification risk generally on payee
Payments Potentially Covered

- Foreign Law Firm
  - Foreign Insurer
    - US risk-related premiums
    - Interest on product-related A/P
- US OpCo
  - Internal shipping fees
- Foreign IP CO
  - Foreign Vendor
  - Foreign Shipper
  - Foreign Bank
  - US Parent Corporation
    - US source dividends and (post-2016) stock redemption proceeds
    - US source services fees
    - US source interest
    - US source royalties
CO pays a foreign entity (“FC”) $1 million of US source interest. Co obtains no W-8BEN-E, withholds nothing, and files no 1042 or 1042-S.

Co is liable for withholding and penalties described below. In addition, interest will run on the $428,571 withholding payment and any accuracy-related or failure to file penalties due, starting on March 15, 2015 (the due date for ACo’s Form 1042).

### Consequence Calculation Maximum Due

<table>
<thead>
<tr>
<th>Consequence</th>
<th>Calculation</th>
<th>Maximum Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Withholding Agent’s Liability</td>
<td>30% X $1,000,000</td>
<td>$300,000</td>
</tr>
<tr>
<td>Gross Up or Pyramid Effect</td>
<td>$1,000,000/.7 = $1,428,571</td>
<td></td>
</tr>
<tr>
<td>Total Liability with Gross Up</td>
<td>30% x $1,428,571</td>
<td>$428,571</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Penalty</th>
<th>Calculation</th>
<th>Maximum Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to File</td>
<td>$428,571 x 5%/month</td>
<td>25% = $107,143</td>
</tr>
<tr>
<td>Failure to Pay</td>
<td>$428,571 x .5%/month</td>
<td>25% = $107,143</td>
</tr>
<tr>
<td>Failure to Deposit</td>
<td>$428,571 x 10%</td>
<td>$42,857</td>
</tr>
<tr>
<td>Failure to File Information Reporting Return</td>
<td>2 x $100</td>
<td>$200</td>
</tr>
<tr>
<td>Total Penalty Calculation</td>
<td></td>
<td>$246,628</td>
</tr>
<tr>
<td>Intentional Disregarded Penalty</td>
<td>$1,428,571 x 10% x 2</td>
<td>$285,714</td>
</tr>
<tr>
<td><strong>Total Potential Liability</strong></td>
<td></td>
<td><strong>$960,713</strong></td>
</tr>
</tbody>
</table>

* This total takes into account the maximum withholding agent liability plus penalties (taking into account a limited offset permitted under the rules) but no withholding agent liability or interest.
• So what do companies need to show the IRS?
  • Work plans that demonstrate (in detail) the steps taken, stakeholders involved
  • Dates of activities (ideally, including completion dates in 2014 and earlier)
  • Agendas from stakeholder implementation meetings
  • Actual implementation with respect to the remaining July 1, 2014, obligations
  • Actual implementation with respect to January 1, 2015, obligations
  • Workpapers showing reasonable analyses regarding payee classifications
  • Privilege / work product issues?
  • Work plans and to-dos, including timing, are facts (not protected)
As of 6/25/2014

Model 1 IGA Signed: Australia, Belgium, Canada, Cayman Islands, Costa Rica, Denmark, Estonia, Finland, France, Germany, Gibraltar, Guernsey, Hungary, Honduras, Ireland, Isle of Man, Italy, Jamaica, Jersey, Liechtenstein, Luxembourg, Malta, Mauritius, Mexico, Netherlands, New Zealand, Norway, Slovenia, Spain, South Africa, United Kingdom

Model 1 agreed in substance: Antigua and Barbuda, Azerbaijan, Bahamas, Barbados, Belarus, Brazil, British Virgin Islands, Bulgaria, Colombia, Croatia, Curacao, Cyprus, Czech Republic, Georgia, India, Indonesia, Israel, Kosovo, Kuwait, Latvia, Lithuania, Panama, Peru, Poland, Portugal, Qatar, Romania, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Seychelles, Singapore, Slovak Republic, South Korea, Sweden, Turkey, Turkmenistan, Turks and Caicos Islands, United Arab Emirates

Model 2 signed the: Austria, Bermuda, Chile, Japan, Switzerland

Model 2 agreed in substance: Armenia, Hong Kong, Paraguay
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