

## **FATCA #12: Foreign Financial Institutions**

### **Qualified Intermediary**

Under the 2010 HIRE Act (IRC §1471(c)(1)), a foreign financial institution that is a party to a qualified intermediary agreement with the IRS must report the following information regarding each U.S. account maintained by the institution:

1. The name, address, and TIN of each account holder that is a specified U.S. Person.
2. The name, address and TIN of each substantial U.S. owner of any account holder that is a U.S. owned foreign entity.
3. The account number.
4. The account balance or value as determined at such time and in such manner as the IRS prescribes.
5. The gross receipts and gross withdrawals or payments from the account as determined for such period and in such manner as the IRS prescribes.

A Qualified Intermediary (“QI”) is a foreign financial institution that has entered into a withholding and reporting agreement (QI Agreement) with the IRS (T.R. §1.1441-1(e)(5)(ii)).

For U.S. Taxpayers, the QI must provide the U.S. payor with Form W-9 for each U.S. recipient account holder (the QI is not required to back-up withhold or file Form 1099).

For non-resident withholdings, a QI is a withholding agent subject to reporting rules, and payor for purposes of back-up withholding and Form 1099 information reporting rules.

Under a QI Agreement, a QI may choose not to assume primary responsibility for non-resident withholding. The QI must provide a U.S. withholding agent with Form W-8IMY certifying the status of its unnamed U.S. account holders and is not required to withhold or report the payments on Form 1042-S.

A foreign financial institution that becomes a QI and elects primary withholding responsibility is not required to forward beneficial ownership information regarding its customers to a U.S. financial institution or other withholding agent of U.S. source investment income to establish the customer’s eligibility for an exemption from or reduced rate of, U.S. withholding tax.

Instead, the QI is permitted to establish for itself the eligibility of its customers for an exemption or reduced rate, based on a Form W-8, and information as to residence obtained under the know-your-customer rules to which the QI is subject in its home jurisdiction, as approved by the IRS or as specified in the QI Agreement (Rev. Proc. 2000-12, 2000-1 CB 387).

A QI may treat an account holder as a foreign beneficial owner of an account if the account holder provides a valid Form W-8 or other valid documentary evidence supporting foreign status. The QI cannot reduce the withholding rate if the QI knows the account holder is not the beneficial owner of a payment to the account.

If the foreign account holder is the beneficial owner of a payment, the QI can shield the account holder's identity from U.S. custodians and the IRS.

If a foreign account holder is a nominee and not the beneficial owner of a payment, the account holder must provide the QI with Form W-IMY for interest and specific information about each beneficial owner to which the payment related.

A QI that receives this information may shield the account holder's identity from a U.S. custodian, but not from the IRS.

If an account holder is a U.S. Person, the account holder must provide the QI with Form W-9 supporting U.S. status. Absent receipt of Form W-9, the QI must follow the presumption rules in the QI agreement to determine whether non-resident 30% withholding, or 28% back-up withholding, is required. A reduced rate of non-resident withholding may not be applied based on the presumption rules.

Pursuant to the QI agreement presumption rules, U.S. source investment income paid to an off-shore account is presumed paid to an undocumented foreign account holder and is subject to 30% withholding.

Foreign source income and broker proceeds paid to an off-shore account are presumed paid to a U.S. exempt recipient and are exempt from both non-resident and back-up withholding.

A QI must file Form 1042 by March 15<sup>th</sup> of the year following any calendar year in which the QI acts as a QI.

A QI is not required to file Form 1042-S for amount paid to each separate account holder, but must file a separate Form 1042-S for each type of reporting paid (income that falls within a particular withholding rate or within a particular income, exemption or recipient code).

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