

April 7, 2005

Qualified Intermediary : Draft regulation package

This information letter highlights important draft amendments, which are intended by the IRS and might be approved in the second half of the year 2005 (with probable retroactive effect to January 1, 2005).

Major topics are the withholding at source regulations governing payments made to foreign persons.

TIN requirements for certain foreign grantor trusts

Current documentation requirements ask for a taxpayer identification number (TIN) to be stated on a Form W-8IMY as soon as it represents to be a foreign grantor trust with 5 or fewer grantors.

According to the draft regulation package, this requirement shall be abolished.

As a consequence, a QI could accept a Form W-8IMY without a TIN as valid documentation.

Financial institutions in U.S. possessions

According to the draft regulation package, a financial institution located in a U.S. possession (e.g. Virgin Islands, American Samoa, Guam, Marshall Islands) will no longer be treated like a non-qualified intermediary, but its treatment will correspond to that of a U.S. branch of a foreign financial institution.

It should be noted that a possession's financial institution can elect such a treatment simply by filing a Form W-8IMY accordingly. As a consequence it has to deposit the withholding tax for its customers and is responsible for the reporting, whereas a QI simply has to prepare a Form 1042-S for such a financial institution and to transmit all related gross payments.

Conversion of foreign currency amounts

In the future, QIs might choose between converting amounts withheld into U.S. dollars at the spot rate on the day the tax is deposited (if within 7 days) and converting them at the spot rate on the date of payment, as currently permitted. However, taxpayers using the first alternative must do so consistently for all nondollar amounts withheld and from year to year.

Regulated investment companies

Regulated U.S. investment companies are allowed to estimate the composition of a distribution. This legislation might be extended to certain dividends.

Furthermore, the IRS will probably shift the responsibility for withholding the correct amounts from the QIs to regulated investment companies if underwithholding is due to an error by the regulated investment company.

QI Breakfast Meeting on April 20, 2005

We would like to take this opportunity to remind you of our QI Breakfast Meeting. This meeting will mainly cover the external audit for the year 2005. We are very pleased to inform you that John Stable, who previously worked for the IRS as Associate Chief Counsel (International), responsible for Qualified Intermediaries, will be our special guest speaker. John will be there to answer your questions, together with some of our US colleagues.

If you have any queries or should you require further details or assistance, please contact one of the following specialists:

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