



IRS ITIN Processing Revision may impact Law Firms filing in the US with Foreign Partners

*PwC Law Firm Services
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A recent revision of the IRS's procedures for processing Individual Taxpayer Identification Numbers ("ITINs") may increase the tax administrative burden of law firms with foreign partners that file tax returns in the United States. On June 22, 2012, the Service released revised procedures for processing ITINs effective immediately through the end of this year. The IRS expects to issue final ITIN processing rules before the 2012 individual income tax returns become due.

Law firm partners that have US tax reporting or filing requirements must have either a Social Security Number ("SSN") or an ITIN to comply with US tax laws. An ITIN is a number issued by the IRS for federal tax reporting purposes only. An ITIN is for those individuals that either do not have nor qualify for a SSN but are required to have a federal taxpayer identification number, which in most cases will be a non-resident alien partner.

In order to apply for an ITIN under the revised procedures, individuals must include with their ITIN application an original passport or certified copy of his/her passport from the agency that originally issued it. A notarized passport does not qualify as a certified copy. Rather, a certified copy is an exact copy of the original passport from the issuing agency that includes an official stamped seal. For instance, if a law firm has a foreign partner with a Singapore passport, that partner must receive a certified copy of his or her passport from the Singapore passport agency that issued the original passport.

The IRS has stated that original documents (passports) will be returned to taxpayers within 60 days, but it is unclear as to when the clock starts running -- from submission or receipt.

If the individual does not have a passport, the IRS has a list of other acceptable identifying documents that may be submitted with the ITIN application. These other documents would still need to be either an original document or a certified copy.

The IRS has identified several exceptions to these interim rules. Non-resident aliens who require an ITIN for purposes of withholding or to claim treaty benefits may still follow the procedures outlined in the Form W-7 instructions. This would require a Form W-7, passport notarized by a US Embassy or US notary, and a letter confirming their partnership interest.¹ However, if the ITIN application will be filed with a US tax return, the foreign partner will have to follow the revised procedures discussed above.

"Certified Acceptance Agents" must also comply with these new rules when filing Form W-7 on behalf of clients, including PwC who is a Certified Acceptance Agent. For example, PwC will need original passports or certified copies of passports to be included with the ITIN

¹ The letter requirement is addressed in the 2012 ITIN Review Frequently Asked Questions.



applications for its clients. It is expected that during this interim period, PwC will not be able to certify ITINs.

Next Steps

There are several issues that come to mind regarding the application of these revised interim procedures for law firms. Foreign partners applying for ITINs (and that do not fall within one of the exemptions listed above) will need to plan carefully in making this submission. Either the partner will be required to forgo travel that requires the use of his/her passport for the period of time during which the passport will be submitted to the IRS, or the partner must take steps to obtain from the agency that originally issued his/her passport a certified copy of the passport. A number of variables will affect a partner's decision as to which document he/she will submit with the ITIN application: (1) Is the foreign passport agency accessible? (2) Do they have in place a process for obtaining a certified copy of an original passport? (3) If so, how much time does it take (and how much does it cost) to obtain a certified copy of the partner's passport? (4) Are there any upcoming trips or events that may preclude the partner's submission of the original passport?

PricewaterhouseCoopers' team of professionals is ready to assist its multinational law firm clients in working with their foreign partners to comply with the interim procedures and to ensure that ITIN applications are filed properly. Please contact Stanley Kolodziejczak at (646) 471-3160, Gregg Sincoff at (646) 471-1335 or Nancy Regan at (646) 471-6104 in New York, or any member of your PwC Law Firm Services team.

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