

Draft FATCA-related IRS forms: A snapshot of those released so far

June 14, 2013

In brief

Preparation for compliance with FATCA is well underway and a key element will be the various forms used to communicate between withholding agents, their payees, and the Internal Revenue Service (IRS). As important FATCA compliance dates draw near, the IRS has recently released drafts of certain FATCA-related forms. These forms are important because they will impact both existing US information reporting requirements and FATCA compliance going forward. Specifically, they will facilitate the identification of the payee's FATCA classification, registration with the IRS, and the year-end reporting requirements. Many of these forms are already currently used to facilitate identification of payees and reporting under Chapter 3, but are being revised to accommodate the FATCA requirements. The IRS forms revised and released in draft more recently include:

- Form W-9 - *Request for Taxpayer Identification Number and Certification*
- Form W-8BEN – *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)*
- Form W-8BEN-E – *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)*
- Form W-8EXP – *Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting*
- Form 8957 - *Foreign Account Tax Compliance Act (FATCA) Registration*
- Form 1042 – *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*
- Form 1042-S – *Foreign Person's U.S. Source Income Subject to Withholding*.

Of note, the following draft FATCA-related IRS forms have been issued in draft within the last year:

- Forms W-8ECI – *Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States*
- W-8IMY – *Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding*.

This Newsbrief is intended to help stakeholders track the release of these draft forms as well as provide some high-level observations about how the revised forms are changing. The IRS has also provided a [list](#) of the draft FATCA-related forms on its website. Unfortunately, the draft forms discussed in this Newsbrief were released with partial or no instructions.

In detail

The imminent need to register—Form 8957

The [draft Form 8957](#) was released in April 2013 and is the first of its kind. When final, the form will serve as an important element to the IRS FATCA registration process. An on-line registration portal (Portal), which the IRS intends to utilize for FATCA registrations and the issuance of global intermediary identification numbers (GIINs), is expected to be available no later than July 15 of this year. The IRS is encouraging financial institutions to use the paper-less on-line Portal, but will accept registrations that are in paper form using a final Form 8957 no earlier than July 1. However, it is important to note that paper forms may not be processed until October 2013. As a result, taxpayers may experience a delay in receiving a response if they choose to register using the paper version rather than the on-line version. See [IRS release](#) and prior [Global IRW Newsbrief](#) dated April 9, 2013 for more details.

Observation: Questions presented in the on-line registration Portal should look very similar to the questions shown on the draft Form 8957, but likely will be presented differently to make the electronic process more efficient. For example, there may be drop down responses for some questions.

Other forms to facilitate compliance and year-end reporting

The IRS currently requires reporting of US source income paid to non-US persons using Forms 1042-S and 1042. Certain amounts and information reportable under FATCA will be added to these forms starting calendar year 2014 and thus, revised forms will be needed well in advance of the corresponding March 15, 2015 filing date. The IRS released both a 2014 [draft Form 1042-S](#) and 2014 [draft Form 1042](#) in April 2013.

Form 1042-S

The draft Form 1042-S retains the same number of boxes (25), but requests more information by renaming boxes and inserting additional subsections. For example, the withholding agent must indicate in Lines 3 and 4 whether amounts were withheld for Chapter 3 or Chapter 4 purposes. The draft form also requests GIINs for withholding agents, intermediaries, and flow-through entities and requires that the withholding agent check a box if the tax is not deposited under escrow procedures. In addition, it requests Chapter 3 and Chapter 4 status codes, exemption codes, as well as type of recipient, withholding agent, or intermediary codes. Most notably, the draft form allows the withholding agent to provide the recipient's date of birth when required.

Observation: It is generally not standard practice for US financial institutions to track the recipient's date of birth, but now they may need to request that information for non-US account holders. The change likely arose out of a requirement in the Model 1A IGA to provide additional identifying information when reporting US account information belonging to a resident of the partner country.

Form 1042

The 2014 draft Form 1042 increases the form's length from one to two pages and adds two new sections:

- ***Section 2: Reconciliation of Payments of U.S. Source FDAP Income***
Requires withholding agents to explain the difference between total US source FDAP income required to be withheld upon under Chapter 4 and total US FDAP income reported on all Forms 1042-S. Reconciling items include the amount of income paid with respect to grandfathered obligations, the amount of excluded nonfinancial payments, etc.
- ***Section 3: Notional principal contract payments and other payments on derivative contracts that reference (in whole or in part) a U.S. security***

Requires withholding agents to indicate whether they made payments (including gross proceeds) on a notional principal contract or other derivatives contract that references (in whole or in part) a US security. Although instructions to the 2014 draft Form 1042 have not been issued, this requirement appears to pertain to payments characterized as dividend equivalent payments under Section 871(m).

The 2014 draft requires more detailed reporting on US source substitute payments, specifically with respect to both total payments and the corresponding taxes withheld. It also requires a break out of total net tax liability under Chapters 3 and 4 separately. Reimbursements and tax assumed by the withholding agent must also be separately reported.

Observation: Instructions to the revised form, which were not released, will be needed to complete the form. For example, instructions are needed to clarify changes like the addition of a box near the top of the form for withholding agents to check if they made quarterly-monthly deposits using the 90% rule (it is unclear what 90% rule the draft form is referencing). Moreover, Chapters 3 and 4 'status codes' must be entered; however, without instructions, it is unclear what those codes are.

US withholding certificates to facilitate information flow

US withholding certificates facilitate information flow by providing payors and withholding agents the information necessary to determine how much US tax to withhold from a payment. Many of the current IRS forms facilitating the required non-FATCA information reporting under Chapter 3 are already in place but are being revised to accommodate FATCA requirements. The attached Exhibit provides an overview of the recently released draft forms and some high-level comments regarding the proposed changes. These include Forms W-8EXP, W-8BEN-E, W-8BEN (for individuals) and W-9. Future guidance will cover drafts of Forms W-8ECI and W-8IMY when they are re-released.

The takeaway

Starting on January 1, 2014, withholding agents and payees subject to the FATCA rules will need to utilize IRS forms that reflect the new FATCA requirements. This includes the suite of Forms W-8 that will be used by payees to establish their FATCA status. In addition, forms used to report year-end information to the

IRS and payment recipients such as Forms 1042 and 1042-S, are also being revised to reflect FATCA. And, Form 8966 will be released to enable the reporting of information on US accounts and US-owned entities. As these forms are released in draft form, and eventually in final form, taxpayers should monitor this process and be aware of what expanded information will be required.

Will the required additional information mandate any change in existing processes and procedures? The answer is likely 'yes.' As a result, the additional information requirements should be considered as organizations plan for FATCA so that modifications to processes and procedures may be identified in a proactive manner with the goal of maintaining efficiency. A key element will likely be the upfront education of the day-to-day users of these forms, including the compliance teams within organizations (such as shared service teams) that enter information and process them.

The expected opening of the IRS on-line Portal for registration is July 2013 which is well before the January 2014 FATCA start date. This date is quickly approaching. Is your organization familiar with the type of information that is required for registration, i.e., for the on-line Portal and on Form 8957? Organizations should not assume that registration is a simple task - planning and early analysis is critical for being ready to provide the necessary information. The registration process will force organizations to engage in various analyses, such as a legal entity analysis to determine type and classification, as well as an expanded affiliated group (EAG) and sponsored

entity analysis. Entities must also determine their approach to FATCA program governance structure.

Additional background

Addressing the challenges of FATCA compliance

- How is your business planning to manage the complex processes behind **FATCA registration?** How is your business planning to validate withholding certificates? To find out more about how PwC can help, please contact a member of the GIR Network below.
- How do you plan to keep up-to-date with the release of the FATCA IGAs and some of their unique differences? **Access our FATCA IGA Website Monitor** that includes:
 - a high-level overview of signed IGAs
 - the latest IGA developments
 - potential actions to think about as you look at the impact of the IGAs to your FATCA program.
- **PwC's FATCA site:**
<http://www.pwc.com/jm/en/fatca/what-is-fatca.jhtml>
- For additional information regarding FATCA guidance and implementation, please click [here](#) for the **Global IRW Newsbrief archive.**

Let's talk

For more information on how FATCA might impact you, please contact a member of the Global GIR Network. To view contacts for over 30 countries worldwide, click [here](#).

Exhibit

Form	Purpose of the form	Changes to the form - highlights	Observations
Form W-8BEN Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)	<p>Establishes that the individual receiving the payment (payee) is the beneficial owner of certain income as well as establishes the status of the beneficial owner. Also used to claim a reduced rate (pursuant to an income tax treaty) or exemption from withholding on certain payments.</p> <p>Form W-8BEN is currently being used by both foreign individuals and foreign entities. When finalized, Form W-8BEN will be used only by foreign individuals. Foreign entities will be required to use the new Form W-8BEN-E (described below), unless another form applies.</p>	<p>The new draft Form W-8BEN was released in May of 2013. It is generally consistent with the June 2012 draft and retains the previous version's succinct one-page format. Similar to the June 2012 version, instructions have not been provided.</p> <p>The draft includes an additional line for payees to provide their date of birth if the beneficial owner does not have a foreign tax identifying number. The requirement to obtain a date of birth is likely meant to facilitate the various exchanges of tax information obligations under IGAs.</p> <p>The penalty of perjury certification now includes a condition that requires the payee to agree to submit a new form within 30 days if any certification made on the form becomes incorrect.</p>	<p><i>The latest draft gives withholding agents more insight into the type of information they will need to collect. For example, the date of birth was going to be a data point given the requirements in the Model 1A IGA, but it was unclear how the date of birth was going to be collected.</i></p> <p><i>The revision date on the draft is July 2013, which may be the release date for the final form.</i></p>
Form W-8BEN-E Certificate of Status of Beneficial Owner for United States Tax Withholding (Entities)	<p>Establishes that the entity receiving the payment (payee) is the beneficial owner of certain income as well as establishes the status of the beneficial owner. Also used to claim a reduced rate or exemption from withholding.</p> <p>No current Form W-8BEN-E exists as the Form W-8BEN is currently used by both individuals and entities.</p> <p>When final, the Form W-8BEN-E will be used only by non-US entities</p>	<p>The new draft Form W-8BEN-E, released in May 2013, was previously released in May 2012. The draft Form W-8BEN-E will be used by foreign entities and is much more expansive than the draft W-8BEN for individuals. The length of the draft Form W-8BEN-E has increased from six to eight pages to accommodate the new requirements and certifications under the final FATCA regulations. For example, certifications were added to Parts IV through XXV corresponding to the new FATCA classifications.</p> <p><i>Disregarded entities and branches</i>—One of the most notable changes from the May 2012 draft is the addition of Line 3 for entities to indicate the name of the disregarded entity or</p>	<p><i>As with other recently released draft forms, the W-8BEN-E was not accompanied by instructions. As a consequence, taxpayers are only able to observe the actual physical changes to the W-8BEN-E, but more guidance will be available once the instructions are issued.</i></p> <p><i>A prime example of the form's complexity is the FATCA classification section. Non-US entities must select their classification from 28 different categories.</i></p>

	<p>that are beneficial owners, unless another form applies.</p>	<p>branch that is receiving a payment. A separate section was also added to the draft Form W-8BEN-E, Part II, to be completed by disregarded entities or branches receiving payments to indicate their FATCA status, address, and GIIN.</p> <p><i>FATCA classification</i>- Among the changes introduced by the draft form is the addition of several categories to Part I where non-US entities certify their FATCA status. This may be done by selecting one of 28 specific classifications on the form.</p> <p><i>Beneficial owner's GIIN</i> - The draft form also added a line for entities to provide their GIIN.</p> <p><i>Capacity lines</i> - The IRS replaced the capacity line with a checkbox in which the signer of the form certifies that he or she has the capacity to sign on behalf of the entity.</p> <p><i>Miscellaneous modifications</i>- The draft form does not include some of the sections included in the previous draft of Form W-8BEN-E including the section for notional principal contracts and certain certifications related to FATCA status such as the ones for participating FFIs and registered deemed-compliant FFIs.</p> <p>Consistent with the draft Form W-8BEN (for individuals), the IRS modified the penalty of perjury certification to include a statement that requires the payee to agree to submit a new form within 30 days if any certification made on the form becomes incorrect.</p>	<p><i>A category added for non-US entities to certify FATCA status under Part I is 'Not receiving withholdable/pass-through payments.'</i> The draft form indicates that a code is required to claim this exemption; additional guidance regarding the codes will be available once instructions are issued.</p> <p><i>The revision date on the draft is July 2013, which may be the release date for the final form.</i></p>
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<p>Form W-8EXP <i>Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting</i></p>	<p>Establishes that the payee is the beneficial owner of certain income as well as establishes the status of the beneficial owner.</p> <p>This form is used by foreign governments, international</p>	<p>The IRS released a draft Form W-8EXP in May 2013. A previous draft was released in 2012.</p> <p>The 2013 draft is generally consistent with the 2012 version with a few modifications. The first change is that the draft Form W-8EXP now has separate sections to delineate Chapter 3 and 4 statuses. The 'Qualification</p>	<p><i>As with other recently released draft forms, the W-8EXP was not accompanied by instructions.</i></p> <p><i>The revision date on the second draft is July 2013, which may be the release date for the final form.</i></p>

	<p>organizations, foreign central banks, foreign tax-exempt organizations, foreign private foundations, and governments of a US possession to claim a reduced rate or exemption from withholding.</p>	<p>Statement¹ for Chapter 3 status remains almost identical to the current form but new Part III relating to Chapter 4 status contains six different statuses that may be checked.</p> <p>The second change is to the penalty of perjury certification, which now includes a condition that requires the payee to agree to submit a new form within 30 days if any certification made on the form becomes incorrect.</p>	
Form	Purpose of the form	Changes to the form - highlights	Observations
<p>Form W-9 Request for Taxpayer Identification Number and Certification</p>	<p>Establishes that the payee is a US person by providing a correct taxpayer identification number (TIN). Also used to certify that the payee is not subject to backup withholding or used to claim exemption from backup withholding.</p> <p>This form is used by US persons, which include individuals who are US citizens or residents of the US, and entities such as US partnerships, corporations, estates, and domestic trusts.</p>	<p>The draft Form W-9 was released in May 2013. It is similar to the current (2011) version of the Form W-9 and, unlike the other forms recently released, contains a draft set of instructions. However, not all the instructions typically associated with this form have been released.</p> <p>The draft form adds new sections for indicating if any exemption from FATCA reporting applies and a specific list of FATCA exemption codes.</p> <p>A statement was added to the penalty of perjury certification requiring payees to certify the FATCA exemption code provided.</p> <p>Additional changes to the draft Form W-9 relate to disregarded entities. The instructions for disregarded entities make it clear that the disregarded entity name is not to be listed on Line 1. Rather, the single owner of the disregarded entity is listed on Line 1.</p>	<p><i>It is not expected that a payor would have to verify the person's claimed FATCA exemption. The final FATCA regulations simply require the financial institution to collect a name, TIN, date, and signature. Financial institutions can accept an entity's claimed exemption status unless the financial institution knows or has reason to know that the information provided is incorrect.</i></p> <p><i>The revision date on the W-9 draft is May 2013, which may be the possible release date for the new final form.</i></p>