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# New IRS portal for qualified intermediary agreement applications

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## In brief

The Internal Revenue Service (IRS) on December 30, 2016 released [Rev. Proc. 2017-15](#), which sets forth the final 2017 qualified intermediary (QI) agreement (2017 QI Agreement). The 2017 QI Agreement provides procedures for QIs (including qualified derivatives dealers (QDDs)) and qualified securities lenders (QSLs) to comply with their US information reporting and withholding obligations. See our [Insight: IRS releases final qualified intermediary agreement](#) for more information.

Historically, the process for applying for QI status has been a paper process that included the completion of Form 14345, *Application for Qualified Intermediary, Withholding Foreign Partnership, or Withholding Foreign Trust*, and IRS approval. The IRS currently is implementing an electronic QI application (QI Portal) process. In addition to the actual application, the QI portal has a link to a user guide and a frequently asked questions (FAQ) section as well as links to other resources for portal users. See <https://www.irs.gov/businesses/corporations/qualified-intermediary-system>.

Similar to systems used to manage foreign financial institution (FFI) agreements, the QI Portal provides users a secure system, a convenient method to upload certain supportive documents, the ability to receive electronic notifications regarding changes to status, renewal reminders, and other updates, and reduces the need to contact the IRS directly in many cases.

**Observation:** *The QI Portal is the system that withholding foreign partnerships (WPs) and withholding foreign trusts (WTs) will use to apply for WP and WT status as well. The WP and WT agreements technically expired on December 31, 2016. The IRS has indicated that WP and WT agreements that were in effect prior to December 31, 2016 will continue until the agreements are updated in January 2017.*

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## In detail

### Application process

The QI Portal will be used for both applications and renewals of existing QI, WP and WT agreements. This insight presents the QI application process; please keep in mind many of the QI processes apply to WP and

WT applicants as well. The process begins by establishing an account for the user as either a responsible officer, a contact person, or a person with a power of attorney, in which case Form 2848, *Power of Attorney and Declaration of Representative*, must be

uploaded with the application or renewal. The application form has five parts:

- Part 1 covers general applicant information.
- Part 2 includes QI/WP/WT information.

- Part 3 must be completed only by applicants for QDD status and is limited to QIs.
- Part 4 must be completed by all applicants and provides the ability to upload additional files.
- Part 5 allows the applicant to review, sign, and submit the application.

The application generally requires the same information as the most recent (March 2015) version of Form 14345, but with additional requirements as outlined below.

**Observation:** *Changes to the application form are most obvious in the QDD section, but additional information and certifications are required of all applicants. The user guide provides line-by-line instructions for the completion of the application similar to the user guide for the Foreign Account Tax Compliance Act (FATCA) portal. The application generally follows the content of the Form 14345 that was released briefly in October 2016 and withdrawn by the IRS prior to it being finalized.*

### Timing of applications

All existing QI agreements expired on December 31, 2016, so it is important for QIs to ensure that there is a seamless transition from the old QI agreement to the 2017 QI Agreement. Section 2.2 of the 2017 QI Agreement provides that an entity that applies to be a QI by March 31 of a calendar year will be a QI as of January 1 of that year assuming that its application is approved. For prospective QIs that apply after March 31 and that have not received any reportable payments prior to submission of the application, the effective date of the QI agreement also will be January 1 of that year. For prospective QIs that apply after March 31 and that have received reportable payments in the calendar year prior to the date they apply, the effective date will be the first day of the month in

which the application is complete and the QI receives its employer identification number (QI-EIN).

### General changes

Several questions relevant to QIs have been added with respect to the local know-your-customer (KYC) rules that apply to the applicant. The applicant must identify the KYC rules that apply in the jurisdiction where the applicant is located. In addition, the applicant must identify the KYC rules for every branch that will operate as a QI under the agreement. The user guide has a link to the list of approved KYC rules on the IRS website.

The general information requires the applicant to provide street addresses for both the responsible party and the contact person. It also includes a certification by the responsible officer applying for that status that the IRS may correspond with the contact person.

Part four of the application includes a question as to whether the applicant has been in default of its QI agreement under Section 11.04 of Rev. Proc. 2014-39 (or similar provisions of future QI agreements for renewals in future years). If so, a brief description of the events of default and their resolution must be provided.

**Observation:** *The most significant change to the required factual information relates to the identification of the applicable KYC rules on a branch-by-branch basis. The requirement to identify and explain events of default under the expiring QI agreement also is new and may require QIs to examine their activities over the effective period of their expired agreement.*

### QDD applicants

The major changes to the application process relate to the addition of Part 3 for QDDs. QDD status is relevant for

entities that are dealers in potential Section 871(m) of the Internal Revenue Code instruments, which include securities loans and repos, notional principal contracts, and equity linked instruments where the underlying security is a US equity. QDD status is limited to (1) regulated banks and bank holding companies and their subsidiaries and (2) entities regulated as securities dealers. QDD status also is limited to transactions where the QDD is acting as principal in a dealer capacity. With respect to securities loans and repos, QSL status, which was introduced in Notice 2010-46, has been retained for 2017 only to allow an orderly transition from QSL to QDD status. Initially, the applicant must check a box indicating whether it is applying for status as a QSL or a QDD. The user guide indicates that only one status may be applied for at this time.

**Observation:** *The preamble to the QI agreement indicates that it is theoretically possible for a QI to be acting as a QSL with respect to positions for which is an intermediary. It is questionable whether this is compatible with the user guide instructions.*

Part 3 of the online application also requires QDD applicants to provide a significant amount of information. Unlike most of the other provisions of the application, the user guide does not provide any detailed instructions for completing Part 3. Instead, it refers the applicant to the FAQs on the QI/WP/WT System. At present, the FAQs do not provide any additional assistance to applicants with respect to the information required for Part 3.

The first question in Part 3 requires QDDs to enter the approximate value in dollars for the following types of transactions for the previous calendar year using notional values for derivatives:

- Stock in a US corporation
- Potential Section 871(m) transactions
- Securities lending transactions and repos
- Notional principal contracts
- Futures and forwards
- Other equity linked instruments.

The second question in Part 3 of the online application process requires similar information on the approximate value of the transactions outlined above by the following types of counterparties:

- Foreign beneficiaries/owners not claiming treaty benefits
- Foreign beneficiaries/owners claiming treaty benefits
- QDDs and QSLs
- US persons.

**Observation:** *It is unlikely that many 2017 applicants will have this information readily available from*

*2016 activity since the Section 871(m) regulations were not effective in 2016. In addition, derivatives dealers do not necessarily record positions in their dealer books by these specific buckets. Absent additional guidance (e.g. FAQs, updated user guide, etc.) with respect to these questions, it may be difficult for QIs to gather this information to apply for QDD status.*

Question 3 in Part 3 requires applicants to describe how they meet the eligibility requirements for QDD status and to identify their regulator as well as the types of Section 871(m) transactions they issue or anticipate issuing and how they intend to hedge those transactions. Question 4 requires a description of how the applicant intends to segregate its QDD business from the rest of its operations and to describe the systems or procedures it has in place to test, track, and report the transactions associated with its QDD activities.

**Observation:** *The international banking market still is awaiting changes to the final Section 871(m)*

*regulations which are anticipated to be issued in January 2017. Pending the release of those regulations, it may be difficult for QDD applicants to provide specific information as to which transactions they intend to issue and how they will be hedged. In addition, non-US banks only now are coming to grips with some of the policies and procedures they will implement, all of which may have to be tweaked in response to final regulations.*

### **The takeaway**

Prospective QIs and QIs renewing their status should take careful note of the additional information that must be provided in the application. For QDDs, the amount of information required may pose real challenges to their ability to timely complete the application process. The 2017 QI Agreement provides that 2017 is a 'phase-in year' for QDDs that act in good faith. Hopefully, this approach also will apply to efforts to complete the application process.

### **Let's talk**

For a deeper discussion of how this development might affect your business, please contact:

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