

IRS releases updated Form W-8BEN-E and instructions

May 1, 2016

In brief

The Internal Revenue Service (IRS) on April 16, 2016 released updated final versions of Form W-8BEN-E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)*, and *Instructions for Form W-8BEN-E*. Non-US entities use Form W-8BEN-E to make several certifications relevant to US withholding tax and information reporting, such as whether they are foreign persons, whether they are beneficial owners of income received, whether they are entitled to a reduced rate of withholding under an income tax treaty, and their Foreign Account Tax Compliance Act (FATCA) status.

In detail

Consistent with draft form and instructions

The updated Form W-8BEN-E and instructions closely resemble the draft form and instructions released on January 15, 2016. See our [Insight: IRS releases draft Form W-8BEN-E and instructions](#) for more information. This insight discusses the few differences between the draft and updated version, when usage of the updated version becomes mandatory, and observations on implementing the updated form.

Mandatory usage of the updated version

Withholding agents may continue to accept the prior version of Form W-8BEN-E (dated February 2014) for six months after

the April 2016 revision date on the updated version, but may not accept the prior version once use of the updated version becomes mandatory at the end of October 2016.

Observation: *Although the updated version of Form W-8BEN-E becomes mandatory after October 2016, payees and account holders can begin using the updated version of the form now. Withholding agents therefore should be prepared to accept and process the updated version as soon as possible. Payees and account owners seeking to complete a Form W-8BEN-E can locate the updated version on the IRS website. The prior version is located in the 'Prior Year' forms section of the IRS website, which is not as easily accessible as the 'Current' forms section.*

Disregarded entities completing Part II (Disregarded Entity or Branch Receiving Payment) of Form W-8BEN-E

The final instructions clarify that a disregarded entity with a US owner or a disregarded entity with a foreign owner that is not otherwise able to fill out Part II (i.e., because it is in the same country as its single owner and does not have a global intermediary identification number (GIIN)) may provide Form W-8BEN-E to a foreign financial institution (FFI) solely for purposes of documenting itself for FATCA purposes. The instructions to Form W-8BEN-E provide specific line-by-line instructions on how disregarded entities in this situation should complete the form.

Passive nonfinancial foreign entity (NFFE)

The final instructions note that an NFFE that is providing Form W-8BEN-E to an FFI treated as a reporting Model 1 FFI or reporting Model 2 FFI also may use Part XXIX (Substantial U.S. Owners of Passive NFFE) to report controlling US persons (as defined in an applicable intergovernmental agreement). The instructions explain that references to ‘controlling US persons’ in Part XXVI (Passive NFFE) and Part XXIX apply only if Form W-8BEN-E is being provided to an FFI treated as a reporting Model 1 FFI or reporting Model 2 FFI.

Withholding agent responsibilities

The IRS has not released a draft or updated version of the *Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8-ECI* (Requestor Instructions). The Requestor Instructions contain, among other things, a summary of a withholding agent’s responsibilities related to reviewing and relying on the information provided on Form W-8BEN-E. It is expected that an updated version of the Requestor Instructions will be issued shortly and that it

will explain a withholding agent’s responsibilities for the new information that is requested on the updated version of Form W-8BEN-E.

For example, as discussed in our insight on the draft Form W-8BEN-E, a foreign entity completing Form W-8BEN-E to claim treaty benefits will be required to check the relevant box on Part III (Claim of Treaty Benefits) associated with the limitation on benefits (LOB) test it meets. The checkboxes for the LOB tests are new and were not on the prior version of Form W-8BEN-E. It is unclear whether a withholding agent should accept a foreign person’s claim regarding the LOB provisions without further inquiry or whether a withholding agent will have reason to know that a person’s claim regarding an LOB provision is unreliable or incorrect when certain provisions are met (e.g., if a particular treaty does not contain the LOB provision claimed by the foreign entity). The updated Requestor Instructions, when issued, may clarify a withholding agent’s responsibilities to review claims made about the LOB tests.

We also noted in our earlier insight that it was unclear why the draft form contained a new checkbox in Part 1

(Identification of Beneficial Owner), Line 5 (Chapter 4 or FATCA status) to indicate whether the beneficial owner is documenting itself with respect to an ‘account that is not a financial account’ since whether an account is a financial account is determined by the withholding agent, not the payee or account owner. Line 5 remains unchanged in the updated form with no additional explanation in the instructions for the checkbox that indicates that an account is not a financial account. Perhaps the Requestor Instructions will explain a withholding agent’s responsibilities regarding this new data element on the form.

The takeaway

The updated Form W-8BEN-E and instructions bring significant changes to how a provider of the form must complete the form. Withholding agents and others that collect the form from account holders and payees and rely on it for withholding tax and information reporting purposes must modify their processes and data management functions in reaction to changes now that Form W-8BEN-E is finalized.

Let’s talk

For more information, please contact a member of your PwC engagement team or one of the members of PwC’s Global Information Reporting Network. To view contacts for over 70 countries worldwide, click [here](#).

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