



Non-U.S. Horse Owner Withholding Tax Compliance Issues & Considerations

The University of Arizona

Race Track Industry Program

44th Annual Global Symposium on Racing

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Notice

The following information is not intended to be “written advice concerning one or more Federal tax matters” subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature, and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

The material contained in herein is current as of the date produced. The materials have not been and will not be updated to incorporate any technical changes to the content or to reflect any modifications to a tax service offered since the production date.

Agenda

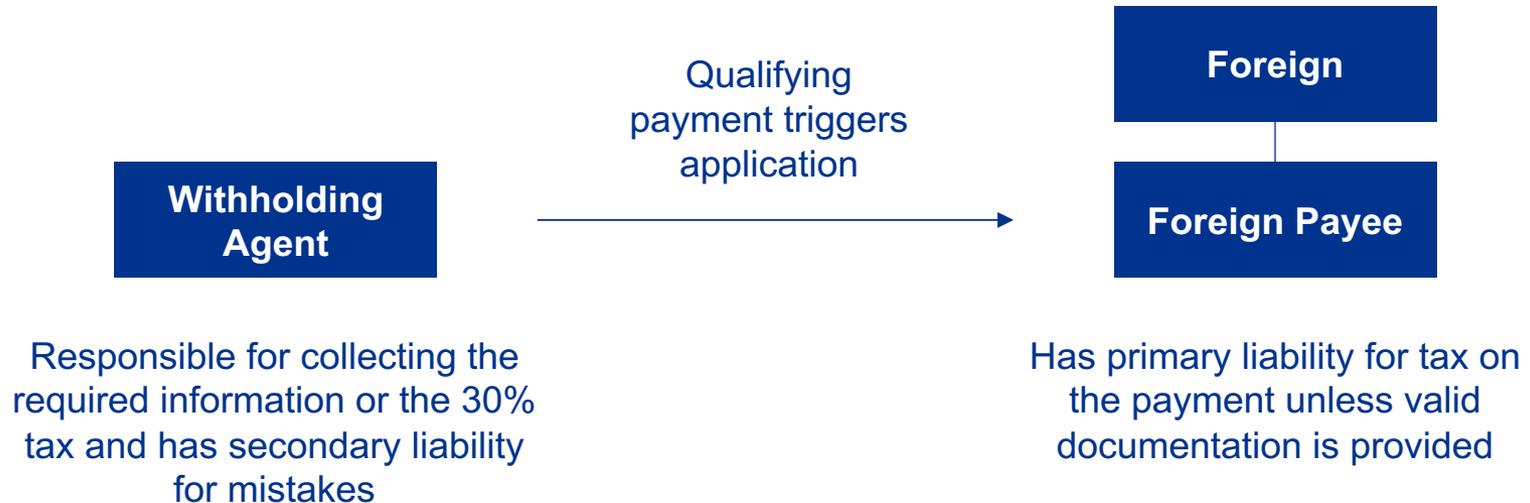
- Chapter 3 Withholding Overview
- Racing Industry Challenges
- Payee Documentation
- Reporting



Chapter 3 Withholding Overview

General Construct

When payments that economically arise in the United States are made to foreign persons, the IRS needs help collecting tax on the payment



The Rules

Tax Speak

U.S. source “fixed or determinable, annual or periodic” income paid to foreign beneficial owners is subject to U.S. withholding tax

Plain English

Foreign persons who make money in the U.S. pay tax in the U.S.

FDAP income triggers withholding tax

Purse winnings on races conducted in the U.S. are considered U.S. Source FDAP (See Rev. Rul. 85-4 and IRS Publication 515)

The Rules

Tax Speak

The applicable withholding tax rate is 30%, unless the foreign person is eligible for treaty or statutory relief

Plain English

The default is 30% tax off the top of the payment

Treasury negotiates tax breaks under treaties with other countries

- For horse owners, treaty claim is generally “no permanent establishment”

ECI not subject to 30% withholding, but net winnings may be subject to tax at regular US corporate rates

The Rules

Tax Speak

Withholding must be performed by any person(s) having custody, control, receipt, or payment of the tax

Withholdable payments are also subject to annual information reporting (Forms 1042 and 1042-S)

Plain English

The IRS doesn't have time to chase foreign payees, so you get to do it

If you are making a withholdable payment, or directing someone else to make the payment, you (*and* that someone else) are responsible for turning the right amount of tax over to the IRS

And you have to tell the IRS what's going on, so they can chase the payees if they really want to

The Rules

Tax Speak

Tax relief may be available under a treaty between the US and the payee's country of residence

Plain English

Treaty relief on withholdable payments may mean reduction of, to complete exemption from, withholding tax

Treaty relief on ECI means the income is exempt

The Rules

Tax Speak

Withholding relief must be supported by documentation (Forms W-8)

Plain English

Payees must tell you whether they are eligible for treaty relief

They swear to treaty eligibility on an IRS form **before** you make the payment

If they do not give you the right form, or a form that looks right, withhold at 30%

The Rules

Tax Speak

Withholding non-compliance results in secondary liability for the withholding agent

Pyramiding (gross-up) applies

Plus interest and penalties

Plain English

If you mess it up, you have to pay the tax yourself – AND IT'S NOT EVEN YOUR INCOME

The payee benefits if you pay the tax, and the IRS treats that as more income to the payee. Which triggers more tax. That you will be expected to pay. Which is even more income. And so on ...

And it will hurt. A lot.

What is the worst that could happen if we mess this up?

ACo pays a foreign entity (“FC”) \$1 million of U.S. source winnings. ACo obtains no W-8BEN-E, withholds nothing, and files no 1042 or 1042-S.

ACo is liable for withholding and penalties as follows. In addition, interest will run on the \$428,571 withholding payment and any accuracy-related or failure to file penalties due, starting on the due date for ACo’s Form 1042.

| Consequence | Calculation | Maximum due |
|--|------------------------------------|--------------------|
| Withholding Agent’s Liability | $30\% \times \$1,000,000$ | \$300,000 |
| Gross-up or “Pyramid Effect” | $\$1,000,000 / 0.7 = \$1,428,571$ | |
| Total Liability with Gross Up | $30\% \times \$1,428,571$ | \$428,571 |
| Penalty | Calculation | Maximum due |
| Failure to File | $\$428,571 \times 5\%/month$ | $25\% = \$107,143$ |
| Failure to Pay | $\$428,571 \times 5\%/month$ | $25\% = \$107,143$ |
| Failure to Deposit | $\$428,571 \times 10\%$ | \$42,857 |
| Failure to File Information Reporting Return | $2 \times \$100$ | \$200 |
| Total Penalty Calculation | | \$246,628 |
| Intentional Disregard Penalty | $\$1,428,571 \times 10\% \times 2$ | \$285,714 |
| Total Potential Liability | | \$960,713* |

* This total takes into account the maximum withholding agent liability plus penalties (taking into account a limited offset permitted under the rules) but no withholding agent liability or interest.



Racing Industry Challenges

What About Form W-8ECI?

A single race may cause non-U.S. owners to be treated as carrying on a U.S. trade or business and, thus, pure earnings may be treated as ECI (See Rev. Rul. 58-63)

- Depends on owner facts & circumstances
- Form W-8ECI can be acceptable documentation to reduce withholding to zero (because you are already paying US tax on the earnings and there is no need to tax you twice)

Validating Treaty Claims

Remember, taxation may be relieved by a valid treaty claim, generally made on a Form W-8

Examples of when a withholding agent should facially disregard the owner's claim of treaty benefits

- Foreign owner resides in a non-treaty jurisdiction but claims a U.S. income tax treaty with another jurisdiction
- Foreign owner claims exemption under a non-existent treaty (e.g. Cayman Islands)
- Special jurisdictions not covered by tax treaties (e.g. Hong Kong, Macau, and Taiwan residents are not covered by U.S.-China treaty)
- “Definitive knowledge“ of significant racing-related activity in the U.S. that could invalidate a treaty claim

Validating Treaty Claims

Owners tax resident in a jurisdiction with a treaty with the U.S. may claim that they are entitled to 0% withholding because they do not have a “permanent establishment” in the U.S.

- Whether owner has a permanent establishment is determined based on all the facts and circumstances
 - Stabling, training, concluding racing contracts, breeding
- Owners are not covered by the sportsmen/artists/athletes provision of tax treaties (unlike jockeys)
- Withholding agents should generally withhold:
 - Absent definite information contained in a statement filed together with a Form W-8 that the owner has not raced, or does not intend to enter, a horse in another race in the United States during the tax year, or
 - In cases where the withholding agent knows or has reason to know such a statement is false

When To Withhold

Withholding required upon “payment”

- A payment is considered made when the amount would be includible in the income of the beneficial owner under the U.S. tax principles governing the cash basis method of accounting
- **Racing Industry Considerations:**
 - Purse winnings are generally considered paid and subject to withholding upon transfer to horsemen’s account, without regard to when the horsemen actually withdraw or otherwise use the money
 - What about drug testing and claw back provisions? – If access to the winnings is permitted for any purposes (including claiming a horse in a subsequent race) before the drug testing clearance occurs, the IRS would argue the income is considered paid at the time the owner has access to the winnings, regardless of whether there is a later claw back for a failed drug test
 - Potential Solution – No transfer of winnings/access to winnings (including for claiming a horse) before drug testing contingencies are satisfied or until a valid W-8 is provided

Unique challenges related to non-U.S. horse owners

- Withholding agent unlikely to recover any cash once released offshore
- Lack of communication / inability to contact owners
- Difficulty obtaining withholding exemption forms (timely or otherwise)
- Lack of knowledge on U.S. withholding rules and tax treaty positions (including inaccurate advice provided by non-U.S. tax advisors)
- Reluctance / refusal by foreign owners to file U.S. tax returns
- Relationship considerations:
 - Incentivizing owners to continue racing at your track
 - Providing immediate access to winnings
 - Ability to claim horses



What Documentation Do I Need From Payees?

What documentation are we talking about?

FAQ #1: *Do I get the same forms from every payee?*

Answer: *No. Depends on the payee:*

- ***Individual:*** *W-8BEN*
- ***For-profit entity (e.g., corporation or partnership taxed in its home country as if it were a corporation):*** *W-8BEN-E or, if it is doing “real” business in the US, a W-8ECI*
- ***Flow-through (e.g., partnership) or intermediary:*** *W-8IMY, possible with an attached withholding statement identifying the “real” owners of the income and attaching their documentation*
- ***Entities already paying tax on their U.S. source income:*** *W-8ECI*

When to Obtain & Update Forms

FAQ #2: *Are W-8s infinitely valid? How long are W-8's valid?*

Answer: *The forms become invalid if you know or have reason to know that facts have changed that makes the information on the forms incorrect. Absent a change in facts, the forms are valid until the end of the third year after you get them. So, if you get a form September 15, 2015, it is good until December 31, 2018.*

- **Example:** A payee notifies you that they have moved from France to Spain. Their W-8BEN-E claiming French treaty benefits is invalid, and 30% withholding applies until they submit a new, valid form.
- Note – The three-year rule does not apply to W-9's. A new W-9 should be obtained if there is a change in personal information (e.g. change in name, tax ID, or legal entity status).

Validating the Forms Received

FAQ #3: *As long as the W-8 is complete, appears reasonable, and contains information that you don't actually know or have reason to know is wrong, you can rely on it. What does this mean?*

Answer: *The fact-based representations on the form must be consistent with the other information you have about the payee (so you have to check)*

- Someone who understands the facts needs to be talking with someone who understands the tax issues
- Their collective knowledge (**including whatever is in the horsemen master files / bookkeeping records**) should be applied to inspect and approve the forms
- All required information must be provided by the payee

Validating the Forms Received (continued)

FAQ #4: *If the W-8 is properly completed and validated by you, are you off the hook for any under withholding?*

Answer: *Generally, yes*

- *Even if you didn't actually investigate every single statement on the form*
- *Even if the payee lied about its facts or got something wrong*
- *The "know or reason to know" standard means you should resist the temptation to be too helpful when vendors ask for help with the form (unless you specifically know the information provided to you is inaccurate).*



Reporting

Form 1042/1042-S Reporting

Income Classification Codes (for 2017):

- Owners – Code 23 (Other FDAP Income)
- Trainers – Code 17 (independent contractor relationship) or Code 18 (employee or exclusive contractor relationship)
- Jockeys – Code 42 (no central withholding agreement) or Code 43 (central withholding agreement)
- Income codes are updated periodically and should be re-validated annually

Form 1042/1042-S Reporting (continued)

- **Annual Form 1042/1042-S Due Date:** March 15th (extension is available)
- **Withholding Tax Due Date** – Generally 3 business days after the quarterly monthly end date (7th / 15th/ 22nd/ last day of month), assuming more than \$2,000 is owed at each quarterly monthly end date
- **Remember Late Payment, Penalties, Etc.**



Questions?

Contact:

Robert B. Stoddard
203-406-8129
rstoddard@kpmg.com

Christopher Riccardi
404-222-7187
criccardi@kpmg.com



Appendix

Form W-8BEN-E: Part I, Line 5, FATCA classification

Withhold 30% unless FATCA withholding exception applies

May commonly see from financial payees. Will need to check GIIN on the IRS website.

May commonly see from nonfinancial vendors. If direct reporting NFFE, will need to check GIIN on the IRS website.

U.S. or foreign income tax ID is necessary for treaty relief

Form **W-8BEN-E** Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)

(February 2014) Department of the Treasury Internal Revenue Service

OMB No. 1545-1621

Do NOT use this form for:

- U.S. entity or U.S. citizen or resident
- A foreign individual
- A foreign individual or entity claiming that income is effectively connected with the conduct of trade or business within the U.S. (unless claiming treaty benefits).
- A foreign partnership, a foreign simple trust, or a foreign grantor trust (unless claiming treaty benefits) (see instructions for exceptions)
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming that income is effectively connected U.S. income or that is claiming the applicability of section(s) 1152), 501(c), 892, 895, or 1443(b) (unless claiming treaty benefits) (see instructions)
- Any person acting as an intermediary

Instead use Form: W-9, W-8BEN (Individual), W-8ECI, W-8IMY, W-8ECI or W-8EXP, W-8IMY

Part I Identification of Beneficial Owner

1 Name of organization that is the beneficial owner

2 Country of incorporation or organization

3 Name of disregarded entity receiving the payment (if applicable)

4 Chapter 3 Status (entity type) (Must check one box only):

- Simple trust
- Grantor trust
- Central Bank of Issue
- Tax-exempt organization
- Private foundation
- Corporation
- Disregarded entity
- Partnership
- Complex trust
- Estate
- Government

If you entered disregarded entity, partnership, simple trust, or grantor trust above, is the entity a hybrid making a treaty claim? If "Yes" complete Part III. Yes No

5 Chapter 4 Status (FATCA status) (Must check one box only unless otherwise indicated). (See instructions for details and complete the certificate below for the entity's applicable status).

- Nonparticipating FFI (including a limited FFI or an FFI related to a Reporting IGA FFI other than a registered deemed-compliant FFI or participating FFI).
- Participating FFI.
- Reporting Model 1 FFI.
- Reporting Model 2 FFI.
- Registered deemed-compliant FFI (other than a reporting Model 1 FFI or sponsored FFI that has not obtained a GIIN).
- Sponsored FFI that has not obtained a GIIN. Complete Part IV.
- Certified deemed-compliant nonregistering local bank. Complete Part V.
- Certified deemed-compliant FFI with only low-value accounts. Complete Part VI.
- Certified deemed-compliant sponsored, closely held investment vehicle. Complete Part VII.
- Certified deemed-compliant limited life debt investment entity. Complete Part VIII.
- Certified deemed-compliant investment advisors and investment managers. Complete Part IX.
- Owner-documented FFI. Complete Part X.
- Restricted distributor. Complete Part XI.
- Nonreporting IGA FFI (including an FFI treated as a registered deemed-compliant FFI under an applicable Model 2 IGA). Complete Part XII.
- Foreign government, government of a U.S. possession, or foreign central bank of issue. Complete Part XIII.
- International organization. Complete Part XIV.
- Exempt retirement plans. Complete Part XV.
- Entity wholly owned by exempt beneficial owners. Complete Part XVI.
- Territory financial institution. Complete Part XVII.
- Nonfinancial group entity. Complete Part XVIII.
- Excepted nonfinancial start-up company. Complete Part XIX.
- Excepted nonfinancial entity in liquidation or bankruptcy. Complete Part XX.
- 501(c) organization. Complete Part XXI.
- Nonprofit organization. Complete Part XXII.
- Publicly traded NFFE or NFFE affiliate of a publicly traded corporation. Complete Part XXIII.
- Excepted territory NFFE. Complete Part XXIV.
- Active NFFE. Complete Part XXV.
- Passive NFFE. Complete Part XXVI.
- Excepted inter-affiliate FFI. Complete Part XXVII.
- Direct reporting NFFE.
- Sponsored direct reporting NFFE. Complete Part XXVIII.

6 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address (other than a registered address).
City or town, state or province. Include postal code where appropriate. Country

7 Mailing address (if different from above)
City or town, state or province. Include postal code where appropriate. Country

8 U.S. taxpayer identification number (TIN), if required. 9a GIIN 9b Foreign TIN 10 Reference number(s) (see instructions)

Note. Please complete remainder of the form including signing the form in Part XXIX. For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 50689N Form W-8BEN-E (2-2014)

Form W-8BEN-E (2016 going forward): Part III treaty claim

Necessary for treaty claims (along with U.S. or foreign income tax ID number noted on page 1)

May see completed to claim special rates

Part II Disregarded Entity or Branch Receiving Payment. (Complete only if a disregarded entity with a GIIN or a branch of an FFI in a country other than the FFI's country of residence. See instructions.)

11 Chapter 4 Status (FATCA status) of disregarded entity or branch receiving payment
 Limited Branch (see instructions). Reporting Model 1 FFI. U.S. Branch.
 Participating FFI. Reporting Model 2 FFI.

12 Address of disregarded entity or branch (street, apt. or suite no., or rural route). **Do not use a P.O. box or in-care-of address** (other than a registered address).

 City or town, state or province. Include postal code where appropriate.

 Country

13 GIIN (if any) _____

Part III Claim of Tax Treaty Benefits (if applicable). (For chapter 3 purposes only.)

14 I certify that (check all that apply):

a The beneficial owner is a resident of _____ within the meaning of the income tax treaty between the United States and that country.

b The beneficial owner derives the item (or items) of income for which the treaty benefits are claimed, and, if applicable, meets the requirements of the treaty provision dealing with limitation on benefits. The following are types of limitation on benefits provisions that may be included in an applicable tax treaty (check only one; see instructions):

| | |
|--|---|
| <input type="checkbox"/> Government | <input type="checkbox"/> Company that meets the ownership and base erosion test |
| <input type="checkbox"/> Tax exempt pension trust or pension fund | <input type="checkbox"/> Company that meets the derivative benefits test |
| <input type="checkbox"/> Other tax exempt organization | <input type="checkbox"/> Company with an item of income that meets active trade or business test |
| <input type="checkbox"/> Publicly traded corporation | <input type="checkbox"/> Favorable discretionary determination by the U.S. competent authority received |
| <input type="checkbox"/> Subsidiary of a publicly traded corporation | <input type="checkbox"/> Other (specify Article and paragraph): _____ |

c The beneficial owner is claiming treaty benefits for U.S. source dividends received from a foreign corporation or interest from a U.S. trade or business of a foreign corporation and meets qualified resident status (see instructions).

15 **Special rates and conditions** (if applicable—see instructions):
 The beneficial owner is claiming the provisions of Article and paragraph _____ of the treaty identified on line 14a above to claim a _____ % rate of withholding on (specify type of income): _____
 Explain the additional conditions in the Article the beneficial owner meets to be eligible for the rate of withholding: _____

Part IV Sponsored FFI

16 Name of sponsoring entity: _____
 GIIN of sponsoring entity: _____

17 **Check whichever box applies.**

I certify that the entity identified in Part I:

- Is an investment entity;
- Is not a QI, WP, or WT; and
- Has agreed with the entity identified above (that is not a nonparticipating FFI) to act as the sponsoring entity for this entity.

I certify that the entity identified in Part I:

- Is a controlled foreign corporation as defined in section 957(a);
- Is not a QI, WP, or WT;
- Is wholly owned, directly or indirectly, by the U.S. financial institution identified above that agrees to act as the sponsoring entity for this entity; and
- Shares a common electronic account system with the sponsoring entity (identified above) that enables the sponsoring entity to identify all account holders and payees of the entity and to access all account and customer information maintained by the entity including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to account holders or payees.

Form W-8BEN-E: Supporting FATCA representations

Common nonfinancial vendor classifications must also be supported by representations (referenced on line 5)

If this box is checked, the ownership disclosures on the last page should be completed.

Form W-8BEN-E (2-2014) Page **7**

Part XXII Non-Profit Organization

36 I certify that the entity identified in Part I is a non-profit organization that meets the following requirements:

- The entity is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural or educational purposes;
- The entity is exempt from income tax in its country of residence;
- The entity has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- Neither the applicable laws of the entity's country of residence nor the entity's formation documents permit any income or assets of the entity to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the entity's charitable activities or as payment of reasonable compensation for services rendered or payment representing the fair market value of property which the entity has purchased; **and**
- The applicable laws of the entity's country of residence or the entity's formation documents require that, upon the entity's liquidation or dissolution, all of its assets be distributed to an entity that is a foreign government, an integral part of a foreign government, a controlled entity of a foreign government, or another organization that is described in this Part XXII or escheats to the government of the entity's country of residence or any political subdivision thereof.

Part XXIII Publicly Traded NFFE or NFFE Affiliate of a Publicly Traded Corporation

Check box 37a or 37b, whichever applies.

37a I certify that:

- The entity identified in Part I is a foreign corporation that is not a financial institution; **and**
- The stock of such corporation is regularly traded on one or more established securities markets, including _____ (name one securities exchange upon which the stock is regularly traded).

b I certify that:

- The entity identified in Part I is a foreign corporation that is not a financial institution;
- The entity identified in Part I is a member of the same expanded affiliated group as an entity the stock of which is regularly traded on an established securities market;
- The name of the entity, the stock of which is regularly traded on an established securities market, is _____; **and**
- The name of the securities market on which the stock is regularly traded is _____.

Part XXIV Excepted Territory NFFE

38 I certify that:

- The entity identified in Part I is an entity that is organized in a possession of the United States;
- The entity identified in Part I:
 - Does not accept deposits in the ordinary course of a banking or similar business,
 - Does not hold, as a substantial portion of its business, financial assets for the account of others, or
 - Is not an insurance company (or the holding company of an insurance company) that issues or is obligated to make payments with respect to a financial account; **and**
 - All of the owners of the entity identified in Part I are bona fide residents of the possession in which the NFFE is organized or incorporated.

Part XXV Active NFFE

39 I certify that:

- The entity identified in Part I is a foreign entity that is not a financial institution;
- Less than 50% of such entity's gross income for the preceding calendar year is passive income; **and**
- Less than 50% of the assets held by such entity are assets that produce or are held for the production of passive income (calculated as a weighted average of the percentage of passive assets measured quarterly) (see instructions for the definition of passive income).

Part XXVI Passive NFFE

40a I certify that the entity identified in Part I is a foreign entity that is not a financial institution (other than an investment entity organized in a possession of the United States) and is not certifying its status as a publicly traded NFFE (or affiliate), excepted territory NFFE, active NFFE, direct reporting NFFE, or sponsored direct reporting NFFE.

Check box 40b or 40c, whichever applies.

b I further certify that the entity identified in Part I has no substantial U.S. owners, or

I further certify that the entity identified in Part I has provided the name, address, and TIN of each substantial U.S. owner of the NFFE in Part XXX.

Part XXVII Excepted Inter-Affiliate FFI

41 I certify that the entity identified in Part I:

- Is a member of an expanded affiliated group;
- Does not maintain financial accounts (other than accounts maintained for members of its expanded affiliated group);
- Does not make withholdable payments to any person other than to members of its expanded affiliated group that are not limited FFIs or limited branches;
- Does not hold an account (other than a depository account in the country in which the entity is operating to pay for expenses) with or receive payments from any withholding agent other than a member of its expanded affiliated group; **and**
- Has not agreed to report under §1.1471-4(d)(2)(ii)(C) or otherwise act as an agent for chapter 4 purposes on behalf of any financial institution, including a member of its expanded affiliated group.

Form **W-8BEN-E** (2-2014)

Form W-8BEN-E: Required certifications

Must be completed; form generally expires in 3 years

Must be checked in all cases

If item 40(c) is checked (passive NFFE with substantial U.S. owners) this table must be completed, including TINs

Form W-8BEN-E (2-2014) Page **8**

Part XXVIII Sponsored Direct Reporting NFFE

42 Name of sponsoring entity: _____
 I certify that the entity identified in Part I is a direct reporting NFFE that is sponsored by the entity identified in line 42.

Part XXIX Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

~~The entity identified on line 1 of this form is the beneficial owner of all the income to which this form relates, is using this form to certify its status for chapter 4 purposes, and the merchant submitting this form for purposes of section 6050W.~~

- The entity identified on line 1 of this form is not a U.S. person,
- The income to which this form relates is not effectively connected with the conduct of a trade or business in the United States, (b) effectively connected but is not subject to tax under an income tax treaty, or (c) the partner's share of a partnership's effectively connected income, and
- For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which the entity on line 1 is the beneficial owner or any withholding agent that can disburse or make payments of the income of which the entity on line 1 is the beneficial owner.

I agree that I will submit a new form within 30 days if any certification on this form becomes incorrect.

Sign Here _____
Signature of individual authorized to sign for beneficial owner Print Name Date (MM-DD-YYYY)

I certify that I have the capacity to sign for the entity identified on line 1 of this form.

Part XXX Substantial U.S. Owners of Passive NFFE

As required by Part XXVI, provide the name, address, and TIN of each substantial U.S. owner of the NFFE. Please see instructions for definition of substantial U.S. owner.

| Name | Address | TIN |
|------|---------|-----|
| | | |
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Form **W-8BEN-E** (2-2014)

W-8ECI

Also a one-pager that relieves 30% withholding (because the payee is already paying “normal” tax on the income)

U.S. Taxpayer Identification Number is required (and, in any case, would be for filing the U.S. tax return)

Explanation of ECI has to be done on an item-by-item basis.

Certification box needs to be checked

Form W-8ECI (Rev. February 2014)

Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States

OMB No. 1545-1621

Department of the Treasury Internal Revenue Service

Section references are to the Internal Revenue Code.
 ▶ Information about Form W-8ECI and its separate instructions is at www.irs.gov/formw8eci.
 ▶ Give this form to the withholding agent or payer. Do not send to the IRS.

Note. Persons submitting this form must file an annual U.S. income tax return to report income claimed to be effectively connected with a U.S. trade or business (see instructions).

Do not use this form for:

- A beneficial owner solely claiming foreign status or treaty benefits. **Instead, use Form W-8EN or W-8EN-E**
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b). **W-BEXP**
- A foreign partnership or a foreign trust (unless claiming an exemption from U.S. withholding on income effectively connected with the conduct of a trade or business in the United States) or W-8BMY
- A person acting as an intermediary. **W-8IMY**

Note. These entities should use Form W-8ECI if they received effectively connected income and are not eligible to claim an exemption for chapter 3 or 4 purposes on Form W-BEXP.

Note. See instructions for additional exceptions.

Part I Identification of Beneficial Owner (see instructions.)

1 Name of individual or organization that is the beneficial owner

2 Country of incorporation or organization

3 Name of disregarded entity receiving the payments (if applicable)

4 Type of entity (check the appropriate box):

| | | | |
|---|---|--|--|
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Simple trust | <input type="checkbox"/> Individual | <input type="checkbox"/> Corporation |
| <input type="checkbox"/> Government | <input type="checkbox"/> Grantor trust | <input type="checkbox"/> Complex trust | <input type="checkbox"/> Estate |
| <input type="checkbox"/> Private foundation | <input type="checkbox"/> International organization | <input type="checkbox"/> Central bank of issue | <input type="checkbox"/> Tax-exempt organization |

5 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address.
 City or town, state or province. Include postal code where appropriate. Country

6 Business address in the United States (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address.
 City or town, state, and ZIP code

7 U.S. taxpayer identification number (required—see instructions)
 SSN or ITIN EIN

8 Foreign tax identifying number

9 Reference number(s) (see instructions)

10 Date of birth (MM-DD-YYYY)

11 Specify each item of income that is, or is expected to be, received from the payer that is effectively connected with the conduct of a trade or business in the United States. (attach statement if necessary)

Part II Certification

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct, and complete. I further certify under penalties of perjury that:

- I am the beneficial owner (or I am authorized to sign for the beneficial owner) of all the payments to which this form relates,
- The amounts for which this certification is provided are effectively connected with the conduct of a trade or business in the United States,
- The income for which this form was provided is includible in my gross income (or the beneficial owner's gross income) for the taxable year, and
- The beneficial owner is not a U.S. person.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the payments of which I am the beneficial owner or any withholding agent that can disburse or make payments of the amounts of which I am the beneficial owner.

I agree that I will submit a new form within 30 days if any certification made on this form becomes incorrect.

Sign Here

Signature of beneficial owner (or individual authorized to sign for the beneficial owner) Print name Date (MM-DD-YYYY)

I certify that I have the capacity to sign for the person identified on line 1 of this form.

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 25040D Form **W-8ECI** (Rev. 2-2014)

Form W-8IMY

A W-8IMY supports payments to persons who do not beneficially own the income, i.e., act as an intermediary.

If the payee has QI or withholding FP status, the payee will undertake ch 3 and FATCA documentation, withholding and reporting (so you don't need to)

If nonwithholding FP, etc., status, means the payee will not take primary responsibility for documentation, etc., but will attach a withholding statement that includes all information and forms necessary for the payer to comply with its obligations

Form W-8IMY Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting
 (Rev. April 2014)
 Department of the Treasury Internal Revenue Service
 OMB No. 1545-1021

Section references are to the Internal Revenue Code.
 Information about Form W-8IMY and its separate instructions is at www.irs.gov/formw8imy.
 Give this form to the withholding agent or payer. Do not send to the IRS.

Do not use this form for:

- A beneficial owner solely claiming foreign status or treaty benefits
- A hybrid entity claiming treaty benefits on its own behalf
- A foreign person claiming that income is effectively connected with the conduct of a trade or business in the United States
- A disregarded entity with a single foreign owner that is the beneficial owner of the income to which this form relates. Instead, the single foreign owner should use
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming the applicability of sections 1102, 901(c), 992, 995, or 1442(b)
- U.S. entity or U.S. citizen or resident
- A foreign person documenting themselves for purposes of section 6050W

Instead, use Form:

- W-8BEN or W-8BEN-E
- W-8BEN-E
- W-BECI
- W-8BEN, W-8BECI, or W-8BEN-E
- W-8EXP
- W-9
- W-8BEN, W-8BEN-E, or W-BECI

Part I Identification of Entity

1 Name of individual or organization that is acting as intermediary
 2 Country of incorporation or organization
 3 Name of disregarded entity (if applicable)

4 Chapter 3 Status:

- Qualified intermediary. Complete Part III.
- Nonqualified intermediary. Complete Part IV.
- Territory financial institution. Complete Part V.
- U.S. branch. Complete Part VI.
- Withholding foreign partnership. Complete Part VII.
- Nonwithholding foreign trust. Complete Part VII.
- Nonwithholding foreign partnership. Complete Part VIII.
- Nonwithholding foreign simple trust. Complete Part VIII.
- Nonwithholding foreign grantor trust. Complete Part VIII.

5 Chapter 4 Status:

- Nonparticipating FFI (including a limited FFI or limited branch). Complete Part IX (if applicable).
- Participating FFI.
- Reporting Model 1 FFI.
- Reporting Model 2 FFI.
- Registered deemed-compliant FFI (other than a reporting Model 1 FFI or sponsored FFI that has not obtained a GIN).
- Territory financial institution. Complete Part V.
- Sponsored FFI that has not obtained a GIN (other than a certified deemed-compliant sponsored, closely held investment vehicle). Complete Part X.
- Certified deemed-compliant nonregistering local bank. Complete Part XII.
- Certified deemed-compliant FFI with only low-value accounts. Complete Part XIII.
- Certified deemed-compliant sponsored, closely held investment vehicle. Complete Part XIV.
- Certified deemed-compliant limited life debt investment entity. Complete Part XV.
- Owner-documented FFI. Complete Part XI.
- Restricted distributor. Complete Part XVI.
- Foreign central bank of issue. Complete Part XVII.
- Nonreporting IGA FFI. Complete Part XVIII.
- Exempt retirement plans. Complete Part XIX.
- Excepted nonfinancial group entity. Complete Part XX.
- Excepted nonfinancial start-up company. Complete Part XXII.
- Excepted nonfinancial entity in liquidation or bankruptcy. Complete Part XXIII.
- Publicly traded NFFE or NFFE affiliate of a publicly traded corporation. Complete Part XXIII.
- Excepted territory NFFE. Complete Part XXIV.
- Active NFFE. Complete Part XXV.
- Passive NFFE. Complete Part XXVI.
- Direct reporting NFFE.
- Sponsored direct reporting NFFE. Complete Part XXVII.

6 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address (other than a registered address).
 City or town, state or province. Include postal code where appropriate. Country

7 Mailing address (if different from above)
 City or town, state or province. Include postal code where appropriate. Country

8 U.S. taxpayer identification number, if required
 QI-EIN WP-EIN WT-EIN EIN SSN or ITIN

9 GIN (if applicable)

10 Reference number(s) (see instructions)

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 254020 Form W-8IMY (Rev. 4-2014)



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