



Qualified Intermediary Frequently Asked Questions

These frequently asked questions and the corresponding answers (Q&As) are derived from telephone inquiries from members of the financial community. They are intended to further the continuing dialogue between the IRS and the financial community about issues arising under the QI program. They provide a convenient alternative to a direct telephone inquiry for members of the financial community wishing to enhance their understanding of these issues. The IRS continues to encourage direct inquiries because these Q&As are equivalent to telephone advice they do not amend or modify the Income Tax Regulations, the QI Agreement or other legal authority.

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I. BECOMING A QI.

QUESTION 1: What is a "Qualified Intermediary"?

ANSWER 1: A "Qualified Intermediary" (QI) is an eligible person that enters into a QI Agreement with the IRS pursuant to Rev. Proc. 2000-12, 2000-4 I.R.B. 387, and that acts as a QI under such Agreement. Generally, under the QI Agreement, the QI agrees to assume certain documentation and withholding responsibilities in exchange for simplified information reporting for its foreign account holders and the ability not to disclose proprietary account holder information to a withholding agent that may be a competitor.

QUESTION 2: What kinds of entities are eligible to enter into a QI Agreement?

ANSWER 2: The following entities may enter into a QI Agreement:

1. A foreign financial institution or foreign clearing organization (other than a U.S. branch or office),
2. A foreign branch or office of a U.S. financial institution or clearing organization,
3. A foreign corporation, but only for the purpose of claiming treaty benefits for its shareholders, or
4. Any other entity acceptable to the IRS, determined on a case-by-case basis.

QUESTION 3: How does an entity become a QI?

ANSWER 3: To apply for QI status, an eligible entity must submit an application in accordance with section 3 of Rev. Proc. 2000-12.

QUESTION 4: When can a QI applicant begin to act as a QI?

ANSWER 4: A QI applicant may act as a QI as soon as it receives its QI-EIN.

QUESTION 5: What is a QI-EIN?

ANSWER 5: A QI-EIN is a special Employer Identification Number assigned by the IRS to a QI. The QI-EIN must be used on every Form W-8IMY provided by the QI to the withholding agent from which it receives payments as a QI, and must be used on Forms 1042, 1042-S, 1042-T, 1099, 945, and 1096 filed with the IRS as a QI. A QI-EIN may be used only when the QI is acting in its capacity as a QI. Therefore, a QI may need an additional Employer Identification Number when it is acting in a non-QI capacity.

QUESTION 6: How does a QI applicant obtain a QI-EIN?

ANSWER 6: A QI applicant must include in its application a Form SS-4 requesting a QI-EIN. After the IRS receives the application, it will issue a QI-EIN to the applicant.

QUESTION 7: What can an applicant do to expedite its application for a QI Agreement?

ANSWER 7: Rev. Proc. 2000-12, 2000-4 I.R.B. 387, outlines the process of applying for and executing a QI Agreement, and provides the text of the QI Agreement. To expedite the application

and execution of its QI Agreement, an applicant should send its application to the following address:

Internal Revenue Service
LMSB:FS:QI
290 Broadway- 12th Floor
New York, NY 10007-1867
USA

Please note that this address differs from the address given in section 3.01 of Rev. Proc. 2000-12.

The application must contain all of the information required in section 3.02 (1) through (9) of Rev. Proc. 2000-12. An applicant need not submit the 18 items of information on a jurisdiction's know-your-customer rules required in section 3.02 if that jurisdiction is on the [List of KYC Rules](#) listed on the IRS website as a jurisdiction whose KYC rules have been approved or have been submitted for approval. The applicant should complete Form SS-4 (rev. 12-2001), "Application for Employer Identification Number," Lines 1, 4a, 4b, 6, 7, 8a (check "other" and insert "Qualified Intermediary"), 8b, 9 (check box "compliance with IRS withholding regulations") and 10 (insert the date that the QI proposes to begin operating as a QI). The applicant need not complete Lines 2, 3, 5a, 5b, or 11 through 17c.

The applicant should also submit with its application two signed copies of the QI Agreement, as requested in section 4 of Rev. Proc. 2000-12, with the following modifications:

1. A new section 12.08 must be added to the Miscellaneous Provisions to read as follows:

Sec. 12.08. This Agreement hereby incorporates all of the provisions of the QI Agreement published in Rev. Proc. 2000-12, 2000-4 IRB 387 with the following exceptions:

(A) Section 2.44(B)(4) of the QI Agreement, which defines the term "reportable amount" for a non-U.S. payor, is amended to read as follows:

Any foreign source interest, dividends, rents, royalties, or other fixed or determinable income if such income is paid in the United States or to an account maintained in the United States or any other amount known to be paid to a U.S. non-exempt recipient paid inside the United States or presumed paid to a U.S. non-exempt recipient under section 5.13(C)(4) of this Agreement (unless an exception to reporting applies under chapter 61 of the Code).

(B) The IRS address in section 12.06 of the QI Agreement is amended as follows:

Internal Revenue Service
LMSB:FS:QI
290 Broadway- 12th Floor
New York, NY 10007-1867
USA

(C) The following NOTE, which precedes section 3.07 of the Agreement, is deleted:

[NOTE: A qualified intermediary that is not a U.S. payor must obtain IRS approval to assume primary Form 1099 reporting and backup withholding responsibility with respect to reportable amounts. The IRS will evidence its approval of a non-U.S. payor's assumption of primary Form 1099 reporting and backup withholding responsibility by the signature of the Commissioner, or his delegate, in the margin of section 3.07 of this Agreement.]

Any other variances from the text of the QI Agreement, published in Rev. Proc. 2000-12 are not part of this Agreement, and therefore void, unless they are amendments made after the date this Agreement is executed, pursuant to section 12.02 of this Agreement.

2. Section 2.44(B)(4) of the QI Agreement as published in Rev. Proc. 2000-12, which defines the term "reportable amount" for a non-U.S. payor, must be replaced with the following amended section 2.44(B)(4):

Sec. 2.44. Reportable Payment.

(B) Non-U.S. Payor.

(4) Any foreign source interest, dividends, rents, royalties, or other fixed or determinable income if such income is paid in the United States or to an account maintained in the United States or any other amount known to be paid to a U.S. non-exempt recipient paid inside the United States or presumed paid to a U.S. non-exempt recipient under section 5.13(C)(4) of this Agreement (unless an exception to reporting applies under chapter 61 of the Code).

3. The IRS address in section 12.06 of the QI Agreement as published in Rev. Proc. 2000-12, must be replaced with the following IRS address:

Internal Revenue Service
LMSB:FS:QI
290 Broadway- 12th Floor
New York, NY 10007-1867
USA

4. The following NOTE, which precedes section 3.07 of the QI Agreement as published in Rev. Proc. 2000-12, must be deleted:

[NOTE: A qualified intermediary that is not a U.S. payor must obtain IRS approval to assume primary Form 1099 reporting and backup withholding responsibility with respect to reportable amounts. The IRS will evidence its approval of a non-U.S. payor's assumption of primary Form 1099 reporting and backup withholding responsibility by the signature of the Commissioner, or his delegate, in the margin of section 3.07 of this Agreement.]

QUESTION 8: Is a QI required to act as a QI?

ANSWER 8: The execution of a QI Agreement with the IRS authorizes the QI to act as a QI but does not obligate it to do so. Whether or not the QI chooses to act as a QI, it must file an annual tax return on Form 1042 using its QI-EIN. If the QI has not acted in its capacity as a QI for a taxable year, it should file a return for that year on Form 1042, and write in zeros where appropriate.

II. PAYMENTS COVERED BY THE QI AGREEMENT.

QUESTION 1: What payments are covered by the QI Agreement?

ANSWER 1: Payments that:

1. Are received by the QI in a QI-designated account, and
2. Are either reportable amounts or reportable payments.

QUESTION 2: What are reportable amounts?

ANSWER 2: Reportable amounts generally consist of U.S. source dividends, interest, rents, royalties and other fixed or determinable income. Amounts of accrued unpaid income, however, are not reportable amounts. Reportable amounts do not include:

1. Interest on deposits with banks or other financial institutions that remain on deposit for two weeks or less,
2. Original issue discount arising from a sale and repurchase transaction completed within a period of two weeks or less, or
3. Amounts described in Treas. Reg. § 1.6049-5(b)(7), (10) or (11) (relating to certain foreign targeted registered obligations and certain obligations issued in bearer form).

QUESTION 3: What are reportable payments?

ANSWER 3: The definition of a reportable payment differs depending upon whether the QI is a U.S. payor or a non-U.S. payor.

For a U.S. payor, a reportable payment generally consists of income from all securities (U.S. and non-U.S.) and proceeds from sales of any securities (subject to exceptions for certain securities such as bonds issued outside the U.S. by U.S. issuers in bearer form).

For a non-U.S. payor, a reportable payment generally means:

1. Any reportable amount;
2. Proceeds from the sale of securities that produce, or could produce, reportable amounts that are beneficially owned by a U.S. non-exempt recipient if the sale is effected inside the U.S.;
3. Proceeds from the sale of securities that produce, or could produce, reportable amounts that are beneficially owned by a U.S. non-exempt recipient whose identity is prohibited by law (including by contract) from disclosure, regardless of where the sale is effected; and
4. Any foreign source dividends or interest, or any other amount (including proceeds from the sale of securities) paid in the U.S., or to an account maintained in the U.S., to a person that is known or presumed to be a U.S. non-exempt recipient.

QUESTION 4: If the QI designates an account as a QI account, does the QI Agreement apply to non-U.S. securities that are also held in the designated account?

ANSWER 4: Yes, the QI Agreement applies to non-U.S. securities that are held in an account that the QI has designated as a QI account. If any of these securities is held by a U.S. non-exempt recipient, the QI must obtain a Form W-9 and must arrange for any reportable payments related to these securities to be reported to the IRS on Form 1099.

III. KNOW-YOUR-CUSTOMER RULES.

QUESTION 1: Where can a QI operate as a QI?

ANSWER 1: A QI can operate as a QI in any jurisdiction whose know-your-customer (KYC) rules have been approved by the IRS. Because the IRS regards KYC rules as a vital component of the QI system, the IRS will not extend the QI system to any jurisdiction that does not have KYC rules or has unacceptable KYC rules. The IRS will not allow a QI to operate as a QI in a jurisdiction that

does not have KYC rules or that has unacceptable KYC rules. (There are special rules for branches discussed below.)

QUESTION 2: How does a QI know whether the IRS has approved the KYC rules in a jurisdiction or whether the IRS has determined that a jurisdiction has no KYC rules or has unacceptable KYC rules?

ANSWER 2: The IRS maintains a list of jurisdictions whose KYC rules have been approved. See [List of KYC Rules](#).

QUESTION 3: Can a branch operating in a KYC approved jurisdiction act as a QI if it is a branch of an entity that is not organized in a KYC approved jurisdiction?

ANSWER 3: Yes, a branch operating in a KYC approved jurisdiction may act as a QI even if it is a branch of an entity that is not organized in a KYC approved jurisdiction. In that case, the branch is subject to the KYC rules of the country in which it is operating. Because the branch and the entity are the same legal person, the entity would enter into the QI Agreement, which would authorize it to act as a QI only with respect to the branch. This rule does not apply to groups of affiliated corporations. Each affiliate is a separate legal person that must enter into its own QI Agreement before it can operate as a QI in a KYC approved jurisdiction.

QUESTION 4: Can a QI act as a QI for branches operating in jurisdictions whose KYC rules have not yet been approved by the IRS or in jurisdictions that have no, or unacceptable, KYC rules?

ANSWER 4: A QI may not act as a QI for branches operating in jurisdictions whose KYC rules have not been submitted to the IRS. The Internal Revenue Service has released [Notice 2006-35](#) stating that branches of financial institutions will no longer be permitted after December 31, 2006 to act as Qualified Intermediaries in countries that do not have IRS approved "Know Your Customer" (KYC) rules.

QUESTION 5: Do the rules applicable to branches described in Q&A 4 also apply to affiliates of a QI?

ANSWER 5: The rules described in Q&A 4 apply only to branches. Because an affiliate is a separate legal person, an affiliate may not act as a QI in any jurisdiction unless it enters into a QI Agreement with the IRS and becomes a QI in its own right.

IV. DOCUMENTATION.

QUESTION 1: Must a QI obtain documentation from all of its account holders?

ANSWER 1: No. The QI Agreement requires the QI only to obtain documentation from any account holders to which the QI pays reportable amounts or reportable payments from a designated QI account.

QUESTION 2: What is a designated QI account?

ANSWER 2: A designated QI account is an account with a withholding agent that the QI has designated as an account for which it acts as a QI.

QUESTION 3: What efforts must a QI undertake to obtain documentation from account holders?

ANSWER 3: The QI Agreement provides that a QI must use its best efforts to obtain documentation from account holders.

QUESTION 4: What happens if documentation cannot be obtained despite best efforts?

ANSWER 4: The QI Agreement provides that an event of default has occurred if documentation is lacking, incorrect, or unreliable for a significant number of direct account holders.

QUESTION 5: What documentation must a QI obtain from its account holders?

ANSWER 5: The QI Agreement requires that, for a foreign account holder, a QI must obtain a Form W-8 or documentary evidence and, for a U.S. account holder, a QI must obtain a Form W-9 (or documentary evidence if the account holder is a U.S. exempt recipient).

QUESTION 6: May a QI use a substitute Form W-8 or W-9?

ANSWER 6: A QI may use substitute Forms W-8 and W-9. See the instructions accompanying Forms W-8 and W-9 for further information about substitute forms.

QUESTION 7: May a QI use a substitute Form W-8 that is not in English?

ANSWER 7: A QI may use a substitute Form W-8 that is not in English provided that the substitute form contains an English translation.

QUESTION 8: Is an undated Form W-8 valid?

ANSWER 8: If a QI receives an otherwise properly completed Form W-8 that is undated, the QI

may date the form from the day it is received and measure the validity period from that date.

QUESTION 9: May the QI add other information missing from a Form W-8?

ANSWER 9: No. If a QI receives an incomplete Form W-8 from an account holder, the QI may not complete the form on behalf of the account holder. The account holder must sign a completed form and provide it to the QI.

QUESTION 10: May a QI prepare a Form W-8BEN before presenting it to an account holder for signature?

ANSWER 10: A QI may complete Part I of Form W-8BEN with information obtained and recorded by the QI from the account holder in the ordinary course of business. For example, a QI may fill in the name and address of an account holder on a Form W-8 obtained from the QI's account opening form and then present the Form W-8 to the account holder for further completion and signature. A QI may not complete Part II for the account holder.

QUESTION 11: What type of documentary evidence may a QI obtain from its account holders?

ANSWER 11: From its direct account holders, a QI must obtain one of the types of documentary evidence listed in the applicable Attachment to its QI Agreement. From its indirect account holders, a QI must obtain documentary evidence in accordance with Treas. Reg. §1.1441-6(c) or §1.6059-5(c)(4).

For purposes of Section 10.03(A)(5) of the Audit Guidance, Rev. Proc. 2002-55, 2002-35 I.R.B. 435, for any audit year before 2005, the external auditor should report an account as undocumented if a direct account holder is documented in accordance with Treas. Reg. §§1.1441-6(c) or 1.6049-5(c)(4) and the documentation is not listed in the applicable Attachment or if an indirect account holder is documented with documentary evidence listed in the applicable Attachment that is not also described in Treas. Reg. §§1.1441-6(c) or 1.6049-5(c)(4). The external auditor should footnote such undocumented accounts. The footnote should identify the specific types of documentation received from the direct or indirect account holders. The external auditor need not select for the Phase 1 Spot Check, under section 10.04.7 of the Audit Guidance, any account that has been so footnoted. The footnote should also include the QI's proposed plan to conform such accounts to the documentation requirements of the QI agreement.

QUESTION 12: For purposes of section 5 of the Attachment to the QI Agreement, what is an acceptable certification for a photocopy of documentary evidence mailed to a QI by an account holder?

ANSWER 12: The IRS will accept the forms of certification commonly used in the local country to certify the authenticity of a copy of an original document if a third party with official authority is required to certify that the photocopy is true and correct. However, self-certifications are not acceptable even if they are the common practice in the local jurisdiction.

QUESTION 13: What procedures are necessary to properly document a pre-January 1, 2001, account for which the QI was not required to maintain originals or copies of documentary evidence under its KYC rules?

ANSWER 13: If the account file contains no documentary evidence, a notation from an employee that the employee actually examined documentary evidence is sufficient if the employee notation was made contemporaneously with the receipt of the document. After-the-fact certifications by an employee are not sufficient. If the account file does not contain documentary evidence or an employee notation, then the QI must obtain documentation from the account holder.

QUESTION 14: What type of documentary evidence must a QI obtain from an account holder claiming benefits under an income tax treaty?

ANSWER 14: From its direct account holders, a QI must obtain one of the types of documentary evidence listed in the applicable Attachment to its QI Agreement. It must also obtain a treaty statement unless the account holder is an individual, government or political subdivision thereof.

From its indirect account holders, a QI must obtain documentary evidence in accordance with Treas. Reg. §1.1441-6(c). It must also obtain a treaty statement unless the account holder is an individual, government or political subdivision thereof.

QUESTION 15: How long does documentary evidence remain valid for purposes of the QI Agreement?

ANSWER 15: Documentary evidence listed in the applicable Attachment to its QI Agreement obtained from direct account holders remains valid for as long as such documentary evidence remains valid under the applicable KYC rules, or until the QI knows or has reason to know that the information contained in it is incorrect. Documentary evidence described in Treas. Reg. §1.1441-6(c) obtained from indirect account holders is generally valid for three years, or until the QI knows or has reason to know that the information contained in it is incorrect.

QUESTION 16: What is a treaty statement?

ANSWER 16: The treaty statement required by the QI Agreement is as follows:

[Name of account holder] meets all provisions of the treaty that are necessary to claim a reduced rate of withholding, including any limitation on benefits provisions, and derives the income within the meaning of section 894 of the Code, and the regulations thereunder, as the beneficial owner.

A QI may use a treaty statement that is not in English.

QUESTION 17: Must the account holder sign and date the treaty statement?

ANSWER 17: Yes. An account holder that is required to provide a treaty statement must sign and date the treaty statement. If the account holder providing the treaty statement has not dated it, the QI may date the treaty statement on the date the QI receives it and measure the validity period from that date.

QUESTION 18: Can a treaty statement be provided by fax or email?

ANSWER 18: An account holder cannot submit the treaty statement by fax or email.

QUESTION 19: Can a QI inform account holders of the terms of limitation on benefits provisions of a treaty by referring them to the IRS website for income tax treaties?

ANSWER 19: Yes, see the IRS website for Income Tax Treaties.

QUESTION 20: If documentary evidence is obtained to establish residence under an income tax treaty, when do conflicting addresses require additional documentation?

ANSWER 20: The QI Agreement provides that if a QI has a mailing or residence address for the account holder (whether or not on the documentary evidence) that is outside the applicable treaty country, or the only address the QI has (whether in or outside the applicable treaty country) is a P.O. Box, in-care-of address, or an address at a financial institution (unless the financial institution is the beneficial owner), the QI must obtain additional documentation. For this purpose, a hold mail instruction is an address at the financial institution.

The additional documentation necessary to establish treaty residence in a jurisdiction where the account holder claims to be resident may include—

(i) An item of documentary evidence supporting treaty residence in the jurisdiction that does not show an address outside the jurisdiction, or

(ii) A Form W-8 showing both permanent residence and mailing addresses within the jurisdiction.

QUESTION 21: Can documentary evidence be used to establish residence under an income tax treaty when the country of issuance of the documentary evidence is not the same country for which treaty benefits are claimed?

ANSWER 21: Documentary evidence does not establish residence in the treaty country if the country of issuance of the documentary evidence is not the country for which treaty benefits are claimed. Therefore, for example, a passport issued by Country X does not establish treaty residence in Country Y.

For purposes of Section 10.03(A)(5) of the Audit Guidance, Rev. Proc. 2002-55, 2002-35 I.R.B. 435, for any audit year before 2005, the external auditor should report an account as undocumented if the country of issuance of the documentary evidence is not the same country for which treaty benefits are claimed. The external auditor should footnote those instances where the country of issuance of the documentary evidence is not the country for which treaty residence is claimed if (i) the documentary evidence is otherwise valid and (ii) both the mailing and permanent residence addresses provided by the account holder are inside the country for which treaty benefits are claimed. The footnote should identify the specific types of documentation received from the account holders. The external auditor need not select for the Phase 1 Spot Check, under section 10.04.7 of the Audit Guidance, any account that has been so footnoted. The footnote should also include the QI's proposed plan to conform such accounts to the documentation requirements of the QI agreement.

QUESTION 22: If a Form W-8 is obtained to establish residence under an income tax treaty, when do conflicting addresses require additional documentation or information?

ANSWER 22: The QI Agreement provides that if the permanent residence address on a Form W-8 is not in the applicable treaty country, the QI shall not treat the account holder as a resident under that income tax treaty unless—

(i) The account holder provides a reasonable explanation (in writing) for the permanent residence address outside the treaty country, or

(ii) The QI has in its possession, or obtains, documentary evidence that establishes residence in a treaty country.

If the permanent residence address of the Form W-8 is in the applicable treaty country but the QI has a mailing or residence address for the account holder (whether or not on the Form W-8) outside of the applicable treaty country, the QI shall not treat the account holder as a resident under the applicable treaty country unless—

(i) The QI has in its possession, or obtains, additional documentation that does not contain an address outside the treaty country and that establishes residence in a treaty country, or

(ii) The QI obtains a written statement from the account holder that reasonably establishes entitlement to treaty benefits.

A mailing address on the Form W-8 that is a P.O. Box, in-care-of address, or an address at a financial institution (if the financial institution is not a beneficial owner) does not preclude the QI from treating the account holder as a resident if the address is in the applicable treaty country.

QUESTION 23: What examples illustrate the rules of Q&A 20, 21 and 22?

ANSWER 23: Ex. 1 The account holder opens an account with QI and furnishes a passport from Country X and an address in Country X.

Conclusion: Because the account holder has furnished a passport from Country X and an address in Country X, no additional documentation is required.

Ex. 2 The account holder opens an account with QI and furnishes a passport from Country X and an address in Country Y.

Conclusion: Because the account holder has furnished a passport from Country X and an address in Country Y, additional documentation is required.

(A) The QI may treat the account holder as a treaty resident of Country X if the account holder is able to furnish (i) another item of documentary evidence that does not contain an address outside Country X and supports his claim of treaty residence in Country X, or (ii) a Form W-8 with both a permanent residence address and a mailing address in Country X.

(B) The QI may treat the account holder as a treaty resident of Country Y if the account holder is able to furnish (i) another item of documentary evidence that does not contain an address outside Country Y and supports his claim of treaty residence in Country Y, or (ii) a Form W-8 that shows a permanent residence address and mailing address in Country Y.

Ex. 3 QI is located in Country X. The account holder opens the account in Country X and furnishes a passport from Country Y. QI has no address for the account holder. The account holder instructs the QI to hold its mail.

Conclusion: Because the hold mail instruction is considered to be the address of the QI and the only address the QI has for the account holder is that address, the QI must obtain additional documentation for this account holder, as provided in Example 2.

****NOTE:** It is irrelevant whether the QI is located in the applicable treaty country because the hold mail instruction is the only address the QI has for the account holder.

Ex. 4 The QI is located in Country X, the account holder opens the account in Country X and furnishes a passport and mailing address from Country Y. The account holder instructs the QI to hold its mail.

Conclusion: Because the hold mail instruction is not the only address the QI has for the account holder, and because the mailing address provided by the account holder is within the applicable treaty country, the QI may properly give the account holder a reduced rate of withholding under the U.S.-Country Y Income Tax Treaty.

Ex. 5 The account holder opens an account with QI and furnishes a Form W-8 with a permanent residence address in Country X and a mailing address in Country Y to establish treaty residence in Country Y.

Conclusion: Because the W-8 has a permanent residence address outside Country Y, the QI may not treat the account holder as a resident of Country Y for purposes of claiming treaty benefits under the Country Y treaty. The QI, however, may rely on the Form W-8 if the account holder provides (i) a reasonable explanation (in writing) for the permanent residence address outside Country Y or (ii) documentary evidence that establishes his residence in Country Y.

Ex. 6 The account holder opens an account with QI and furnishes a Form W-8 with a permanent residence address in Country X and a mailing address in Country X to establish treaty residence in Country X. In the account opening statement, the account holder provides a mailing address in Country Y.

Conclusion: Because the account holder has provided a mailing address that is outside Country X, the QI may not treat the account holder as a resident of Country X for purposes of claiming treaty benefits under the Country X treaty. The QI, however, may rely on the Form W-8 if the account holder provides (i) additional documentation supporting the account holder's claim of residence in Country X that does not contain an address outside Country X, or (ii) a written statement that reasonably establishes his treaty residence in Country X.

QUESTION 24: What documentation should a French Fond Commune de Placement (FCP) provide to a US withholding agent or QI to claim an exemption from withholding tax under a provision of the Internal Revenue Code?

ANSWER 24: To claim an exemption from withholding tax under a provision of the Internal Revenue Code, e.g., with respect to portfolio interest,

(i) if the FCP is treated as a corporation for US tax purposes under section 301.7701-3 of the regulations, the FCP should provide a Form W-8BEN in its own name as beneficial owner.

(ii) if the FCP is treated as a partnership for US tax purposes under section 301.7701-3 of the regulations, the FCP has three options:

(a) provide a Form W-8IMY in its own name as a flow-through entity, with Forms W-8BEN or other appropriate documentation for persons investing through the FCP, along with a withholding statement including allocation information;

(b) enter into a withholding foreign withholding partnership agreement with the IRS (see Rev.

Proc. 2003-64, 2003-2 C.B. 306, as modified by Rev. Proc. 2004-21, 2004-1 C.B. 702, and Rev. Proc. 2005-77, 2005-2 C.B. 1176); or

(c) if it has an account with a QI, enter into an agreement with a QI under sections 4A.01 (joint account alternative) or 4A.02 (agency alternative) of the QI Agreement. See Rev. Proc. 2003-64, Rev. Proc. 2004-21 and Rev. Proc. 2005-77.

QUESTION 25: What documentation should a French Fond Commune de Placement (FCP) provide to a US withholding agent or QI to claim reduced rates of withholding tax under the US-France income tax treaty (the Treaty), as revised by Article I(2) of the Protocol to the Treaty (signed December 8, 2004)?

ANSWER 25: Under Article 4(2)(b)(iv) of the Treaty, an FCP is treated as a flow-through entity for purposes of claiming treaty benefits, e.g., with respect to claiming a reduced rate of withholding for dividends under Article 10(2)(b) of the Treaty. To claim an exemption under the Treaty, the FCP has three options:

(i) provide a Form W-8IMY in its own name as a flow-through entity, with Forms W-8BEN or other appropriate documentation for persons investing through the FCP, along with a withholding statement including allocation information;

(ii) enter into a withholding foreign partnership agreement with the IRS (see Rev. Proc. 2003-64, 2003-2 C.B. 306, as modified by Rev. Proc. 2004-21, 2004-1 C.B. 702, and Rev. Proc. 2005-77, 2005-2 C.B. 1176); or

(iii) if it has an account with a QI, enter into an agreement with a QI under sections 4A.01 (joint account alternative) or 4A.02 (agency alternative) of the QI Agreement. See Rev. Proc. 2003-64, Rev. Proc. 2004-21 and Rev. Proc. 2005-77.

V. FORM 1042-S REPORTING OBLIGATIONS.

QUESTION 1: What are the reporting obligations of a QI or U.S. withholding agent if, under the alternative procedure, a non-QI has provided all the required documents and information but has not supplied the allocation information?

ANSWER 1: If the non-QI fails to allocate, timely, more than 10% of the payment in a withholding rate pool to the specific recipients in the pool, the QI (or U.S. withholding agent) must file Forms 1042-S for each recipient in the pool on a pro rata basis. If however, the non-QI fails to allocate, timely, 10% or less of the payment in a withholding rate pool to the specific recipients in the pool, the QI must file Forms 1042-S for each recipient for which it has allocation information and report the unallocated portion of the payment on a Form 1042-S issued to "unknown recipient" (See Instructions to Form 1042-S, pp.6-9).

VI. DEPOSIT REQUIREMENTS.

QUESTION 1: How can a QI that has not enrolled in the Electronic Federal Tax Payment System (EFTPS) obtain coupon books to make deposits?

ANSWER 1: The QI can obtain coupon books for making deposits by calling (215) 516-2000.

QUESTION 2: How can a QI obtain a summary from the IRS of the amounts it has deposited?

ANSWER 2: The QI can obtain a summary of amounts it has deposited by calling (215) 516-2000, selecting option 4, and requesting a summary from the IRS representative.

VII. QI AUDIT.

QUESTION 1: Section 10.03.2 (c) of the Audit Guidance (Rev. Proc. 2002- 55, 2002-35 I.R.B. 435) allows the external auditor to include explanatory footnotes in its audit report. What information should be included in the footnotes?

ANSWER 1: The external auditor may include in the footnotes any information that will help the IRS to analyze the audit report, including explanations of information reported, additional information produced by any additional procedures or fact finding, or any proposals to perform additional procedures or fact finding. The IRS will use the information in the footnotes to evaluate problematic results in the audit report and to assess the QI's compliance with the QI Agreement.

QUESTION 2: What are some examples of information that an external auditor may include as footnotes in the audit report?

ANSWER 2: The external auditor may include in footnotes information to reflect--

1. Section 5.03(C) of the QI Agreement (transition rules providing that treaty statements are not required for accounts opened prior to January 1, 2001);
2. Section 5.10(B)(2)(i) of the QI Agreement (transition rules regarding documentary evidence provided by account holders before January 1, 2001, to establish foreign status);
3. Section 5.12(A) of the QI Agreement (transition rules for accounts opened prior to January 1, 2001, where employee record indicates that documentation was examined);
4. Section V.A. of Notice 2001-4, 2001-2 I.R.B. 267 (documentation transition rules).
5. Section III.C. of Notice 2001-4 (transition rules regarding documentation and reporting relief for simple and grantor trusts);
6. Notice 2002-66, 2002-42 I.R.B. 715 (extension of transition relief for partnerships);

The external auditor's report should not take into account the above transition rules other than by footnote where appropriate. However, the external auditor need not select for the Phase 1 Spot Check any account that should not be included in paragraphs (a) through (d) of section 10.04.7 of the Audit Guidance because of the above transition rules.

QUESTION 3: Can a Private Arrangement Intermediary ("PAI") obtain an external audit waiver under section 10.01.4, 10.01.5 or 10.01.6 of the Audit Guidance?

ANSWER 3: The IRS will not agree to waive the performance of an external audit by a PAI. Only a QI may obtain such a waiver. Thus, to obtain an audit waiver, a PAI must convert to QI status. If a PAI converts to QI status for an audit year, it will be eligible to request an audit waiver for that year.

QUESTION 4: How does a PAI convert to QI status?

ANSWER 4: For information about how a PAI converts to QI status, please contact the IRS:

Voice mail (212) 298-2091
IRS e-mail Abid.R.Siddiqi@irs.gov

QUESTION 5: How should an external auditor treat documentation provided to establish foreign status for an account holder that is an entity where the only address that is available for the entity is an in-care-of address or an address at a financial institution?

ANSWER 5: For purposes of Section 10.03(A)(5) of the Audit Guidance, the external auditor should report such cases as undocumented. The external auditor's report should footnote instances where the account holder's file contains organizational documents for the entity supporting the claim of foreign status. The external auditor need not select for the Phase 1 Spot Check, under section 10.04.7 of the Audit Guidance, any account that has been so footnoted.

VIII. SPECIAL RULES FOR AUDIT YEARS AFTER 2004.

QUESTION 1: Will there be any changes to the QI Audit Guidance, Rev. Proc. 2002-55, 2002-35 I.R.B. 435, or these Q&As, for audit years after 2004?

ANSWER 1: There will be no change to the QI Audit Guidance. In general, the Q&As in Sections I through VII will apply to audit years after 2004, with the following exceptions—

1. In Section VII, Q&A 2, items 1), 5) and 6) will no longer apply because the underlying rules have expired.
2. The Q&As in this Section VIII are added.

QUESTION 2: Will the IRS request information from the external auditor about the U.S. indirect account holders of a QI in addition to the information already required by the QI Audit Guidance?

ANSWER 2: The IRS expects that it will routinely make a Phase 2 request that the external auditor review and report on documentation for U.S. non-exempt recipients as part of its review and report under Section 10.03(A)(6).1 and .2 of the Audit Guidance. Following Step 8 of Section 10.03(A)(6).1, the IRS would instruct the external auditor to perform additional Steps 9 and 10 as follows:

Step 9: Segregate the U.S. non-exempt recipients from the indirect account holders identified in Section 10.03(A)(4).1 Step 7.

Step 10: Perform the procedures under section 10.03(A)(6).1 Steps 2 through 8 for each indirect account holder.

The IRS would also instruct the external auditor to separately complete Reports 1 and 2 of Section 10.03(A)(6).2 for such indirect account holders. To avoid a Phase 2 request for this information, the external auditor should include this information in footnotes to Section 10.03(A)(6).1 and .2 of the audit report.

QUESTION 3: Will the IRS request any information regarding a QI's implementation of Section 4A.01 and .02 of the QI agreement (joint account and agency options for treatment of partnership and trust accounts)?

ANSWER 3: The IRS expects that it will routinely make a Phase 2 request that the external auditor review and report on a QI's implementation of Sections 4A.01 and .02 of the QI Agreement. The IRS would instruct the external auditor to identify the accounts to which the QI has applied Sections

4A.01 and .02 respectively in Steps 6 and, if applicable, Step 10 of Section 10.03(A) (5).1 of the QI Audit Guidance, and, for each account to which the QI has applied Section 4A.01, to--

1. inspect the written agreement required in Section 4A.01 to determine whether it contains the required terms;
2. inspect the Form W-8IMY, the documentation for each partner, beneficiary or owner, and the withholding statement to determine that documentation has been obtained for all partners, beneficiaries or owners and that none of the partners, beneficiaries or owners is a U.S. person or pass-through partner, beneficiary or owner;
3. Perform the steps required in Section 10.03(A) (4).1 and (5).1 of the QI Audit Guidance to determine the validity of the Form W-8IMY and the documentation for each partner, beneficiary or owner;
4. determine the rates of withholding to which each partner, beneficiary or owner is subject and whether the QI has treated payments as allocated solely to a partner, beneficiary or owner that is subject to the highest rate of withholding;
5. perform the procedures in Sections 10.03(B), (C) and (D) of the QI Audit Guidance for the account, based on the partner, beneficiary or owner that is subject to the highest rate of withholding;
6. determine whether any separate Forms 1042-S were issued to any partner, beneficiary or owner and whether any payments to the partnership of trust account were included in any collective refund claim by the QI; and
7. Report accordingly.

To avoid a Phase 2 request for this information, the external auditor should include this information in the appropriate required reports with footnotes that separately state information about the accounts to which Section 4A.01 has been applied. The information requested in items (1), (2), (3), (5) and (7) should be reported and footnoted in section 10.03(A)(5).2, Report 7 of the QI Audit Guidance.

QUESTION 4: Under what circumstances will the IRS grant extensions for the submission of the QI audit report beyond December 31 of the year following the audit year?

ANSWER 4: Section 10.03 of the QI Agreement requires that the audit report must be received by the IRS no later than June 30 of the year following the audit year. It further provides that the IRS may, upon request by the external auditor, extend the due date of the audit report upon good cause. Section 10.05.3 of the QI Audit Guidance provides that the IRS will grant an automatic extension of the due date of the audit report until December 31 of the year following the audit year if the external auditor submits a request for extension in writing that identifies the QI to be audited to the IRS by June 30 of the year following the audit year. It also provides that the external auditor may request further extensions of the due date of the report by submitting a request for extension in writing before the due date under any previous extension, stating the date to which the extension is requested, and explaining the reason for the extension.

Based on its experience in administering these provisions in QI audits for years before 2005, the IRS has determined that an optional and more specific procedure for scheduling submissions of QI audit reports under these provisions might enhance efficiency and coordination between IRS and external auditors. Accordingly, for audit years after 2004, an external auditor may coordinate the submission of QI audit reports with the IRS using the following optional procedure, on an audit by audit basis:

1. The external auditor must appoint a single individual employee as the scheduling coordinator for all QI audits to be coordinated by the external auditor under this procedure. The external auditor must notify the IRS of the scheduling coordinator's name, address, e-mail address, telephone and fax numbers before it may use this procedure.
2. Before the earlier of—(i) 30 days after the external auditor has been engaged to perform the QI audit, or (ii) June 30th of the year following the audit year, the scheduling coordinator and the QI must propose a submission date in writing to the IRS. The proposals must include the QI's name and QI-EIN, and state the date that the external auditor was engaged by the QI to perform the QI audit. The proposal must be signed by both the scheduling coordinator and QI responsible person. Proposals must be sent to:

Thomas Chillemi, QI Team Manager
Internal Revenue Service
LMSB: FS: QI
290 Broadway - 12th Floor
New York, NY 10007-1867, USA.
Attn: Audit Scheduling

3. The proposed submission date for the QI audit report must be a specific date (day, month and year). The scheduling coordinator and QI may propose any specific date before the first day of the third year following the audit year. If the IRS approves the proposed submission date, the IRS will notify the scheduling coordinator in writing and may require the QI to execute a Form 872 to extend of the statute of limitations for the audit year. Within 30 days, the scheduling coordinator must notify the QI of the submission date in writing and must copy the IRS. If the IRS does not approve the proposed submission date, the IRS will suggest a period within which an acceptable submission date may be proposed. If the scheduling coordinator and the IRS are unable to agree on a submission date, this procedure may not be used for the QI audit. If the scheduling coordinator and QI have sent a proposal to the IRS on or before June 30th of the year following the audit year and the scheduling coordinator, QI and IRS are unable to agree on a submission date, the IRS will grant an automatic extension of the due date of the report until December 31 of the year following the audit year pursuant to Section 10.05.3 of the Audit Guidance.

4. The scheduling coordinator must submit the QI audit report no later than the submission date. The scheduling coordinator may submit the QI audit report at any time prior to the submission date. The scheduling coordinator may request an extension of the submission date under section 10.05.3 of the Audit Guidance.
5. The IRS will accept scheduling proposals and the submission of the audit report for a QI audit for which this procedure is used only from the external auditor's scheduling coordinator. All written communications between the external auditor and the IRS regarding a QI audit for which this procedure is used must be copied to the scheduling coordinator.
6. The external auditor may not use this procedure for a QI audit before the external auditor has been engaged in writing to perform the QI audit. Further, the external auditor may not use this procedure unless it has been engaged to perform the QI audit before June 30 of the year following the audit year.

QUESTION 5: What procedures will the IRS follow in administering WP/WT Audits by external auditors under Section 8 of the WP/WT agreement?

ANSWER 5: In general, the IRS will follow procedures similar to relevant procedures in the QI Audit Guidance. As in the QI Audit Guidance, WP/WT audits will consist of three phases: Phase one, consisting of basic fact finding and preparation of the audit report; Phase two, consisting of additional fact finding at the direction of the IRS; and Phase three, consisting of audit meetings between the IRS and the WP or WT. Unlike the procedures in the QI Audit Guidance, which allow waiver of the QI audits in certain circumstances, the IRS will not waive any WP/WT audits and the external auditor will be required to submit an audit plan. The IRS will employ the following procedures for the WP/WT audits:

1. Audit plan and schedule.
After the external auditor has been engaged by the WP/WT to perform the WP/WT audit and has formulated a proposed audit plan, the external auditor must submit the proposed audit plan to the IRS with a proposed submission date for the audit report for IRS review and approval. The external auditor may request a meeting with the IRS to discuss the proposed audit plan and submission date. The audit plan must satisfy the requirements of Section 8.05 of the WP/WT Agreement and may incorporate relevant procedures in the QI Audit Guidance. The external auditor must propose a specific date on which the audit report will be submitted, and may propose a date after December 31 of the year following the calendar year being audited and before January 1 of the third year following the calendar year being audited in order to spread workload and coordinate with IRS workload.
2. Phase 1: Audit report.
The external auditor's report must satisfy the requirements of Section 8.06 of the WP/WT Agreement and may incorporate reports and formats from the QI Audit Guidance. For Phase 1 of the WP/WT audit, the IRS will follow procedures similar to the Phase 1 procedures in Sections 10.05 and 10.06.1 of the QI Audit Guidance.
3. Phases 2 and 3: IRS directed procedures and audit meeting. For Phases 2 and 3 of the WP/WT audit, IRS will follow procedures similar to the procedures for Phases 2 and 3 in Section 10.06.2 and 10.06.3 of the QI Audit Guidance.

IX. RENEWAL OF QI AGREEMENT

QUESTION 1: How does a QI renew its QI Agreement?

ANSWER 1: The renewal of the QI agreement continues the QI agreement for a succeeding term. The renewal of a QI Agreement will not be dependent on a review of the QI's audit report from the last audit under the previous term of its QI Agreement. However, the IRS' renewal of the QI agreement is in no way a waiver of a QI's default discovered in that audit.

For purposes of Section 11.06, of the QI Agreement, the procedures for renewal of the QI Agreement are as follows--

1. No earlier than one year and no later than six months prior to the expiration of the QI Agreement, the QI must send a request for renewal, in writing, to the following address:

Internal Revenue Service
LMSB: FS: QI
290 Broadway – 12th Floor
New York, NY 10007-1867
USA
Attn: QI Renewal
2. The request for renewal must include—(a) the QI's name, address and QI EIN; (b) name, address, title, telephone and fax numbers, and e-mail address of the individuals who will be the responsible parties for performance under the QI Agreement, pursuant to Section 3.02(4) of Rev. Proc. 2000-12; and (c) two signed copies of the renewal instrument.
3. If the IRS chooses to renew the agreement, the IRS will sign both copies of the renewal instrument and return one copy to the QI.

The renewal instrument will incorporate by reference the QI Agreement as published in Rev. Proc. 2000-12 (as amended by Rev. Proc 2003-64, 2003-32 I.R.B. 306 and Rev. Proc 2004-21, 2004-14, I.R.B. 702) and will state any further amendments to the QI Agreement made pursuant to Section 12.02 of the QI Agreement. The renewal instrument will be made available on the QI website for the convenience of QI's requesting renewal.

X. THE IRS ELECTRONIC W-8 MEMORANDUM OF UNDERSTANDING PROGRAM

- Question 1: Can a withholding agent collect Forms W-8 electronically?
Question 2: What is the IRS Electronic W-8 MOU Program?
Question 3: What is an EW-8 MOU?
Question 4: Who may obtain an EW-8 MOU?
Question 5: Are all EW-8 systems eligible for an EW-8 MOU?
Question 6: Why should a withholding agent obtain an EW-8 MOU?
Question 7: What is required of an EW-8 system in order to obtain an EW-8 MOU?
Question 8: Can an EW-8 system be eligible for an MOU if it pre-populates information for its users?
Question 9: How can a withholding agent obtain an EW-8 MOU from IRS?

Question 1: Can a withholding agent collect Forms W-8 electronically?

Answer 1: Yes. Treas. Reg. §1.1441-1(e)(4)(iv) provides that a withholding agent may establish a system for a beneficial owner to electronically furnish a Form W-8 or an acceptable substitute Form W-8. In addition, a withholding agent may voluntarily choose to participate in the IRS Electronic W-8 Memorandum of Understanding ("EW-8 MOU") Program.

Question 2: What is the IRS EW-8 MOU Program?

Answer 2: The IRS EW-8 MOU Program, a collaborative process between the withholding agent and IRS, is open to all withholding agents. IRS works with withholding agents to develop electronic systems for beneficial owners to furnish Forms W-8 electronically and validate these forms through an automated process. The IRS EW-8 MOU Program provides withholding agents with the opportunity to coordinate the development and improvement of their EW-8 systems with IRS and to obtain an EW-8 MOU. The goal of this process is to provide withholding agents with feedback concerning the sufficiency of their electronic system and provide withholding agents with assurances that their system meets the requirements of Treasury regulations.

Question 3: What is an EW-8 MOU?

Answer 3: An EW-8 MOU is a document that details the extent of the IRS' approval of a specific EW-8 system. Various types of electronic systems exist which are used to collect and validate Forms W-8. Accordingly, each EW-8 MOU is unique because it is tailored to meet the specific needs of withholding agents. Each EW-8 MOU incorporates as an attachment the written submission ("written submission") of the withholding agent MOU applicant ("MOU applicant"). The written submission provides a detailed description of the specific EW-8 system. Final MOUs are signed by both the IRS and the MOU applicant. MOUs remain in effect for a term of six years. The MOU applicant, however, agrees to inform IRS of any significant changes to its system and bears the responsibility of requesting modifications to the MOU when necessary. Significant changes include, but are not limited to, modifications, deletions, or additions to the questions asked of users or to any validation procedures. Changes to Form W-8 or W-9, Treasury Regulations under chapter 3, and/or issuance of Treasury Regulations under chapter 4 will be considered significant changes requiring MOU modification. Modifications to existing MOUs required as a result of such changes will be given priority over new MOU applications.

Question 4: Who may obtain an EW-8 MOU?

Answer 4: Program developers may assist withholding agents in developing an electronic W-8 system. However, as of this time, only withholding agents may obtain an EW-8 MOU from IRS.

Question 5: Are all EW-8 systems eligible for an EW-8 MOU?

Answer 5: Not all EW-8 systems are eligible for an EW-8 MOU. Through the EW-8 MOU Program, IRS is attempting to encourage systems that are self-validating and seek to improve data quality. Accordingly, eligible systems must be in a question and answer interview format rather than a simple fill-in the form format, and must validate the information provided electronically. Any questions regarding eligibility should be directed to Ashton Ellis, Technical Advisor – Qualified Intermediary, by phone at (212) 298-2283, or by FAX at (212) 298-2106.

Question 6: Why should a withholding agent obtain an EW-8 MOU?

Answer 6: Withholding agents may attempt to follow the requirements of Treas. Reg. §1.1441-1(e)(4)(iv) without obtaining an EW-8 MOU. However, the EW-8 MOU provides a withholding agent with two important benefits. First, the withholding agent gains the assurance from IRS that it has already reviewed and approved its EW-8 system. Second, audits of U.S. withholding agents or external audits of qualified intermediaries that have entered into an MOU with IRS have the potential to be much more efficient and streamlined.

Question 7: What is required of an EW-8 system in order to obtain an EW-8 MOU?

Answer 7: Below is a non-exhaustive list of the IRS' expectations with regard to an EW-8 MOU system. While IRS recognizes that each EW-8 system is unique, to be eligible for an MOU, each EW-8 system must have the following features:

- 1) Follows an interview format which takes the user of the system ("user") through a series of questions and directs the user to appropriate follow-up questions.

- 2) Collects all information required of the corresponding paper form.
- 3) Properly authenticates and verifies each user. All electronic systems must verify the identity of each user and ensure that the person accessing the system is the person named on the form or has capacity to sign for the person or entity named on the form. For joint accounts, the system must authenticate and verify each beneficial owner. Broker/dealers may use customer identification programs mandated by the Department of Treasury and the Securities Exchange Commission to verify the identity of customers. Such systems may need enhancements to cover indirect account holder beneficial owners.
- 4) Pre-populates only limited information. See Question 8 below for more specific information on pre-population.
- 5) Documents all occasions of user access that result in the submission, renewal or modification of a form.
- 6) Requires that the user confirm that he or she agrees to the electronic submission of tax forms.
- 7) Attempts to detect U.S. persons, dual citizens, and those subject to U.S. resident taxation in order to determine if a Form W-9 is required.
- 8) Asks the following questions of individual beneficial owner users:

Either "What country were you born?" or "Were you born in the United States?" If the answer indicates U.S. birth, then the follow-up question "Have you formally renounced your U.S. citizenship?" should be asked. If U.S. citizenship has been formally renounced, then the follow-up question "Are you presently subject to taxation in the United States as a U.S. citizen or resident alien?" should be asked.
- 9) Requests U.S. and non-U.S. tax identification numbers.
- 10) Requires that under penalties of perjury each user acknowledge separately each applicable certification set forth on the paper Form W-8.
- 11) Includes language above the signature line required of substitute Forms W-8. A description of such required language is outlined in the "Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY", pages 6-7.
- 12) Instructs the user that the electronic signature will be treated as an acceptance of the information provided or confirmed and constitutes a legally binding digital signature.
- 13) For entities, may include a broad list of approved signing capacities that comply with IRC §§ 6061-6063 and the associated Treasury regulations.
- 14) Where there is more than one account holder of an account, the system must not consider the account documented for U.S. tax purposes until all beneficial owners have individually submitted a valid withholding certificate.
- 15) Validates all forms by identifying and tracking any discrepancies and inconsistencies in the information provided by the user. Also, compares information provided by the user with the information available to the withholding agent. The system should track and report all discrepancies and instances of manual review.
- 16) The system must track all significant changes in account information, and obtain new forms W-8 if needed. Significant changes in account information include, but are not limited to, change in name, country of incorporation, permanent address country or mailing address country.
- 17) May be used to meet the obligation of payment settlement entities ("PSEs") required by IRC § 6050W.
- 18) May be used by several subsidiaries of one parent entity. An MOU may be created which would cover all the subsidiaries.
- 19) May include any Forms W-8 and may include Forms W-9 in conjunction with Forms W-8. For information regarding the electronic submission of Forms W-9, see Announcement 98-27, 1998-1 C.B. 865, and Announcement 2001-91, 2001-2 C.B. 221.

Question 8: Can an EW-8 system be eligible for an MOU if it pre-populates information for its users?

Answer 8: EW-8 systems eligible for an MOU ("eligible systems") can and should, in some instances, pre-populate information for users. Any pre-populated field, however, must be confirmed by the user. This confirmation can be accomplished with the use of a check box for each pre-populated field. Eligible systems should pre-populate information for users according to the following guidelines:

Required Pre-population: Eligible systems are required to pre-populate TIN or foreign tax identifying numbers if they are available in the withholding agent's account records.

Permitted Pre-population: Pre-population is only permitted in Part 1 of the Form W-8, and only for certain fields. Fields that may be pre-populated are as follows:

- 1) Name.
- 2) Permanent Residence Address: Pre-population is permitted provided the user selects the country from a drop down menu, and the selection is verified against the withholding agent's records.
- 3) Mailing Address: Pre-population is permitted provided the user selects the country of the mailing address as with the country of permanent residence.

All address fields specified in Publication 1187 should be included as separate electronic fields, such as city, state, postal/zip code and country. Each field must be confirmed by the user. However, separate address fields may be confirmed in convenient groups.

Prohibited Pre-population: Only fields specifically described above may be pre-populated when an initial Form W-8 is completed.

Pre-population on Renewal: Pre-population of all fields other than signature is permitted upon renewal provided the user separately confirms all pre-populated fields.

Question 9: How can a withholding agent obtain an EW-8 MOU from IRS?

Answer 9: A withholding agent who is developing an EW-8 system and that seeks to obtain an MOU from the IRS should proceed as follows:

- 1) **Application.** A withholding agent interested in an EW-8 MOU should follow the [Instructions for Applying for an Electronic W-8 MOU](#).
- 2) **Pre-Submission Conference.** Once an MOU application is submitted, the IRS will determine initially whether the proposed system meets the basic EW-8 MOU requirements. The IRS EW-8 Team may then request to discuss the withholding agent's EW-8 system with the withholding agent. The purpose of such a meeting is for the IRS EW-8 Team to gain a general overview of the withholding agent's proposed system. The withholding agent should be prepared to discuss its business, and provide an overview of how its EW-8 system works including authentication, security, and validation procedures. Screenshots and interview questions also assist in the initial discussions with the IRS.
- 3) **Demonstration of System.** Subsequent to the pre-submission conference the IRS EW-8 team may request that the withholding agent provide one or more demonstrations of various aspects of its system.
- 4) **Conferences.** Following any demonstrations of the system, the IRS EW-8 team may request additional conferences with the withholding agent to obtain additional information, and discuss IRS concerns or questions about the proposed system.
- 5) **Written Submission.** Once IRS has reached a sufficient level of comfort with the withholding agent's EW-8 system, the withholding agent will be asked to prepare a written submission. This written submission should describe the withholding agent's online system in detail as it will be attached and incorporated into the EW-8 MOU. The written submission should include the following:
 - a) Withholding agent name and address,
 - b) Withholding agent EIN,
 - c) Overview of the withholding agent's business including a description of the types of services provided or products sold and the types of payments made,
 - d) A list of the forms and user types (e.g. individual, corporation, partnership) supported by the system,
 - e) A detailed description of authentication and security procedures including how passwords are issued,
 - f) Screenshots of interview questions presented to a user of the system,
 - g) A description of what specific information is pre-populated by the system,
 - h) A description of the certification and signature procedures,
 - i) A detailed description of validation procedures including the following:
 - 1) Information on how the system validates internal consistency of each form,
 - 2) Information identifying the account holder information (e.g. account master file) to be used for validating data gathered during the EW-8 interview process, and
 - 3) A list of all EW-8 data fields validated and an explanation of which fields are validated against which specific account holder information.
 - j) A description of what processes (including manual processes) are used to further assist the user in completing a form when it initially fails system validation. Please categorize the processes by cause of failure. Indicate what records are kept of such processes and of the ultimate results, and
 - k) Any other issues raised by IRS during the earlier stages of the MOU process.

XI. INTERNAL AUDIT WAIVER

QUESTION 1: How can a QI request IRS clearance of a proposed annual internal audit review program for purposes of the internal audit waiver under section 10.01.6 of the QI Audit Guidance?

ANSWER 1: Section 10.01.6 of the QI Audit Guidance provides for an internal audit waiver under which the IRS waives the performance of the QI audit by an external auditor for an audit year. If this waiver is granted, the QI's internal audit department may perform the audit and report to the

IRS in accordance with the QI Audit Guidance.

To qualify for the internal audit waiver, the QI must maintain a substantial and independent audit staff and the QI's internal auditors must have conducted a review of the QI's compliance with the QI Agreement each year for the three years preceding the audit year. Section 10.01.6 also provides that the QI may request IRS clearance of any proposed program of tests, checks or other procedures to be performed by its internal audit department (Internal Audit Review Program).

A QI that desires to obtain IRS clearance for its Internal Audit Review Program should follow the procedures described below.

(1) Pre-Submission Conference. Prior to submitting a written proposal, the QI must request a pre-submission conference to discuss its proposed internal audit review program by contacting the IRS at—

Internal Revenue Service
Qualified Intermediary Program
290 Broadway, 12th floor
New York City, New York 10007-1867 USA
Attention: Internal Audit Program

Questions regarding IRS clearance of internal audit review programs should be directed to Thomas McGrath at tom.mcgrath@irs.gov phone number 212-298-2187, or by FAX at 212-298-2106.

(2) Written submission. The QI must submit a written description of its proposed internal audit review program. The submission should include a description of the QI's internal audit department, including an organizational chart identifying key personnel and their responsibilities. The submission should also identify a single person within the internal audit department to act as a contact with the IRS in developing the proposed internal audit review program. The submission should be sent to the address provided in paragraph (1) above.

(3) Conferences. The QI or the IRS may request one or more conferences to obtain additional information, make comments and discuss concerns about the proposed system.

(4) Memorandum of Understanding (MOU). When the IRS is satisfied that the internal audit review program is sufficient, the IRS and the QI will execute an MOU that describes the program. The MOU may also address consolidated audits and modified audit plans with respect to the internal audit waiver. The MOU will identify an IRS audit coordinator to work with the QI's internal auditors during the term of the MOU. The MOU will specify the audit years for which a waiver can be requested under the procedures of Section 10.01.6. A QI may not request an internal audit waiver for an audit year unless its internal audit review program has been in operation for at least three years preceding such audit year. The MOU will expire when the QI Agreement expires. A new MOU must be executed for each term of the QI Agreement.

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