

MEMO# 26225

June 8, 2012

IRS Releases Draft Investor Certification Forms for FATCA

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TO: ICI GLOBAL TAX COMMITTEE No. 2-12 RE: IRS RELEASES DRAFT INVESTOR CERTIFICATION FORMS FOR FATCA

The IRS has released drafts of the new investor certification forms that will be used to certify foreign status for U.S. tax treaty benefit and FATCA withholding purposes. Draft instructions for the forms have not been released. These two new forms will replace the existing IRS Form W-8BEN (last revised in 2006); the existing W-8BEN is used by both individuals and others to, among other things, identify an account's beneficial owner and claim tax treaty benefits.

The draft new W-8BEN – Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individual) – would be used only by individuals. In most respects, the existing W-8BEN and the draft new W-8BEN require individuals to provide the same information and make the same certifications.

The draft new W-8BEN-E – Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Entities) – generally would be used by other non-U.S. investors; in certain cases, identified on the W-8BEN-E, another form (such as a W-8IMY) should be used. Because this new form would be used to establish FATCA compliance, it is very different from the existing W-8BEN. Part I of the draft new form – regarding beneficial owner identification – includes 24 separate boxes to identify an entity's status for FATCA purposes. Parts II and III of the form, as with the existing W-8, would be used to claim tax treaty benefits and to disclose certain notional principal contracts. Parts IV through XXIII would be used by an entity to certify its FATCA status (e.g., as a participating foreign financial institution ("FFI") or a registered deemed-compliant FFI). Part XXIV would be used to certify under penalties of perjury that the information provided is, to the best of the signer's knowledge, accurate and complete. The final part of the form (Part XXV) would be used to identify substantial U.S. owners of passive nonfinancial foreign entities.

Keith Lawson
Senior Counsel - Tax Law

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