

IRS releases preliminary drafts of Form W-8BEN



On June 6, 2012, the Internal Revenue Service (IRS) released two preliminary drafts of the Form W-8BEN: Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individual)) and Form W-8BEN-E, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Entities).

The draft Forms W-8BEN are intended to replace the current Form W-8BEN once the provisions of the Foreign Account Tax Compliance Act ("FATCA") becomes effective.

Currently, the Form W-8BEN is provided by both foreign individuals and foreign entities for purposes of complying with the withholding and reporting requirements under Internal Revenue Code (IRC) Section 1441 (chapter 3) related to certain US source payments made to non-US persons. Foreign persons provide Form W-8BEN to establish their foreign status, certify that they are the beneficial owners of the payment and to claim a reduced rate of, or exemption from, withholding under an income tax treaty.

The two draft forms provide insight into how the IRS views the FATCA documentation requirements and will allow the non-US payee to certify their status for purposes of IRC Section 1441 and FATCA.

The individual certification, Form W-8BEN is a one page document which is very similar to the current (2006) version of the Form W-8BEN, except for the fact that lines relating to entity information have been removed. The longer six page entities certification, Form W-8BEN-E, retains most of the elements of the current version of the Form W-8BEN, but has added multiple new sections corresponding to each of the various FATCA status types.

The drafts issued on June 6 are preliminary and were not issued with instructions. An official draft of these forms are expected by the end of June or early July, however draft instructions are not expected until the FATCA regulations are finalized. Drafts of the Form W-9 and others in the Form W-8 series are also expected to be revised before the end of the year. However, instructions for the new forms are not expected to be released until the final forms are published.

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Draft Form W-8BEN for individuals

Draft Form W-8BEN-E for entities