



IRS Issues Updated Form W-9 to Comply With FATCA

November 26, 2013

The IRS recently released a revised [Form W-9 Request for Taxpayer Identification Number and Certification](#) and its [instructions](#). Although the IRS did not provide a time period for implementing the new Form W-9, financial institutions are encouraged to implement use of the new form, and to update any substitute W-9 that may be used in account-opening documentation, as soon as reasonably possible.

Generally, the Form W-9 is used by payees to certify that they are a U.S. person and to provide their correct taxpayer identification number. In addition, the Form W-9 can be used by certain U.S. entities to certify their status as exempt from backup withholding. The Form W-9 should be completed by U.S. persons, including individuals who are either U.S. citizens or residents, and entities such as partnerships, corporations, estates and domestic trusts.

The IRS revised Form W-9 to conform to the provisions of the Foreign Account Tax Compliance Act ("FATCA"). The revised Form W-9 permits a payee to indicate if an exemption from FATCA reporting applies. The FATCA exemption codes are included in the instructions to Form W-9. (Note that FATCA reporting requirements generally apply only to foreign financial institutions; U.S. financial institutions maintaining accounts in the U.S. typically are not required to collect exemption codes for FATCA reporting.) The certification statement on the revised Form W-9 also has been modified. To accommodate the implementation of FATCA, an additional statement was added to the penalties of perjury certification requiring payees to certify that their FATCA exemption code (if provided) is correct.

In addition, the revised Form W-9 requires payees that claim an exemption from backup withholding to provide additional information regarding the exemption. Unlike the prior Form W-9, on which a payee merely checked a box indicating that it was exempt, the revised Form W-9 requires the exempt payee to enter an exemption code indicating the exemption for which the payee qualifies (e.g., the payee is exempt from backup withholding because it is a corporation, a real estate investment trust, a political subdivision etc.).

As noted above, the IRS did not provide a time period for implementing the new Form W-9. Absent additional guidance, we would recommend that financial institutions that use a substitute Form W-9 in account-opening documentation review their forms and make the appropriate modifications as soon as reasonably possible.

For more information about the new [Form W-9](#), please contact either Joseph D. Simon at [516-357-3710](tel:516-357-3710) or via email at jsimon@cullenanddykman.com, or Deirdre Mitacek at [516-296-9136](tel:516-296-9136) or via email at

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