



The ITIN Fiasco

Withholding Primer for Payments to Nonresident Aliens and Foreign Corporations

Arthur J. Dichter
GGI North American Conference
May 9-12, 2013

Who needs an ITIN?

- Foreign individuals filing a US tax return who are not eligible for a social security number
- Exceptions to the filing of a return requirement:
 - Passive income
 - Other Income
 - Mortgage Interest
 - FIRPTA withholding



Quick Review of FIRPTA Rules

- Buyer required to withhold 10% of gross proceeds for foreign person who sells interest in US real property. (In certain cases, 35% of gain.)
- Must be remitted within 20 days of sale with Forms 8288 and 8288-A
- Withholding certificates and non-recognition transactions



NOTE: Withholding certificates must be applied for before transaction closes

In the Good Old Days...

- Complete Form W-7
- Complete the tax return (unless exception applies)
- Original/notarized/certified copy of supporting document were accepted

REMEMBER WHEN???



TIP FROM INSTRUCTIONS TO FORM W-7:

"To avoid any loss of your documents, it is suggested that you do not submit the original documentation."

The Beginning of the End



- June 2012 interim changes
- January 2013 new procedures

Solutions

- Certified documents from issuing agencies
- Certifying acceptance agents



Withholding Primer for Payments to Nonresident Aliens and Foreign Corporations

What's New

- After 1/1/13, interest on deposits of \$10 or more now reported on Forms 1042 and 1042-S.
- For obligations issued after 3/18/2012 bearer bonds no longer qualify for portfolio interest exception
- Extension of expired provisions relating to
 - RIC treated as qualified investment entity
 - Interest-related dividends and short-term capital gains

Rules for General Application

- FDAP income subject to 30% withholding tax
- Reported on Forms 1042 and 1042-S
- Rate may be reduced by treaty (W-8 BEN)
- W-8 versus W-9
- Foreign Partner in partnership with ECI



Withholding Agent Liable for Tax



Who is the Payee?

- US agent of foreign person – if you know – withhold
- Disregarded entity – Payee is the owner, not the entity
- Flow through entities – Owners or beneficiaries treated as owners
 - ECI treated as paid to the entity
 - Form W-8IMY
 - Qualified intermediary
 - Non-qualified intermediary
 - FATCA classifications

Income Subject to Withholding

- Effectively connected income (ECI) – No withholding if W-8ECI submitted
- Interest
- Dividends
- Rents/Royalties for use of property in the US unless ECI
- Other income
- 1441 verses 1446 withholding for partnerships
- 1441 verses 1445 verses 1446 withholding for U.S. real estate transactions

Contact Information

Arthur J. Dichter
Cantor & Webb, P.A.
1001 Brickell Bay Drive
Suite 3112, Miami, FL 33131

- Phone: (305) 374-3886
- Fax: (305) 371-4564
- Email: art@cantorwebb.com
- Website: www.cantorwebb.com

