

Supplemental Information on Revenue Procedure 2000-12 for Prospective Qualified Intermediaries

Announcement 2000-48

AGENCY: Internal Revenue Service (IRS), Treasury

Revenue Procedure 2000-12, 2000-4 I.R.B. 387 sets forth a qualified intermediary (QI) withholding agreement that governs the withholding and information reporting obligations of certain financial institutions. This announcement provides guidance for financial institutions that are considering the qualified intermediary regime.

The QI system is a significant step forward for both taxpayers and the IRS. It does, however, represent a paradigm shift to greater self-regulation. Treasury and the IRS believe that it is appropriate to allow the greatest self-regulation under circumstances in which Treasury and the IRS have the greatest confidence that such self-regulation will be effective. In pursuit of that objective, Treasury and the IRS considered allowing QI status only for businesses operating in jurisdictions with which the United States has a bilateral tax treaty or tax information exchange agreement. In response to taxpayer comments, however, that approach was not adopted. Taxpayers requested that the QI system have the broadest scope possible, so that financial institutions can potentially act as qualified intermediaries in all jurisdictions in which they do business. In an attempt to balance these competing concerns, Treasury and the IRS intend to permit financial institutions to act as qualified intermediaries in accordance with the provisions of this announcement.

QI Agreements in Countries Without KYC Rules.

As noted above, Treasury and the IRS believe it is appropriate to permit the self-

regulation envisioned by the QI system only under circumstances in which Treasury and the IRS have confidence that such self-regulation may be effective. Because Treasury and the IRS regard know-your-customer (KYC) rules as a vital component of adequate self-regulation, the IRS generally will not extend the QI system to any country that does not have KYC rules or has unacceptable KYC rules. The IRS will, however, permit a branch of a financial institution (but not a separate juridical entity affiliated with the financial institution) located in such a country to act as a qualified intermediary if the branch is part of an entity organized in a country that has acceptable KYC rules and the entity agrees to apply its home country KYC rules to the branch. As is the case with any violations of the QI agreement by the branch, failure to obtain adequate documentation will cause the entity to be in default of its agreement and may cause the agreement to be terminated.

Heightened Enforcement of QI Agreement in Specified Tax Haven and Secrecy Jurisdictions.

Treasury and the IRS believe that self-regulation is most likely to be effective in jurisdictions that are characterized by adequate transparency and a willingness to provide tax information to the IRS. Accordingly, the IRS will apply more rigorous oversight to financial institutions or their branches in jurisdictions that are tax havens or bank secrecy jurisdictions and show an unwillingness to cooperate with the United States to reform their practices relating to transparency and the provision of tax information (“specified tax havens and secrecy jurisdictions”). It will do so, for example, by imposing increased or more rigorous audit requirements and/or stricter enforcement standards (including a more rigorous approach to defaults) on businesses operating in such jurisdictions. The IRS will begin immediately making determinations of which jurisdictions meet these criteria, but may not have

made all such determinations prior to entering into QI agreements. As such, QIs should not assume that, because they have an agreement covering a business in a particular jurisdiction, such jurisdiction will not later be identified as a specified tax haven or secrecy jurisdiction. Any enhanced audit requirements or stricter enforcement standards will, however, be imposed only on agreements entered into or renewed after identification of the jurisdiction as a specified tax haven or secrecy jurisdiction.

Certification Prior to Renewal.

As stated above, Treasury and the IRS believe that self-regulation is most likely to be effective in jurisdictions that are characterized by adequate transparency and a willingness to provide tax information to the IRS. A QI agreement generally has a duration of six calendar years. After the six year period, the agreement may be renewed upon the signatures of both the QI and the IRS. It is expected that the IRS will agree to renew a QI agreement or, in the case of new agreements that become effective on or after January 1, 2004, enter a new agreement for QIs in a particular country only if the IRS receives a certification from the Treasury Department that the country has effective rules and/or procedures for providing tax information to the United States for both civil tax administration and criminal tax enforcement purposes (including, for example, under an income tax treaty or a tax information exchange agreement), or has taken significant steps towards achieving such effective provision of information.