Weighted Average Interest Rate Update

Notice 2001–3

Notice 88–73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for November 2000 is 5.78 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
December	2000	5.93	5.34 to 6.23	5.34 to 6.52

tion, this notice provides a clarification regarding the use of the term "know your customer" in the context of the new withholding and reporting regulations. The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) will continue to monitor the implementation of the new regulations and the qualified intermediary agreement and will provide, as appropriate, other guidance designed to ensure that the implementation process occurs as smoothly as possible.

II. Background

In T.D. 8734, as modified by T.D. 8881, (the "new withholding regulations"), Treasury and the IRS issued comprehensive regulations under chapter 3 (sections 1441-1464) and subpart G of subchapter A of chapter 61 (sections 6041-6050S) of the Internal Revenue Code (the "Code"). The regulations are a significant revision of the procedural rules regarding the withholding, documentation, and information reporting requirements that apply to payments of income to foreign persons, particularly as they relate to payments handled by financial intermediaries. The regulations generally become effective January 1, 2001.

The provisions relating to QIs are a key component of the new regulations. Those provisions are intended to reduce the administrative burdens of both foreign financial institution intermediaries (as well as foreign branches of U.S. intermediaries) and the U.S. withholding agents from whom the foreign intermediaries and foreign branches receive income. To become a QI, an entity must submit an application and enter into a qualified intermediary withholding agreement (QI agreement) with the IRS. The application procedures and terms of the QI agreement are set forth in Rev. Proc. 2000–12 . Additional guidance has been provided to qualified intermediaries in Announcement 2000–48 (2000–23 I.R.B. 1243).

III. Transitional Guidance for QIs.

A. Acting as a QI Prior to Execution of the QI Agreement

1. Provisions Applicable to QIs.

Some potential QIs have expressed concerns about their ability to act as QIs on January 1, 2001, if they file an application for a QI agreement before January 1,

2001, but do not receive a fully executed QI agreement by that date. Other potential QIs have expressed concerns about their treatment if they submit applications after January 1, 2001. To address these concerns, the IRS will apply the following rules to potential QIs.

An applicant for a QI agreement may represent on a Form W-8IMY that it is a QI for a limited period after it submits a complete application for a QI agreement and before it receives a fully executed agreement. An application is complete if it contains all of the information required by section 3 (Application for QI Status) of Rev. Proc. 2000–12, including a completed Appendix A (countries in which the applicant will operate as a QI) and Appendix B (list of auditors that may be used by the QI and any private arrangement intermediary of the QI to perform external audits). It is not necessary, however, for an applicant to attach the know-your-customer documentary evidence attachment for particular countries because the IRS has standardized those attachments.

An applicant that has submitted a QI application before January 1, 2001, may represent on Form W-8IMY that it is a QI without being in possession of a fully executed QI agreement until June 30, 2001. An applicant that has submitted a QI application after December 31, 2000, may represent on Form W-8IMY that it is a QI until the end of the sixth full month after the month in which it submits its QI application. An application is submitted on the date it is post marked. Because of limited resources, the IRS will not date stamp return copies of applications.

An applicant may not represent that it is a QI if it receives a notice from the IRS stating that it may not make the representation unless it receives a fully executed QI agreement. The IRS will only issue such notices in cases where an application is not substantially complete or the IRS has determined on a preliminary basis that it will not enter into a QI agreement with the applicant.

The IRS has instituted procedures to issue applicants a QI employer identification number (QI-EIN) upon receiving an application. An applicant should include the QI-EIN on any Form W-8IMY it provides as a QI after it receives the number. If an applicant has provided a Form W-8IMY before it has received a number, it should write "awaiting QI-EIN" on line 6 of Part I of the form. If an applicant provides an "awaiting QI-EIN" statement on a Form W-8IMY, or an applicant has provided a Form W-8IMY before the date of this notice in anticipation of becoming a QI, the applicant should provide the QI-EIN to its withholding agent as soon as practicable after it is received. It is not necessary, however, for the applicant to provide a newly executed Form W-8IMY with the QI-EIN after it receives the QI-EIN or after it receives a fully executed QI agreement provided all of the information on the original form remains valid. The applicant may furnish its QI-EIN to its withholding agent in any manner agreed to by the applicant and its withholding agent.

Provided that it submits its application before July 1, 2001, a potential QI may apply all of the provisions of the QI agreement beginning January 1, 2001. An applicant that submits its application after June 30, 2001, may represent to a withholding agent that it is a QI effective on the date it submits a complete application. Such a QI, however, will not be permitted to apply the reporting provisions of section 8 of the QI agreement or the collective credit or refund procedures of section 9.04 of the QI agreement to any payments received prior to the effective date contained in its QI agreement. Thus, a QI that submits its application after June 30, 2001, must report all payments that it makes prior to the effective date of its QI agreement as a nonqualified intermediary. See e.g., §1.1461–1(c)(4).

The IRS will not assess any penalties for failure to make a deposit of withheld amounts prior to the date the QI receives its QI-EIN provided the QI makes a deposit of any amounts otherwise required to be made within 3 days of receiving its QI-EIN. In addition, if a QI applies to enroll in the Electronic Federal Tax Payment System (EFTPS) within 30 days of receiving a QI-EIN, no penalty will be assessed for failure to deposit withheld amounts if any deposit otherwise required to be made before the date that the QI is enrolled in EFTPS is made within 3 days of being enrolled in EFTPS.

2. Rules Applicable to Withholding Agents

A withholding agent that receives a Form W-8IMY with an "awaiting QI-EIN" statement may treat the person that provides the form as a QI unless it knows, or has reason to know, that the provider of the form cannot validly represent that it is a QI. A withholding agent that receives a Form W-8IMY with an EIN, or that receives an EIN with respect to an otherwise valid Form W-8IMY without an EIN, may treat the provider of the form as a QI unless it knows, or has reason to know, that the provider of the Form is not a QI. A withholding agent is not required to determine when a QI applied for an agreement or if it is actually in possession of a fully executed agreement. A withholding agent is also not required to verify whether the EIN is a QI-EIN.

A withholding agent should report any payments made prior to receiving a Form W-8IMY on which a person represents that it is acting as a QI in accordance with any other valid documentation that the withholding agent has for such person or, in the absence of such documentation, in accordance with the presumption rules provided in the withholding agent's QI agreement (if the withholding agent is a QI) or the presumption rules contained in the new withholding regulations (if the withholding agent is not a QI).

B. Documentation Transition Rules for QIs.

Under section 5.01 of the QI agreement, a QI is required to apply the presumption rules of section 5.13(C) to any payment made to an account holder unless the QI can reliably associate the payment with valid documentation from the account holder. The presumption rules may result in withholding at a 30-percent or 31-percent rate. Under section 11.03(F), failure to obtain documentation from a significant number of direct account holders constitutes an event of default for which the IRS may terminate a QI agreement.

Some potential QIs have indicated that they will be unable to obtain the account holder documentation required under section 5 of the QI agreement by January 1, 2001, because they have a substantial number of existing accounts for which documentation must be sought. These institutions have requested clarification regarding the operation of the documentation requirements and, in particular, the audit provisions of the QI agreement. Specifically, they have asked whether the audit provi-

sions of the QI agreement afford them a documentation transition period.

Section 10.03 of the QI agreement provides that the QI shall have its external auditor conduct an audit of the second and fifth full calendar years that the agreement is in effect. Section 10.06 provides that, upon review of the external auditor's report, the IRS may request, and the QI must permit, the external auditor to perform additional audit procedures or to expand the external audit to cover some or all of the calendar years for which the period of limitations for assessment of taxes has not expired.

The IRS intends to implement the audit provisions in a manner that will permit a QI to have a transition period for obtaining account holder documentation. To effect a documentation transition period, the IRS will not request an external auditor to examine the first year of the QI agreement provided that the IRS determines, based on the external auditor's report, that the QI is in substantial compliance with all of the provisions of the QI agreement, including the documentation requirements, by the end of the second full year of its agreement. In addition, the IRS will not impose failure to deposit penalties to the extent that the under-deposit is attributable solely to the failure to apply the presumption rules in the second full year of the agreement. The IRS will, however, require a QI to pay the tax due from the second full year of the agreement if the amount actually withheld from an account holder is less than the amount supported by valid documentation on file by the end of the second full year of the agreement or, if there is no documentation on file, the amount withheld was less than required under the presumption rules. No penalties will be assessed on underpaid tax; however, interest will be charged on any tax due that is paid after the due date of the Form 1042 for the second full calendar year of the agreement.

The following example illustrates the documentation transition rule. Assume that after the audit of the second year of its QI agreement, a QI is found to be in substantial compliance with the QI agreement and all but an insignificant number of its accounts have valid documentation. The external auditor determines that payments of dividends were received by a particular individual account holder, B, prior to B furnishing the QI with any documentation. The QI applied withholding on dividends received by B in year 2 at the rate of 15 percent. By the end of year 2, B does provide the QI with documentation that supports the 15 percent rate. No penalties will be asserted against the QI even though 30 percent was not withheld from the dividends as required under the presumption rules. If, however, B did not provide valid documentation supporting the 15-percent treaty rate by the end of the second full calendar year of the agreement, the QI would be liable for the tax equal to the difference between the 15-percent rate of withholding actually applied and the 30-percent rate that should have applied under the presumption rules. Because the QI is in substantial compliance with the QI agreement and has valid documentation for all but an insignificant number of its accounts, however, the underpayment will be computed only with respect to dividends paid in the second year of the agreement.

The IRS will not apply the transition approach to any QI that is found not to be in substantial compliance with the QI agreement by the end of the second full year of the agreement. In that case, the IRS may, in accordance with the terms of the QI agreement, request the external auditor to audit the first year of the QI agreement, and the IRS may assess the appropriate penalties for both the first and second years of the agreement. The provisions of this section III. B. shall not apply for years after 2002.

C. Documentation and Reporting Relief for Simple and Grantor Trusts.

Under section 5.07 of the QI agreement, a QI is generally required to obtain a Form W-8IMY from a flow-through entity, which includes a foreign simple or foreign grantor trust, together with appropriate documentation from the interest holders in the flow through entity. Section 8.02(B) of the QI agreement provides that a QI must file separate Forms 1042-S for each interest holder in a flow-through entity that is not itself a nonqualified intermediary or flow-through entity. Thus, the pool basis reporting provisions of section 8.03 of the QI agreement do not apply to payments made to beneficiaries or owners of foreign simple trusts and foreign grantor trusts.

Commentators have requested that the IRS consider treating beneficiaries of foreign simple trusts and owners of foreign grantor trusts as direct account holders of a QI in appropriate circumstances. They argue that where local "know-your-customer" rules (*i.e.*, the rules that require a person to obtain documentation confirming the identity of a customer or account holder) require a QI to identify the beneficiaries or owners of such trusts, plus certain additional precautions are taken, it is appropriate to treat the beneficiaries or owners as direct account holders. In addition, they argue that a company providing fiduciary services as a trustee should be able to become a QI if it is subject to know-your-customer rules, even though it is not a financial institution or a clearing organization described in §1.1441–1(e)(5)(ii)(A) and (B).

The IRS will permit a QI to treat the beneficiaries of a foreign simple trust or the owners of a foreign grantor trust as direct account holders for purposes of the QI agreement if the following criteria are met. First, the QI must be required, pursuant to the applicable know-your-customer rules, to determine the identity of the beneficiaries or owners of foreign simple or foreign grantor trusts. Second, the QI must obtain the type of know-your-customer documentation set forth in paragraph 4 of the appropriate know-your-customer attachment to the QI agreement. This second requirement cannot be satisfied by obtaining a Form W-8. Third, the QI must obtain a valid Form W-8 from the beneficiary or owner of the trust. The IRS will apply the documentation transition approach described in section III. B. of this notice to these documentation requirements. The documentation may be provided to the QI directly rather than being attached to a Form W-8IMY, or it may be attached to a Form W-8IMY on which the trust represents that it is a foreign simple or foreign grantor trust. If a Form W-8IMY is provided, it is not necessary for the trust to provide a withholding statement. In addition, if a Form W-8IMY is provided and the trust has 5 or fewer owners, the IRS will not require the trust to provide the QI with a taxpayer identification number despite §1.1441–1(e)(4)(vii)(G).

The IRS will also permit a company that is in the business of providing fiduciary services as a trustee (*i.e.*, a trust company) and that is subject to know-

your-customer rules that have been approved by the IRS for purposes of the QI agreement to become a QI provided that the trust company agrees to the provisions of the QI agreement as set forth in Rev. Proc. 2000–12. Such a QI must treat the trusts and trust beneficiaries or owners as account holders for purposes of applying the QI agreement. Such a QI may also treat beneficiaries and owners of foreign simple trusts and foreign grantor trusts as direct account holders provided they meet the conditions of this section III. C.

Treasury and the IRS will monitor whether the rules of this notice applicable to grantor and simple trusts are appropriate and may provide further guidance as necessary.

D. Proprietary Accounts of Qualified Intermediaries

Section 1.01 of the QI agreement provides that a QI must act as a qualified intermediary for those accounts which it designates as QI accounts with a withholding agent. Clearing organizations have argued that the language that requires a QI to act as a QI with respect to an account prohibits the QI from including assets for which the QI is the beneficial owner in the same account as one containing assets for which the QI acts as a QI. Separating proprietary and intermediary assets into separate accounts would, they argue, erode the efficiencies that clearing organizations provide their financial institution members and shareholders.

Notwithstanding Section 1.01, the IRS will permit a QI that maintains an account with a clearing organization in which it is a member or shareholder to include the assets for which the QI is the beneficial owner in the same account with those assets for which it acts as a qualified intermediary if the QI timely and accurately reports the income for which it is the beneficial owner by filing the appropriate Forms 1042-S for each year showing itself as the recipient of the income for which it is the beneficial owner. For purposes of this exception to section 1.01 of the QI agreement, a clearing organization is an entity which is in the business of holding obligations for member organizations or shareholders and transferring those obligations among the members or shareholders by credit or debit to the account of the member or shareholder without the necessity of physical delivery of the obligation. Under no circumstances, however, may a QI maintain assets for which it acts as a QI in the same account as assets for which it acts as a nonqualified intermediary.

E. Assumption of Primary Form 1099 Reporting and Backup Withholding Responsibility

Section 3.07 of the QI agreement contains the terms for those QIs assuming primary Form 1099 reporting and backup withholding responsibilities. The introductory language to that section provides that QIs that are not U.S. payors must obtain IRS approval to assume primary Form 1099 reporting and backup withholding responsibility. The IRS evidences its approval by inserting the Commissioner's, or his delegate's, signature in the margin of section 3.07 of the QI agreement.

The IRS will no longer require QIs that are not U.S. payors to obtain IRS approval before assuming primary Form 1099 reporting and backup withholding responsibility. A non-U.S. payor QI may, therefore, assume such responsibilities by making the appropriate representations on Form W-8IMY, or the associated withholding statement, provided to a withholding agent.

IV. Transition Relief for Foreign Partnerships

Under the regulations as well as the QI agreement, foreign partnerships are generally treated as flow-through entities. As such, they should provide withholding agents, including QIs, with a Form W-8IMY together with documentation from each partner and a withholding statement that, among other things, allocates the payment made to each of the partners in the partnership.

To achieve a smoother transition period for foreign partnerships and their withholding agents, the IRS will permit for calendar year 2001 a foreign partnership to provide a withholding agent, including a QI, with a Form W-8IMY together with a withholding statement that provides the withholding agent with information regarding withholding rate pools. The foreign partnership must associate the documentation from each of its partners with the Form W-8IMY. However, if a partner is a foreign person or a U.S. exempt recipient (e.g., a corporation), that documentation may be provided to the withholding agent at any time during calendar year 2001. A Form W-9 must be provided, however, with respect to any U.S. non-exempt recipient before a payment is made to a partnership.

A withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income reported on Form 1042-S or Form 1099, as applicable, that is subject to a single rate of withholding. The foreign partnership, must provide a separate withholding rate pool for each U.S. non-exempt recipient partner (e.g., a U.S. individual, U.S. partnership, U.S. trust, or U.S. estate).

A withholding agent, including a QI, may withhold in accordance with the withholding rate pool information provided by the foreign partnership. In addition, a withholding agent that is not a QI should report payments allocated to withholding rate pools, other than a withholding rate pool attributable to a U.S. non-exempt recipient, on Form 1042-S as if the payment were made to the foreign partnership as a recipient. A QI should report such payments as if it were made to its general withholding rate pool. A withholding agent that is not a QI must report payments to U.S. non-exempt recipients in accordance with the regulations under chapter 61 of the Code. A withholding agent that is a QI must treat U.S. non-exempt recipients in accordance with the provisions of the QI agreement. Withholding agents that cannot allocate a payment to a withholding rate pool must apply the appropriate presumption rules.

V. Transition Relief for U.S. Withholding Agents

A. Documentation Transition Rules.

Some U.S. withholding agents that are financial institutions have stated that despite the extensive period they have been given to obtain Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY, they have nevertheless had difficulties re-documenting the large number of accounts they must handle. In addition, they have stated that the rule in §1.1441–1(e)(2)(ii), which prohibits the use of a P.O. box as a permanent residence address on a Form W-8, presents an insurmountable difficulty for Forms W-8 provided by residents of foreign countries that do not have street addresses and instead use P.O. boxes as permanent residence addresses. Finally, some commentators have

noted that T.D. 8881, issued on May 15, 2000, made certain changes to the rules regarding when a withholding certificate may be treated as reliable that are more restrictive than the rules promulgated under T.D. 8734. In particular, they note that under T.D. 8881, a withholding agent cannot rely on a Form W-8 if the form has a U.S. mailing address or the withholding agent has a U.S. mailing address as part of its account information, unless the withholding agent obtains both documentary evidence that is less than three years old and a written explanation from the account holder that substantiates the account holder's foreign status.

To address these concerns, the IRS will permit a U.S. withholding agent during calendar year 2001 to rely on old Form W-8 (*i.e.*, Form W-8 as revised November 1992), Form 1001, Form 1078, Form 4224, and Form 8709 obtained under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1992), even if the validity period of those forms has expired, provided that the U.S. withholding agent can demonstrate on audit that it has made good faith efforts to obtain Forms W-8BEN, W-8ECI, W-8EXP, W-8IMY, and W-9 from account holders required to provide those forms. In addition, and until further notice, the IRS will permit Forms W-8 that contain a P.O. box as a permanent residence address to be relied upon provided that the withholding agent does not know, or have reason to know, that the person providing the form is a U.S. person and provided that the withholding agent does not know, or have reason to know, that a street address is available. Finally, the IRS will permit a withholding agent to rely on Forms W-8 for which there is a U.S. mailing address provided the Form was received prior to December 31, 2001, without applying the provisions of 1.1441–7(b) regarding the presence of a U.S. mailing address on the Form W-8 or as part of the withholding agent's account information.

Under no circumstances, however, may a U.S. withholding agent apply the so-called address rule contained in §§1.1441–3(b)(3) and 35a.9999–3 Q&A 36 for dividends paid after December 31, 2000. Thus, a withholding agent may not treat dividends as paid to a foreign person, or as subject to a reduced rate of withholding under an income tax treaty, based solely on the address of the person to whom the dividends are paid. The withholding agent may treat the payee of dividends as a foreign person, and as a resident of a treaty country, if applicable, in the absence of a Form W-8BEN if it is in possession of a Form W-8 (revised November 1992) or a Form 1001 for the same payee and it does not know, nor have reason to know, that the payee is not entitled to treaty benefits.

Notwithstanding the provisions of this section V. A., a withholding agent may not rely on an old Form W-8 (revised November 1992) to treat a foreign financial institution as the beneficial owner of income if the withholding agent knows, or has reason to know, that the foreign financial institution is acting as an intermediary on behalf of others.

B. Year 2001 as Transition Year for U.S. Withholding Agents

In Notice 98–16 (1998–1 C.B. 847) and Notice 99–25 (1999–1 C.B. 979), the IRS stated that it would regard the calendar years 1999 and 2000 as transition years. Calendar year 2001 will similarly be regarded as a transition year for U.S. withholding agents by the IRS in enforcing compliance for the administration of the withholding tax system. Accordingly, the IRS will take into account in performing audits of the year 2001, the extent to which a U.S. withholding agent has made good faith efforts in 1999, 2000, and 2001 to transform its business practices and information systems to comply with the new withholding regulations. Thus, the IRS will take into account whether a U.S. withholding agent has made reasonable efforts during 1999, 2000, and 2001 to modify its account opening practices to conform to the new documentation requirements, obtain new withholding certificates on existing accounts, and make appropriate systems changes to comply with the new withholding regulations. The IRS will also take into account whether or not a U.S. withholding agent has effectively implemented the new withholding regulations by January 1, 2002.

C. Reporting Relief for U.S. Payors in U.S. Possessions.

Under the new withholding regulations, U.S. payors that pay foreign source income outside the United States to U.S. non-exempt recipients must generally report such payments on Form 1099 and, if appropriate, apply backup withholding. A commentator has noted that the new withholding regulations will require reporting of income from sources within a possession of the United States, including Puerto Rico, on Form 1099 if that income is paid to persons that are U.S. citizens, even though that income may be exempt from Federal income taxation under section 931 section 932, section 933, or section 935.

The IRS intends to revise the new withholding regulations so that income from sources within a possession of the United States that is exempt from taxation under section 931, section 932, section 933, or section 935 and that a payor reasonably believes to be paid to a resident of a possession of the United States is not required to be reported on Form 1099. U.S. payors will not be required to report such income pursuant to the authority of this notice until the regulations are amended.

D. Use of the Documentary Evidence Rule in U.S. Possessions

Section 1.6049–5(c)(1), effective January 1, 2001, states that a payor may rely on documentary evidence instead of a beneficial owner withholding certificate (*i.e.*, a Form W-8) for a payment made to an offshore account, or, in the case of broker proceeds, for the sales effected outside the United States. For this purpose, the term offshore account means an account maintained at an office or branch of a U.S. or foreign bank or other financial institution at any location outside the United States and outside of U.S. possessions. The IRS intends to amend section 1.6049–5(c)(1) so as to permit the use of documentary evidence in lieu of a Form W-8 in the U.S. possessions. U.S. payors will be permitted to rely on documentary evidence in lieu of a Form W-8 in a U.S. possession pursuant to the authority of this notice until the regulations are amended.

E. Foreign Source Services Income

Under section 6041, a U.S. payor must report payments of foreign source income paid for services performed outside the United States unless the U.S. payor has a Form W-8 from the payee stating that the payee is not a U.S. person. Under the presumption rules of §§1.6049–5(d)(2) and 1.14441–1(b)(3)(iii), a U.S. payor must presume that the payee of income for services is a U.S. payee and subject to Form

1099 reporting, and potentially backup withholding, if the payee is an individual. U.S. payors, which include controlled foreign corporations, contend that the rule contained in the regulations is overly burdensome in that it requires them to ask all persons to whom they make payments for services performed outside the United States to represent that they are not U.S. persons.

Until further notice, the IRS will not require a U.S. payor to report, under section 6041, income paid for services if (1) the payee of the income is an individual, (2) the U.S. payor does not know that the payee is a U.S. citizen or resident, (3) the payor does not know, and has no reason to know, that the income is (or may be) effectively connected with the conduct of a U.S. trade or business, and (4) all of the services for which payment is made were performed by the payee outside the United States.

VI. Issuance of New Forms W-8.

The IRS has released new versions of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY, all of which were revised in December 2000. Withholding agents have asked for clarification regarding whether the prior versions of those forms (Forms W-8 as revised October 1998) may be relied upon now that new versions of those forms have been released.

Withholding agents, including QIs, may rely on the October 1998 versions of Forms W-8BEN, W-8ECI, W-8EXP, W-8IMY that they receive prior to January 1, 2002, for the normal validity period applicable to those forms. Withholding agents are advised, however, to use the newer versions of the forms in all mailings they make after December 2000.

VII. Clarification Regarding Use of the Term "Know Your Customer"

Treasury and the IRS have recently become aware that some confusion may have arisen concerning the use of the term "know your customer" in relation to the QI agreement. Accordingly, Treasury and the IRS wish to clarify the meaning of "know your customer" in that context, to avoid any misunderstanding by foreign financial institutions or officials in other countries.

Use of the term "know your customer" in the QI context should not be confused with the use of that term in other contexts, specifically including the use of the term in the area of international standards relating to money laundering control. As used in the QI context, the term "know your customer" generally relates to the capacity of financial institutions to determine whether their customers are U.S. persons and, if their customers are non-U.S. persons claiming the benefits of an income tax treaty, whether these customers are residents of the applicable treaty country.

The term "know your customer" in the context of international money laundering control efforts, for example in recommendations of the Financial Action Task Force (FATF), refer to a broad range of rules and practices designed to ensure that financial institutions properly identify their customers and understand enough about their customers' customary banking activities to be able to comply with applicable suspicious activity reporting rules and other obligations that may apply under anti-money laundering regimes. Although the meaning of the term "know your customer" in the QI context is often closely related to the meaning of the term in the broader context of money laundering control, the concepts are nevertheless distinct and should not be regarded as having the same meaning or scope.

Contact Information

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26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part 1 , §§ 162, 263A, 446, 471, 481, 1001; 1.162–3, 1.263A–1, 1.446–1, 1.471–1, 1.481–1, 1.481–4, 1.1001–1.)