



Chapter 4 Regulations on verification and certification requirements with issued corrections

Closing the distance

The IRS issued Chapter 4 regulations relating to verification and certification requirements for certain entities and reporting by foreign financial institutions (“Final Certification Regulations”)

On March 25, 2019, Final Certification Regulations were published in [Federal Registrar](#) addressing the verification and certification requirements for sponsoring entities of foreign financial institutions (FFI) and certain non-financial foreign entities (NFFE), trustees of certain trustee-documented trusts, registered deemed-compliant FFI, and financial institutions that implement consolidated compliance programs. Key novelties introduced by the Final Certification Regulations are outlined below. Shortly thereafter, on April 4, 2019, the IRS issued [corrections](#) (84 FR 13121, TD 9852) to the Final Certification Regulations changing the date of application of certain provisions of the Final Certification Regulations.

Background

On January 6, 2017, the IRS [published](#) in the Federal Register (82 FR 1629) the proposed rulemaking (REG-103477-14)) (Proposed Regulations) under chapter 4 of Subtitle A (sections 1471 through 1474) of the Internal Revenue Code (Code) relating to verification requirements for certain entities. After considering the comments received from public on the Proposed Regulations, the Treasury Department and the IRS revised the Proposed Regulations and issued the Final Certification Regulations.

Definition of the Responsible Officer

The Proposed Regulations require a sponsoring entity of a sponsored FFI to appoint a responsible officer (RO) to supervise the sponsoring entities compliance with its Chapter 4 obligations with respect to each sponsored entity. For this purpose, the Proposed Regulations specify that the sponsoring entity RO may be a sponsoring entity’s officer with sufficient authority to fulfill the duties of an RO set out in § 1.1471-5(j) or § 1.1472-1(f) (as applicable).

In response to the public comments on the Proposed Regulations, the Final Certification Regulations extended the RO definition with respect to a sponsoring entity to include an officer of an entity that establishes and maintains policies and procedures for, and has general oversight over, the sponsoring entity, provided such individual has sufficient authority to fulfill the duties of an RO set out in § 1.1471-5(j) or § 1.1472-1(f) (as applicable). Definition of the RO of the financial institution or a sponsoring entity that is an investment entity, in addition to an officer of such entity, also includes an individual who is a director, managing member, or a general partner of such entity. Where the general partner or managing member of the investment entity is itself an entity, the RO may be an individual who is an officer, director, managing member, or general partner of such other entity.

Coordination of Certification Requirements for Certain Entities

The Final Certification Regulations clarify that the electing FFI, sponsored FFI, or sponsored direct reporting NFFE will not have a separate certification requirement under § 1.1471-4(f)(3), § 1.1471-5(f)(1)(ii)(B), or § 1.1472-1(c)(3)(vi), if a compliance FI or sponsoring entity satisfies the certification requirements in § 1.1471-4(f)(2)(ii), § 1.1471-5(j)(2) and (3), or § 1.1472-1(f)(2) on behalf of an electing FFI, sponsored FFI, or sponsored direct reporting NFFE.

Written Sponsoring Agreement Requirement

Under the Proposed Regulations, the RO is required to certify that the sponsoring entity has a written sponsorship agreement in effect with each sponsored FFI authoring the sponsoring entity to fulfil the requirements of § 1.1471-5(f)(1)(i)(F) or (f)(2)(iii) or an applicable Model 2 IGA. Some comments on Proposed Regulations requested elimination of the written sponsoring agreement requirement because of related administrative burden for the sponsored FFIs. Other comments requested clarification whether written sponsoring agreement should be a separate agreement that must meet certain requirements.

The Final Certification Regulations do not remove written sponsoring agreement requirement but provide certain clarifications in response to the comments received on the Proposed Regulations. Specifically, the Final Certification Regulations provide that the written sponsorship agreement may be part to another agreement between the sponsoring entity and the sponsored entity (i.e. FFI or a sponsored direct reporting NFFE) provided the agreement refers to the sponsored entity's FATCA requirements. For instance, a provision in a fund manager agreement that states that the sponsoring entity agrees to satisfy the sponsored FFI's FATCA obligations is sufficient to meet written sponsoring agreement requirement.

The Final Certification Regulations also clarify that the sponsoring entity of a sponsored FFI or a sponsored direct reporting NFFE must have the written sponsorship agreement in place by the later of: (i) March 31, 2019, or (ii) the date when the sponsoring entity begins acting as a sponsoring entity for such sponsored FFI (see §1.1471-5(j)(6) and §1.1472-1(f)(4) accordingly).

Extension of Time for Certifications for the Certification Period Ending on December 31, 2017

Under the Proposed Regulations sponsoring entity of a sponsored FFI or sponsored direct reporting NFFE and a trustee of a trustee-documented trust must make the compliance certification on or before July 1 of the calendar year following the end of the certification period. Given that the earliest certification period for a sponsoring entity or trustee of a trustee-documented trust ends on December 31, 2017, under the Proposed Regulations, the earliest certification date is July 1, 2018. Some of the comments on the Proposed Regulations requested to apply certification requirement only to the certification periods ending after 2018. The Final Certification Regulations reject this request, however, provide certification date deferral. Specifically, under the Final Certification Regulations certifications by sponsoring entities and trustees of trustee-documented trusts are due on or before March 31, 2019 for the certification period ending on December 31, 2017.

Registration by a Sponsored FFI or Sponsored Direct Reporting NFFE after Termination of the Sponsoring Entity by the IRS

In general, the Proposed Regulations prohibited a sponsored FFI or sponsored direct reporting NFFE from registering under an entity that is related to the terminated sponsoring entity in a manner described in Section 267(b). Section 267(b) describes certain relationships among individuals, corporations, trusts, tax-exempt organizations, and S corporations. The Final Certification Regulations extend the scope of this restriction by prohibiting sponsored FFI or sponsored direct reporting NFFE from registering under a sponsoring entity that is related to the terminated entity in a manner described in section 267(b) or 707(b). Accordingly, due to the additional restrictions introduced under the Final Certification Regulations, a sponsored FFI of a terminated sponsoring entity that is a partnership may not register under another sponsoring entity that is a partnership if the same person owns, directly or indirectly, more than 50 percent of capital interests or profits interests of both sponsoring entities.

Corrections to the Final Certification Regulations

On April 4, 2019, the IRS issued [corrections](#) (84 FR 13121, TD 9852) to the Final Certification Regulations. The corrections address the date of application of certain sections of the FATCA regulations that were modified by the Final Certification Regulations. Specifically, corrections set March 25, 2019 (instead of March 26, 2019 as specified in the Final Certification Regulations) as the application date for the following paragraphs of the FATCA regulations:

- 1.1471-4(f)(2)(ii)(A), (f)(2)(ii)(B)(1) and (2), (f)(3)(i), and 1.471-4(f)(g)(2) relating to various aspects of the FFI Agreement;

- 1.1471-5(f)(1)(i)(F)(3)(vi), (f)(1)(i)(F)(4), (f)(1)(iv), (f)(2)(iii)(D)(4), (f)(2)(iii)(E), (j), (k), and (l) relating to the definitions applicable to Section 1471;
- 1.1472-1(c)(5)(iii), (f), and (g) relating to the various aspects of withholding on NFFEs.

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