



IRS Finalizes updates to Form W-8EXP

Global Information Reporting

On November 20, 2023, the IRS published a new version of [Form W-8EXP](#), *Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting*, and the [corresponding instructions](#). The modifications primarily reflect the finalized sections 897 and 1445 regulations exempting qualified foreign pension funds from withholding on dispositions of US real property interests. Unlike other Forms W-8, the finalized Form W-8EXP permits use of the form both to indicate an entity is exempt from withholding under section 1445 and for other withholding exemption purposes.

A new status box was added for line 3 (chapter 3 status) to allow entities to select the status of "Withholding qualified holder under section 1445." The instructions were updated to confirm that this status box can be selected in addition to a second status for chapter 3 purposes, and the certification language has been updated to allow for a filer to certify to both statuses (section 1445 status and other status). A new line was inserted (new line 15) to allow an entity to certify to their qualification for exemption under section 1445. Further conforming changes are made, such as stating that the Form W-8EXP should not be used by foreign partnerships except for withholding qualified holders under section 1445, and an explanation of the withholding qualified holder exemption in the instructions. Finally, the instructions are updated to clarify that a Form W-8EXP is only valid for two years when used for section 1445 purposes.

Other changes unrelated to section 1445 have been made to the new form and instructions. The certifications for a controlled entity of a foreign sovereign or a foreign central bank of issue not engaged in commercial activities have been moved from the certification language to lines 10d and 10e. Old line 18 (now new line 19 after other additions) split the previously single, two-part foreign pension fund certification into two distinct certifications. In both cases, no substantive changes were made. The final version changes the terms "U.S. possession/possessions" to "U.S. territory/territories." The instructions to line 13c regarding tax-exempt organizations have been updated to clarify changes to the supporting information required to represent that an

entity is not a foreign private foundation. These revisions account for modifications to Rev. Proc. 92-94 (which is referenced in the instructions) that were made in Rev. Proc. 2017-53.

The new Form W-8EXP includes a revision month of October 2023. As such, the new version of the Form W-8EXP is mandatory for use for forms signed on or after May 1, 2024.

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