



TaxNewsFlash

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New FAQs provided by IRS for QIs / WPs / WTs

The IRS announced it has updated a set of “frequently asked questions” (FAQs) on a FATCA webpage concerning qualified intermediaries (QIs), withholding foreign partnerships (WPs), and withholding foreign trusts (WTs).

As noted in an [IRS transmittal message](#), the updated FAQs relate to “qualified derivatives dealers” (QDDs) under the heading “Certifications and Periodic Reviews” and are designated with the date “April 30, 2020.”

The updated and new FAQs appear on the [IRS webpage](#) (text of new and updated FAQs provided below):

Q1. Can a QI that is a QDD apply for a waiver of the periodic review with respect to its QI activities that are not QDD activities if its applicable certification period ends before calendar year 2023 and it otherwise meets the requirements of section 10.07 of the QI agreement?

A1. Yes. Section 10.07 of the QI agreement provides that a QI may apply for a waiver of the periodic review requirement if it is a QI that is not acting as a QDD and it meets the other requirements of section 10.07. Under Notice 2020-2, 2020-3 I.R.B. 327, a QI that is a QDD is not required to perform a periodic review with respect to its QDD activities for a certification period ending in any calendar year prior to 2023. A QI that is a QDD (whether or not it acted as a QDD) may, however, still be required to conduct a periodic review of its QI activities that are not QDD activities for those years. Thus, the IRS will permit a QI that is a QDD and that has a certification period ending in any calendar year before 2023 to apply for a waiver of the periodic review when it otherwise meets the requirements of section 10.07 of the QI agreement with respect to its QI activities that are not QDD activities. (If a QI does not have any QI activity, it should apply for a waiver.) To request a waiver, the QI should complete Parts I, II, and III (Waiver of Periodic Review) of the certification taking into account both its QDD and non-QDD activities (except for Part III, which only takes into account non-QDD activities) and, in Part A (step 1 of 3 - Eligibility for Waiver), check the box titled “QI is an FFI that is not also acting as a QDD.” See FAQ Q9 under the heading Certifications and Periodic Reviews regarding the year to indicate as the periodic review year in the case of a QI applying for a waiver.

Updated: 04-30-2020

Q19. Is a QI that is a QDD required to make a periodic certification and perform a periodic review pursuant to the QI agreement, including for calendar years ending before 2023?

A19. Each QI, whether or not the QI acted as a QI or QDD, must make a periodic certification (including a periodic review) every three years. A QI that is a QDD must make any required periodic certifications, including the Certification of Internal Controls, taking into account both its QDD and non-QDD activities. However, for its QDD activities in calendar years ending before 2023, the QI may certify by taking into account whether the QDD made a good faith effort to comply with the section 871(m) regulations and the relevant provisions of the QI agreement. The QI must retain information to support the good faith effort certification. For calendar years ending before 2023, Part V of the certification does not apply, as a QI need not conduct a periodic review of its QDD activities. See Notice 2020-2, 2020-3 I.R.B. 327.

As noted above, for calendar years ending before 2023, the QI is required only to conduct a periodic review of its QI activities that are not QDD activities. See FAQ Q1 under the heading Certifications and Periodic Reviews regarding whether a QI that is a QDD may apply for a waiver for the periodic review for calendar years ending before 2023.

Added: 04-30-2020

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