

# Qualified Intermediary Update & *Fi*TAX News

15 January 2004

Centre Universitaire de Luxembourg

## Agenda

1. Introduction
2. QI update
3. **F**iTAX-QI News
4. **F**iTAX tax solutions outlook

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# QI update

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*What's new in the QI world?*

- **Current QI Audit Status**
- **Qualified Dividends**
- **Repeal of Notice 2001- 4 relief for partnerships and certain trusts**
- **Filing deadlines**

## Current QI Audit Status

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- Last minute extension of time granted by IRS (end of January, end of February)
- IRS has just started to review audit reports
- written notice by IRS that « no further action is necessary »
- 2005 is the next audit year
  - > end to some transition rules
  - Most important one: so-called “expat” rule, with different nationality and residence (e.g. Luxembourg national living in France)
- Ongoing attention especially to U.S. persons :
  - Persons with NRA passport but born in the US
  - US Persons without Form W-9
    - Obtain sales mandate
    - 2 contacts attempts per year (documented attempts)

## Qualified Dividends

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- “Jobs and Growth Tax Relief Reconciliation Act of 2003”
- Lowers maximum individual tax rate for “qualified dividend income” to **15 %** (or 5% for lower income levels).
- Applicable only to **US taxpayers: Forms 1099 only**
- Important for QIs that have assumed **primary form 1099 reporting** and backup withholding responsibility
- Includes dividends paid by U.S corporations and “Qualified foreign corporations” under certain conditions  
Problem: identifying qualified dividends
- Holding period requirement : 60 days of the 120-day period that begins before the ex-dividend date **except if impractical to track the holding period information.**

# Repeal of Notice 2001- 4 relief for partnerships and certain trusts

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- IRS Notice 2001- 4 had offered relief to avoid disclosed reporting of the identity of partners, beneficiaries or owners of flow-through entities (Partnership, Simple Trust or Grantor Trust)
  
- Surprisingly, this notice has been repealed in 2003
  
- Ongoing lobbying by Swiss Banking Association
  
- Current options:
  - Obtain disclosure mandates and file 1042-S forms with identity information
  - No US securities in portfolio
  - Withholding foreign trust (WT) or Withholding foreign partnership (WP) agreement (Rev. Proc. 2003-64)
  - Set up a structure that includes a corporation acting as a blocker?
  - Small partnerships or trusts (or related partnership or trust)

# Small partnerships and trusts

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Described in Rev. Proc. 2003-64

## Which Partnerships/Trusts?

- foreign partnership or
- foreign simple trust or
- foreign grantor trust,
  
- a direct account holder of QI,
- none of its partners, beneficiaries or owners is a U.S. person or a **passthrough** (=indirect) partner, beneficiary or owner
- total reportable amounts that QI has paid to accounts of the partnership or trust that are covered by the QI Agreement must not exceed **\$200,000** for the calendar year.

Problem: tracking of this \$200,000 threshold during the year

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## Documentation

- Form W-8IMY
- Forms W-8 or KYC from each partner, beneficiary or owner
- withholding statement that provides information for all partners, beneficiaries or owners; allocation information not required

Problem for grantor trusts: with 5 or fewer grantors, a trust must include an EIN (employer identification number) on such a Form W-8IMY. -> they would need to apply for such a number with the IRS

## Withholding

- treated as joint accounts
- withholding at the highest rate of all partners, beneficiaries or owners

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## Reporting

- include payments in Form 1042-S **reporting pools** for direct account holders
- QI may file a separate Form 1042-S for any partner, beneficiary or owner who requests that it do so and provides a withholding statement that includes allocation information

## Other

- QI may not include any payments subject to any collective refund claim.
- QI and a partnership or trust must apply these rules to the **calendar year** in its entirety.
- QI and the partnership or trust must **agree in writing** that the partnership or trust, upon request, will **make available** to QI's **auditor, records** that establish that the partnership or trust has provided QI with documentation of all its partners, beneficiaries or owners.

## Related partnerships and trusts

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- Described in Rev. Proc. 2003-64
- **Written agreement** between QI and the partnership or trust
- QI, or an affiliate of the QI, is a general **partner** of the partnership or a **trustee** of the trust
- **Similar** treatment as Private Arrangement Intermediaries (**PAI**):
  - partners, beneficiaries or owners are **treated as account holders of the QI** under the QI Agreement;
  - Partnership or trust agrees to act as an **agent** of QI with respect to its partners, beneficiaries or owners, and, as QI's agent, to apply the provisions of the QI Agreement to the partners, beneficiaries or owners
- **Audit**: must make available, upon request, to QI's auditor records that establish its compliance with all of these rules
- QI and the partnership or trust are **jointly and severally liable** for any tax, penalties and interest
- QI must file **separate Forms 1042-S reflecting pooled basis information for each partnership or trust** and in some circumstances **Forms 1042-S and 1099** for partners, beneficiaries or owners

# Summary of IRS Filing Deadlines and Extension Request Forms

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Form	Due date	Request an extension
<b>Form 945</b>	February 2, 2004 (February 10 if deposits were made on time and in full)	N/A
<b>Forms 1099</b> recipient copy	February 2, 2004	Letter to IRS-MCC for an additional 30 days
<b>Forms 1099</b> IRS copy (+ Form 1096 for paper filing or Form 4804 for filing on magnetic media)	March 1, 2004	Form 8809 for additional 30 days
<b>Form 1042</b>	March 15, 2004	Form 2758 for additional 90 days
<b>Form 1042-S</b> recipient copy (if required)	March 15, 2004	Letter to IRS-MCC for an additional 30 days
<b>Form 1042-S</b> IRS copy (+ Form 1042-T for paper filing or Form 4804 for filing on magnetic media)	March 15, 2004	Form 8809 for additional 30 days

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- **FiTAX Savings Directive**
  - Certificate
  - Withholding Tax (similar to 1042-S reporting)
  - Exchange of Information (similar to 1099 reporting): importance not be underestimated
- **Domestic tax reporting solutions**
  - Existing solution: EasyTax for German fiscal reporting, first implementation in Luxembourg in 2003
  - Other countries?
- Development depending on market demand

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