



TRANSCRIPT

W-8BEN LESSON 5

So, we've finished walking through the form. Let's talk through a few items that you might come across in dealing with these forms. First, what happens when you have a joint account? Where an individual holds an account jointly with other persons, the payor or withholding agent will treat the account as owned by a non-U.S. person only if he or she provides a Form W-8BEN. Each joint holder must provide this form to certify non-U.S. status.

Next, let's talk about additional documentation. What is this? We talked about changes in circumstances and U.S. addresses throughout this discussion. If a non-U.S. person includes a U.S. address on his or her Form W-8BEN or if there is a U.S. address associated with the person, then the payor or withholding agent may have questions about why a non-U.S. person might have a U.S. address. The rules tell us that this is what we refer to as U.S. indicia and that the withholding agent or payor must request additional documentation from the individual to substantiate or support his or her non-U.S. status. What could this be? In most cases it is a passport or some other government issued identification card that indicates status as a resident of a country that is not the United States. We will talk more about what additional documentation might be required in our module on section 1441.

Another type of additional documentation might be required to substantiate a treaty claim. Think about an example where a person indicates that he or she is a citizen and resident of a treaty country, but indicates a mailing address in another country. A withholding agent or payor would require additional documentation here to substantiate tax residence status in the treaty country to cure any deficiencies made by the non-treaty country address. This additional documentation generally must be more recent in date – particularly within three years of the date the individual presents such documentation to the withholding agent or payor. As an example, an individual could present a recent utility bill, bank statement, or tax statement that was mailed to him or her at the address in the treaty country. This would indicate and substantiate residence in the treaty country. Now, let's turn our attention to common errors of beneficial owners completing Forms W-8BEN. One is where the individual did not complete a required line on the form. On this Form W-8BEN, almost all of the lines are required except a few, such as:

- Where there is not a separate mailing address, so a mailing address may not be required, or
- Where the individual resides in a country that does not issue a TIN, then the FTIN line generally may not be required, or
- Where a person is not making a treaty claim, then the treaty section would not be required, or
- Where an individual is signing on his or her own behalf, so the capacity line is not required.



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So, the moral of that story is to complete all required lines. By not completing all required lines a beneficial owner could cause the form to be unreliable or incorrect and the individual would have to complete a new form.

Now, let's turn our attention to what happens when an individual does not provide a Form W-8BEN to a payor or withholding agent when required. We have touched on this a bit, but generally, any beneficial owner receiving U.S. source FDAP income must provide a Form W-8 to a withholding agent to certify non-U.S. status. Here, we have been talking about Forms W-8BEN, which pertain specifically to individuals or humans. A payor or withholding agent that did not receive a Form W-8BEN from a non-U.S. person would have to apply the presumption rules.

We are not going to get into the details of what and how to apply these rules, because they are a bit complicated. We will talk more about these in specific modules related to each type of payment and depending on where the payment is being made. Here, we wanted to note that these Forms W-8 are important for documenting non-U.S. status to payors and withholding agents. Further, Forms W-8BEN tell a withholding agent or payor that the person receiving the U.S. source FDAP income is the beneficial owner of the income, is a non-U.S. person, and is an individual or human –all very important for purposes of U.S. federal tax information reporting and withholding. And that just about concludes our walkthrough of Form W-8BEN.

I hope you've enjoyed this mini-series and feel free to contact us if you would like to subscribe for the full course!