

IRS Change in Application Requirements for Obtaining Employer Identification Number Could Affect Many International Investors in U.S. Real Estate

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Effective May 13, 2019, the **Internal Revenue Service (IRS) changed the requirements for obtaining an employer identification number (EIN)**[1]. The IRS no longer permits an entity to be named as the “responsible party” on IRS Form SS-4 (Application for Employer Identification Number). Instead, only an individual can act as a responsible party. This is particularly significant because the instructions for Form SS-4 seem to require the responsible party to provide their social security number (SSN) or individual taxpayer identification number (ITIN) on the application. A “responsible party” is generally defined as the person who owns, controls or exercises sufficient control over the entity. The responsible party is often the owner, manager, officer, or trustee of the entity. For many entities controlled by non-U.S. persons, the only individual that is capable of satisfying the criteria of a “responsible party” is a non-U.S. individual that does not have a SSN or ITIN. For non-U.S. individuals the process for obtaining a ITIN can be lengthy and

onerous, requiring the applicant to produce a significant amount of documentation to verify their identity and two months or more for the IRS to process.

Fortunately, despite the instructions, for the time being, a non-U.S. individual may act as a responsible party without obtaining a ITIN provided that the only reason that individual needs a ITIN is to complete the SS-4 application. In that instance the non-U.S. “responsible party” should write “ineligible” on the form where an SSN or ITIN is usually provided. It remains unclear how long the IRS will allow for this exception.

The IRS’s new policy seeks to improve security and transparency, and it applies to both paper and electronic Form SS-4 applications. Notably, there is no change for tax professionals who may still act as third-party designees for entities and complete the paper or online applications on behalf of clients.

The IRS’s new policy is not likely to affect entities for which a U.S. resident is the responsible party, other than the data privacy concerns resulting from the requirement that the responsible party disclose his or her SSN on yet another form.

[1] This blog is intended to update the previously published [article](#) on this topic.

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