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United States –New Draft Instructions for Form W-7 (ITINs)

by KPMG LLP's Washington National Tax practice, Washington, D.C. (KPMG LLP in the United States is a KPMG International member firm)

flash Alert

A Publication for Global Mobility and Tax Professionals by KPMG's Global Mobility Services Practice

The U.S. Internal Revenue Service (IRS) has released new draft instructions for Form W-7, *Application for IRS Individual Taxpayer Identification Number*.¹ These draft instructions remove the requirement that certain taxpayers seeking an Individual Taxpayer Identification Number (ITIN) must obtain a letter from the U.S. Social Security Administration (SSA) stating that they are ineligible to receive a social security number.

Why This Matters

The removal of the requirement to obtain a letter from the SSA rejecting a claim for a social security number is a welcome development for many individuals seeking ITINs, in particular short-term business travelers claiming relief from U.S. tax under the provision of an income tax treaty.

Background

In general, an individual can only apply for an ITIN when filing a tax return for which the ITIN is needed. However, there are certain exceptions that permit individuals to apply for an ITIN prior to filing a tax return. One of these exceptions (referred to as 'Exception #2' in the instructions to Form W-7) applies to individuals who are claiming the benefits of a tax treaty pursuant to which they are exempt or subject to a reduced rate of tax on their wages or compensation for services performed in the United States. Such individuals claim the exemption or reduced rate of withholding by completing and submitting to their employer Form 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*.

New Draft Instructions

Whereas the current instructions to Form W-7 provide that such individuals must include with their application a letter from the SSA stating that they are ineligible to receive a social security number, the new draft instructions remove this requirement.

Another change included with the new draft instructions is a statement that, beginning in 2016, the IRS will deactivate an ITIN that has not been used on at least one tax return in the past five years. See [Flash International Executive Alert 2014-062](#) (July 2, 2014) for more information on this development.

The new draft instructions are not yet in effect. They are expected to enter into effect for ITIN applications submitted on or after January 1, 2015, but are subject to change before they are issued in final form.

Footnote:

1 See: <http://www.irs.gov/pub/irs-dft/iw7--dft.pdf> .

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Watch This Video from KPMG's Global Mobility Services Practice!

To get a better understanding about why income tax treaties and social security agreements are important for international assignees and their multinational employers, we encourage you to view the following video on the Tax Watch Web page on www.kpmg-institutes.com:

See: [Update on U.S. Income Tax Treaties and Social Security Totalization Agreements](#) (app. 9 minutes)

In this recently released GMS video, we look at the important role income tax treaties and social security agreements play in mitigating costs and fostering cross-border business between the United States and other countries. This video highlights the social security agreement with Slovakia, which entered into force a few months ago, and the revised agreement with Switzerland, which entered into force on August 1.

The following information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230 as the content of this document is issued for general informational purposes only.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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