

Mr. Roberto Mora-Figueroa  
Internal Revenue Service, Room 6129  
1111 Constitution Avenue N.W.  
Washington, DC 20224

**RE: Written Comments Concerning Information Collection Requirements Related to the Application for an Employer Identification Number**

Dear Mr. Mora-Figueroa:

Per the Internal Revenue Service's (IRS) Notice issued on March 23, 2018 and published in 83 FR 12845, the IRS has requested comments about changes to the employer identification number (EIN) application on Form SS-4.

The following comments address and object to a change to the Instructions for Form SS-4 in the Revised December 2017 version that require disclosing an individual's SSN or ITIN where the sole purpose for the application is for a foreign legal entity to make an entity classification election. This change imposes undue burdens on taxpayers and is neither necessary for the proper performance of the IRS nor enhances the quality, utility and clarity of the information collected on the SS-4.

**Comments Regarding Revised Form SS-4 and Related Instructions**

In December 2017, the IRS issued a revised Form SS-4, *Application for Employer Identification Number* and related instructions. Since 2010, EIN applicants have been required to include a "responsible party" on line 7a of Form SS-4. Prior to the revisions, the responsible party was itself permitted to be an entity, and an SSN/ITIN was **not** required on line 7b if the only reason for applying for an EIN was:

- 1) To make an entity classification election; and
- 2) The applicant was a nonresident alien or other foreign entity with no effectively connected income from sources within the United States.<sup>1</sup>

The change in the December 2017 revision now requires that the responsible party be a natural person who ultimately owns or controls the applicant or who exercises ultimate effective control over the applicant (e.g., the principal officer of a corporation). Such natural person must provide a social security number (SSN) or individual taxpayer identification number (ITIN) on line 7b of Form SS-4. Notably absent from the revised Form SS-4 is the previous exception that an SSN/ITIN is not required for the responsible party where the applicant is a foreign entity applying for an EIN solely to make an entity classification election.

**The change imposes an undue burden on taxpayers.**

Multinational corporations frequently file entity classification elections on behalf of their foreign affiliates (e.g., controlled foreign corporations), thus requiring the foreign entity to obtain an EIN.

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<sup>1</sup> See, page 3, *Instructions for Form SS-4, Rev. February 2016*.

It is typically the case that the sole owner or the controlling interest party in such foreign entity is itself a business entity. Mandating that the responsible party be a natural person, combined with elimination of “solely for the purposes of making an entity classification election” exception puts an undue burden on taxpayers.

It is common for U.S. multi-nationals to have foreign subsidiaries with foreign nationals, who have no U.S. filing obligations, as the officers and directors. Under the proposed changes, these foreign nationals would be required to first obtain their own personal SSN/ITIN before the classification election could be made. This adds an unnecessary burden to the process as these individuals are understandably reluctant to divulge personal information to a foreign taxing power that has no jurisdiction over them. At a minimum, this requires a great deal of time and effort to explain the procedures to the individuals and provide assurances that they will not inadvertently saddle themselves with U.S. compliance obligations or expose them to risk of identity theft. In the worst case, it could prevent the timely filing of an entity classification request.

*The change is not necessary to enhance the quality, utility and clarity of the information collected on the SS-4 for the proper performance of the IRS.*

There has been no change in the law or regulations that require that the responsible party be an individual and disclose its own personal SSN/ITIN for an entity election of a foreign legal entity. The exception to requiring that the responsible party be an individual has existed since 2010. No abuses are being remedied with this change.

Whether an individual discloses their SSN/ITIN will not impact the performance of the IRS, particularly in those common cases where the individual is employed by the corporate group that owns the foreign entity. The IRS’s audit and enforcement capabilities are not improved by knowing the SSN/ITIN of an individual who is not a shareholder. The attention of the IRS auditor has always correctly focused on the U.S. shareholder. This new requirement stifles legitimate tax planning because of the obvious difficulty of persuading non-shareholder individuals to disclose their SSN or ITIN for corporate entity elections.

Where a change in entity election of a foreign legal entity with no effectively connected income is the only reason for requesting an ITIN, the IRS’s controls are not improved by requiring that the responsible party be an individual. The IRS gains no useful information from the individual disclosing its own SSN. The foreign entity making the entity election has no effectively connected income, and, therefore, its actions have no impact to the U.S. fisc.

### **Requested Change**

Revise the Form SS-4 instructions to reinstate the requirement that an SSN/ITIN is not required on line 7b for the responsible party where the applicant is a foreign entity applying for an EIN solely to make an entity classification election.