

Completing US tax forms: Form SS-4 – Application for Employer Identification Number

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Non-US entities, even when not conducting a business in the United States, must sometimes apply for a US tax identification number, known as an employer identification number (EIN). Properly completing Form SS-4 will result in smoother processing and support the entity's tax classification and residency position.

Reasons for applying

Non-US entities conducting a US trade or business will need an EIN in order to file US income tax and other returns. Common other reasons for a non-US entity to apply for an EIN include opening an account with a US financial institution or making an entity classification election on Form 8832. A box must be ticked on Line 10 of Form SS-4 to indicate the reason for applying.

The box 'Started new business' is generally ticked when the entity is applying for the EIN in order to file a US tax return reporting income earned from a US trade or business. Applicants should review the listed reasons for applying and, if not intending to do business in the United States, tick an alternative box to support that position.

For example, if the entity is requesting an EIN for banking purposes only, it should tick the box 'Banking purpose' and write in the purpose, which might be "opening financial account to hold investments" or "company bank account from which to pay expenses". If applying solely for purposes of making an entity classification election, the entity should tick the box 'Other' and specify "entity classification election – Form 8832". Another specific purpose will be situations where a non-US entity is transferring a US real property interest and needs an EIN to comply with the Foreign Investment in Real Property Tax Act (FIRPTA) (for further details please see "[Disposition of US Real Property Interests by Foreign Persons](#)").

If the non-US entity is the single member of a limited liability company (LLC) established under the law of a US state such as Delaware, the LLC and not the non-US owner will need to apply for an EIN in order to file Form 5472 (for further details please see "[Completing and filing Form 5472 for foreign-owned US LLC](#)").

Once the EIN is assigned, the non-US entity continues to provide a certificate of status to requesting financial institutions only on Form W-8BEN-E, or in the case of a foreign partnership on Form W-8IMY. That form must also include the entity's foreign tax identification number if the country of tax residency issues such numbers. Non-US entities do not use Form W-9, Request for Taxpayer Identification Number and Certification, even if they have been assigned an EIN.

Name of individual responsible party

When an entity applies for a US tax identification number using Form SS-4, it must designate the true principal officer, general partner, grantor, owner or trustor as the 'responsible party'. Line 7b asks for the individual's social security number (SSN), individual taxpayer identification number (ITIN) or EIN.

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An entity's responsible party must be an individual, unless the entity is a government entity. This individual is the natural person who ultimately owns or controls the entity or exercises ultimate effective control over the entity. The responsible party should have a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables that individual, directly or indirectly, to control, manage or direct the entity and the disposition of its funds and assets. If there is more than one responsible party, the entity may name whichever party the entity wants the Internal Revenue Service (IRS) to recognise as the responsible party. The ability to fund the entity or the entitlement to the property of the entity alone, without any authority to control, manage or direct the entity, does not cause the individual to be a responsible party.

Notwithstanding the foregoing, even following the IRS announcement that individuals must be responsible parties, in situations where the entity applying for the EIN is non-US, IRS agents have accepted Form SS-4 with another entity listed as the responsible party so long as an individual signs the form and includes their title with authority to sign on behalf of the entity responsible party. Responses from IRS agents can vary and the instructions seem clear, but since a non-US entity can apply via telephone, in situations where an individual is not the true owner, principal officer, general partner, grantor or trustor, it may be worth discussing an entity responsible party with the agent.

The IRS does not permit the use of nominees to obtain tax identification numbers. All applications must disclose the name and taxpayer identification number of the true owner, principal officer, general partner, grantor or trustor. A nominee is not one of these people. The IRS is considering several ways to identify the responsible parties of entities and will continue to pursue enforcement actions to prevent the misuse of tax identification applications.

When planning for international family succession structures, it is possible that the individual who owns or has ultimate effective control over the entity is not a US person and does not have a US tax identification number. In which case, the instructions to Form SS-4 indicate that Line 7b is to be left blank if the responsible party does not have and is ineligible to obtain a SSN or ITIN. Typing in "foreign" on Line 7b has been accepted. When a trust (whether foreign or domestic) with a professional trust company as trustee applies for an EIN, the responsible party must be an individual. If the grantor is deceased or otherwise not involved with the trust administration, an individual trust officer can be named. In that situation, the EIN of the trust company on Line 7b has been accepted where a US trust officer would prefer not to use their SSN.

Mailing address, street address and place of business

The mailing address provided on Form SS-4 should be used on all tax returns. The mailing address should be the one where the entity would like to have IRS correspondence sent. Because the IRS sends notices, confirmations, requests for additional information and even conducts audits by mail, it is important to provide a full and accurate address where mail will be received and regularly collected.

If the entity's street address is different from its mailing address, Form SS-4 must include that address as well. In addition to mailing and street addresses, Line 6 should not be left blank and should specify the country and state where the entity's principal business is located. If Line 6 does not match the mailing address, the entity's street address in the country of principal business should be included. Line 9b goes on to ask for the foreign country where a corporation was incorporated. Responses should be kept consistent throughout the form. If the entity takes the position that it is not tax resident in the country of its mailing address, a place of business and street address, which may be that of the entity's registered office, will help to support the tax position.

Changing a responsible party and address

An entity's IRS records should be kept up to date. Form 8822-B should be used to notify the IRS if the entity changes its business mailing address, location or responsible party. Form 8822-B must be filed regardless of whether the entity is engaged in a US trade or business.

Type of entity

Form SS-4, Line 8a asks if the entity is an LLC or a foreign equivalent (eg, a flow-through entity for local tax purposes). If yes, the number of LLC members is provided on Line 8b, and Line 8c asks if the LLC was organised in the United States. For US tax purposes, an LLC may be treated as a partnership or corporation or be disregarded as an entity separate from its owner.

Line 9a then requires that a box be ticked to indicate the 'Type of entity'. By default, a non-US entity with limited liability will be a corporation, including a foreign equivalent LLC. If a foreign eligible entity with a single member is requesting an EIN for purposes of filing Form 8832 to elect classification as a disregarded entity, the box 'Other' should be ticked and "foreign disregard entity" written on the line provided.

Date business started and principal activity

Responses from IRS agents reviewing the SS-4 can vary and agents can request additional information. Where a non-US entity has been in existence for some time, agents have questioned why the entity has not previously applied for an EIN when Line 11 has a business start date in the past. Completing Line 11 with the date on which the need for an EIN became relevant has been accepted. Likewise, IRS agents have questioned principal activity of just "holding company" but accepted "investment holding company" and "holding company (real estate)".

Third-party designee

A third-party designee is authorised to answer questions about the completion of Form SS-4 and receive the entity's newly assigned EIN. An entity is not required to authorise a third-party designee. But if desired, the designated area on the form must be completed with the designee's name, address and telephone and fax numbers. The EIN will be released to the designee by the method used to request the EIN (eg, online, telephone or fax). The actual EIN notice will be mailed to the taxpayer. The designee's authority terminates when the EIN is assigned and released to the designee.

How to apply

The IRS will issue only one EIN per **responsible party** per day. This limitation is applicable to all requests for EINs whether online or by phone, fax or mail. The [IRS website](#) has current forms and helpful information. The instructions to Form SS-4 should be consulted as the form is completed. The IRS does not charge for issuing EINs.

Online

Domestic entities must apply online. The online EIN application portal is available only to entities:

- that have a legal residence, principal place of business or principal office or agency in the United States or a US possession; and
- whose responsible party has a valid taxpayer identification number.

Telephone

Only international applicants can receive an EIN by telephone. A non-US entity with no US presence can call the designated IRS telephone number to obtain an EIN. The person making the call must be the designated agent authorised to receive the EIN and answer questions regarding the application. Form SS-4 should be completed before contacting the IRS (wait times can be significant). An IRS representative will use the information from the form to establish the account and assign an EIN. The number should then be written on the upper right corner of the form and the form signed and dated and kept with the entity's records. The designee will be asked to fax the form and may be asked to fax additional information to the IRS.

Fax

The Fax-TIN programme is available 24 hours a day, seven days a week, and EINs are generally received within four business days. A completed and signed Form SS-4 should be faxed to the IRS using the appropriate fax number. A return fax number should be included. Entities should wait the full four business days before calling the IRS to follow up on the status of a faxed EIN application.

Mail

The completed and signed Form SS-4 can also be mailed to the specified IRS address. It will take approximately four to five weeks to receive an EIN in the mail.

Comment

The IRS is concerned about the identity of the person with whom they communicate regarding an entity's confidential tax information. They are aware that nominees have been used. The IRS believes the requirement for responsible parties to be individuals will provide greater security and improve transparency. Non-US entities should complete Form SS-4 carefully. The form is signed under penalties of perjury and all statements should be true and correct. Compliance and recordkeeping is becoming increasingly important as jurisdictions begin to enforce the Foreign Account Tax Compliance Act (FATCA), the Common Reporting Standard (CRS) and the new Economic Substance regulations. Incorrect or inconsistent statements on important documents can undermine an entity's position on tax residence.

For further information on this topic please contact [Jennie Cherry](#) at Kozusko Harris Duncan by telephone (+1 212 980 0010) or email (jcherry@kozlaw.com). Please note that the author is unable to provide legal advice to non-clients. The Kozusko Harris Duncan website can be accessed at www.kozlaw.com. The author would like to acknowledge the input provided on this topic by her colleague Sabino Casas, who has substantial experience in applying for EINs.

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