

Part III - Administrative, Procedural, and Miscellaneous

Foreign Financial Institution Temporary U.S. Taxpayer Identification Number Relief

Notice 2023-11

SECTION 1. PURPOSE

This notice provides temporary relief procedures for certain foreign financial institutions (FFIs) required to report U.S. taxpayer identification numbers (U.S. TINs) for certain preexisting accounts as defined in an applicable Model 1 intergovernmental agreement (IGA). If an FFI in an eligible Model 1 IGA jurisdiction (as further defined in section 3.05 of this notice) complies with the procedures described in this notice, then the U.S. Competent Authority will not determine there is significant non-compliance (described in Article 5(2) or 5(3) of the relevant IGA) with the reporting Model 1 FFI's obligations under the IGA solely as a result of its failure to report U.S. TINs associated with its preexisting accounts.

The relief described in this notice is intended to enable the Internal Revenue Service (IRS) to collect and analyze additional information for accounts without U.S. TINs. To obtain the relief provided by this notice, the reporting Model 1 FFI must, as part of its requirements under this notice, use certain codes provided by the IRS that identify features of these accounts that may explain why the reporting Model 1 FFI does not report a U.S. TIN. The Department of the Treasury (Treasury Department) and the IRS intend to use this data to enhance IRS compliance procedures and to inform potential future options for reporting Model 1 FFIs who continue to be unable to obtain

and report the U.S. TIN for certain accounts. If permanent relief is granted in the future, it is anticipated that the scope of the accounts for which an FFI may obtain such relief will be narrower than the scope of accounts for which relief is given under this notice.

SECTION 2. BACKGROUND

On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Pub. L. No. 111-147, 124 Stat. 71 (2010) (HIRE Act), added chapter 4 of Subtitle A (chapter 4), comprising sections 1471 through 1474, to the Internal Revenue Code (Code). Chapter 4 (commonly known as the Foreign Account Tax Compliance Act, or FATCA) addresses non-compliance by U.S. taxpayers holding foreign financial accounts or assets. FATCA requires certain FFIs to report to the IRS information about financial accounts held by U.S. taxpayers or foreign entities in which U.S. taxpayers hold certain ownership interests. FATCA generally requires withholding agents to withhold 30 percent tax on certain U.S. source payments to FFIs that do not agree to report information to the IRS about their U.S. accounts. FATCA was enacted to ensure compliance with U.S. taxpayers' tax obligations.

In order to facilitate the exchange of information on financial accounts held by U.S. taxpayers, the Treasury Department collaborated with foreign governments to develop two alternative model IGAs (Model 1 IGAs and Model 2 IGAs) that are intended to provide an effective and efficient means for complying with FATCA while reducing the burden FATCA compliance imposes on financial institutions. The Model 1 IGA provides that a reporting Model 1 FFI will report certain information on U.S. reportable accounts maintained by the FFI to the Model 1 IGA jurisdiction tax authority, which will

automatically exchange such information with the U.S. Competent Authority.

Each Model 1 IGA provides that a reporting Model 1 FFI shall be treated as complying with, and not subject to withholding under, section 1471 of the Code if the Model 1 IGA jurisdiction complies with its obligations under the IGA with respect to the FFI and the FFI complies with its reporting and registration obligations in accordance with the IGA. Under Model 1 IGAs, a reporting Model 1 FFI that does not satisfy those obligations shall not be subject to withholding under section 1471 of the Code unless the FFI is treated by the IRS as a nonparticipating financial institution under the procedures described below. Each Model 1 IGA also provides that the United States shall not require a reporting Model 1 FFI to withhold tax under section 1471 or 1472 of the Code with respect to an account held by a recalcitrant account holder or to close such account if the U.S. Competent Authority receives certain information specified in the Model 1 IGA with respect to such account.

The information required to be reported by a reporting Model 1 FFI includes the U.S. TIN of each specified U.S. person that is an account holder and, in the case of a non-U.S. entity with one or more specified U.S. persons who are controlling persons, the U.S. TIN of each controlling person for its U.S. reportable accounts (required U.S. TINs). The U.S. TIN of a U.S. citizen is the individual's U.S. Social Security number (SSN). Notwithstanding this reporting requirement, before 2017, a reporting Model 1 FFI was not required to report a required U.S. TIN for an account maintained as of the determination date specified in the applicable Model 1 IGA (preexisting account) that is a U.S. reportable account if the U.S. TIN was not in the reporting Model 1 FFI's records.

In such cases, a reporting Model 1 FFI was required to report the date of birth of the relevant person, but only if the date of birth was in the reporting Model 1 FFI's records. Model 1 IGA jurisdictions committed to establish rules for 2017 and subsequent years requiring reporting Model 1 FFIs to obtain and report the required U.S. TINs for such accounts.

Each Model 1 IGA requires that the Model 1 IGA jurisdiction obtain and exchange the information specified in the Model 1 IGA (including each required U.S. TIN) with respect to each U.S. reportable account. The suspension of withholding under sections 1471 and 1472 of the Code pursuant to each Model 1 IGA is conditioned on adequate reporting and exchange of information. If a reporting Model 1 FFI fails to report required U.S. TINs, the U.S. Competent Authority may notify the Model 1 IGA jurisdiction competent authority that there is significant non-compliance with respect to the reporting Model 1 FFI, in accordance with the Model 1 IGA. During the 18 months following the notification, the U.S. Competent Authority would work with the Model 1 IGA jurisdiction competent authority to address the non-compliance. If the reporting Model 1 FFI remains non-compliant for 18 months after the notification, under the relevant Model 1 IGA, the United States may treat the reporting Model 1 FFI as a nonparticipating financial institution that is subject to withholding under section 1471 of the Code.

On September 25, 2017, the Treasury Department and the IRS released Notice 2017-46, 2017-41 I.R.B. 275, which provided relief and guidance for reporting Model 1 FFIs that were unable to obtain and report required U.S. TINs for preexisting accounts.

If a reporting Model 1 FFI complied with the conditions in Notice 2017-46, the U.S. Competent Authority would not determine that there had been significant non-compliance with the obligations under an applicable Model 1 IGA solely because of a reporting Model 1 FFI's failure to obtain and report each required U.S. TIN for a preexisting account. In order to qualify for the relief in Notice 2017-46, a reporting Model 1 FFI was required to: (1) obtain and report the date of birth of each account holder, and of each controlling person, whose U.S. TIN is not reported; (2) request annually from each account holder any missing required U.S. TIN; and (3) before reporting information that relates to calendar year 2017 to the Model 1 IGA jurisdiction, search electronically searchable data maintained by the reporting Model 1 FFI for any missing required U.S. TINs. The relief in Notice 2017-46 was limited to reporting for calendar years 2017, 2018, and 2019, and was intended to provide reporting Model 1 FFIs additional time to implement practices and procedures to obtain and report required U.S. TINs.

Pursuant to the Model 1 IGAs and Notice 2017-46, reporting Model 1 FFIs had up to six years to obtain required U.S. TINs and could report information on such accounts without the U.S. TINs without being treated as in significant non-compliance with the obligations under an applicable Model 1 IGA. Consequently, U.S. citizens who reside abroad also had up to six years to obtain (if necessary) and provide an SSN or renounce their U.S. citizenship before facing consequences from their financial institutions (if any).

In addition, in 2019, the IRS issued relief procedures for certain persons who

have relinquished, or intend to relinquish, their U.S. citizenship in order to ease the tax obligations that are part of the U.S. expatriation process. The procedures are available to U.S. citizens with a net worth of less than \$2 million and an aggregate tax liability of \$25,000 or less for the taxable year of expatriation and the five prior years. An applicant for the relief is not required to obtain an SSN for purposes of using the procedures and may use his or her best efforts in computing his or her total tax for each year. The relief procedures are available at <https://www.irs.gov/individuals/international-taxpayers/relief-procedures-for-certain-former-citizens>.

Notwithstanding the years of relief the Treasury Department and the IRS have provided to reporting Model 1 FFIs that have not been reporting required U.S. TINs for preexisting accounts, the IRS continues to receive reporting from Model 1 IGA jurisdictions that does not include required U.S. TINs for all preexisting accounts that are U.S. reportable accounts. Obtaining U.S. TINs from U.S. taxpayers connected to accounts at FFIs, including accounts located in the taxpayer's country of residence, is crucial to ensuring that the IRS has the necessary information to determine whether U.S. taxpayers are complying with their U.S. tax obligations. To better understand the issues that FFIs were facing in obtaining required U.S. TINs, the IRS developed a series of codes (TIN Codes) a reporting Model 1 FFI could use to populate the TIN field for 2020 data. The IRS shared the TIN Codes with each Model 1 IGA jurisdiction in early 2021 and then issued the TIN Codes in an FAQ on IRS.gov on May 13, 2021, available at <https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal>. These TIN Codes indicated that a required U.S. TIN had not been

obtained in specified scenarios. The use of TIN Codes was not mandatory and did not affect the obligations of a reporting Model 1 FFI to collect and report required U.S. TINs.

The Treasury Department and the IRS have received communications from Model 1 IGA jurisdictions, FFIs, and U.S. citizens expressing concern that FFIs are closing or may close bank accounts of U.S. citizens who have failed to provide a required U.S. TIN, including accounts of U.S. citizens resident outside the United States. FFIs have indicated that these closures are based on concerns about being treated as in significant non-compliance with their obligations under a Model 1 IGA. Model 1 IGA jurisdictions have also indicated that FFIs are unable to close certain accounts, which may increase the risk that the FFI is found to be in significant non-compliance with its obligations.

The Treasury Department and the IRS also have received communications expressing concern that some FFIs are refusing to provide accounts to U.S. citizens resident in the FFI's jurisdiction, or otherwise providing access to accounts on less favorable terms than apply to other account holders, even if the U.S. citizen provides a U.S. TIN.

The Treasury Department and the IRS have determined that merely providing additional time for reporting Model 1 FFIs to implement practices and procedures to obtain and report required U.S. TINs for preexisting accounts will not address the concerns described above. Section 3 of this notice sets forth interim measures intended to address the concerns of FFIs and Model 1 IGA jurisdictions while providing

the IRS additional information to enhance compliance procedures and addressing other concerns described above.

SECTION 3. U.S. TIN REPORTING BY REPORTING MODEL 1 FFIS

.01 In general

In order for the Treasury Department and the IRS to determine an appropriate permanent solution to the concerns expressed above, the IRS needs to collect additional information from reporting Model 1 FFIs explaining why they have not provided all required U.S. TINs. Accordingly, as an interim measure, sections 3.02, 3.03 and 3.04 of this notice provide that reporting Model 1 FFIs that follow specified procedures will not be treated as in significant non-compliance with their obligations under an applicable Model 1 IGA solely because of the failure to report a required U.S. TIN with respect to a preexisting account. Section 3.05 of this notice limits this relief to reporting Model 1 FFIs that are in a Model 1 IGA jurisdiction that makes good faith efforts to increase the likelihood that U.S. citizens residing in that jurisdiction will report their U.S. TINs to the FFIs and that takes other steps specified in section 3.05.

.02 Relief for reporting on certain preexisting accounts that are U.S. reportable accounts

For reporting on calendar years 2022 (due by September 30, 2023), 2023 (due by September 30, 2024), and 2024 (due by September 30, 2025), the U.S. Competent Authority will not determine that there is significant non-compliance with the obligations of a reporting Model 1 FFI under an applicable Model 1 IGA with respect to reporting required U.S. TINs for preexisting accounts solely because of a failure to obtain and report each required U.S. TIN for such accounts, provided that the reporting Model 1

FFI complies with the conditions set forth in sections 3.03 and 3.04 of this notice and is in a Model 1 IGA jurisdiction that satisfies the requirements of section 3.05 of this notice.

This relief is limited to reporting on preexisting accounts. It does not apply to U.S. reportable accounts opened after the determination date specified in the applicable Model 1 IGA (new accounts), including new accounts held by account holders of preexisting accounts.

Nothing in this notice prevents the U.S. Competent Authority from finding significant non-compliance for a failure to satisfy any obligation under the applicable Model 1 IGA other than a failure to obtain and report each required U.S. TIN for preexisting accounts. Furthermore, nothing in this notice affects a reporting Model 1 FFI's obligations under chapter 3 or chapter 61 with respect to a reportable amount or reportable payment.

.03 Requirements for reporting Model 1 FFIs

A reporting Model 1 FFI is eligible for the relief described in section 3.02 of this notice only if, for each U.S. reportable account (including new accounts) with a missing required U.S. TIN, the reporting Model 1 FFI: (1) obtains and reports the date of birth of each account holder that is an individual and controlling person whose U.S. TIN is not reported; (2) starting in calendar year 2023, annually requests from each account holder any missing required U.S. TIN, as described in further detail in section 3.04 below; (3) starting in calendar year 2023, annually searches electronically searchable data maintained by the reporting Model 1 FFI for any missing required U.S. TINs; and (4)

reports an accurate TIN Code for each account that is missing a required U.S. TIN. For reporting on calendar year 2022, the fourth condition may be satisfied by a reporting Model 1 FFI by using either the TIN Codes issued by the IRS in May 2021 or updated TIN Codes issued by the IRS in early 2023. For reporting on calendar years 2023 and 2024, the fourth condition must be satisfied by a reporting Model 1 FFI by using the most recent TIN Codes issued by the IRS.

.04 Annual request for missing required U.S. TINs

To satisfy the requirement to make an annual request from each account holder for missing required U.S. TINs, reporting Model 1 FFIs must use the method of communication that is, in the FFI's reasonable judgment, most likely to reach the account holder. In addition, the communication must include either of the following:

- the web address of the State Department's Joint FATCA FAQs (<https://travel.state.gov/content/travel/en/international-travel/while-abroad/Joint-Foreign-Account-Tax-Compliance-FATCA-FAQ.html>),¹ or
- (i) a copy of the FAQs described in the preceding bullet and (ii) either
 - a copy of the relief procedures provided by the IRS for certain former citizens, or
 - the web address for such procedures (<https://www.irs.gov/individuals/international-taxpayers/relief-procedures-for-certain-former-citizens>).

¹ The Joint FATCA FAQs provide information on how to obtain an SSN, how to renounce U.S. citizenship, and relevant U.S. tax consequences (including a link to the IRS's relief procedures for certain former U.S. citizens).

An FFI must retain records of the policies and procedures adopted to satisfy this requirement and documentation that those policies and procedures were followed to establish its compliance with the requirements of this section 3.04 until the end of calendar year 2028.

.05 Eligible Model 1 IGA jurisdictions

For a reporting Model 1 FFI to be eligible for the relief described in this section with respect to reporting for a particular calendar year or other appropriate reporting period, the applicable Model 1 IGA jurisdiction must make good faith efforts, by the date that is nine months after the end of the calendar year to which the information relates, to do the following:

- (1) Encourage U.S. citizens resident in the jurisdiction to provide U.S. TINs to FFIs when requested;
- (2) Take measures to enforce compliance by reporting Model 1 FFIs identified by the U.S. Competent Authority to the Model 1 IGA jurisdiction as potentially non-compliant;
- (3) Encourage FFIs located in a Model 1 IGA jurisdiction to not discriminate against U.S. citizens that do provide a U.S. TIN; and
- (4) If notified by the U.S. Competent Authority, take steps to conclude Competent Authority Arrangements with the U.S. Competent Authority, to implement an IGA, amend an Annex II to an IGA, or exchange country-by-country information.

In order to provide a transition period for the satisfaction of these conditions, section 3.05 will be deemed to have been satisfied for reporting on calendar year 2022.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Sarah Stein of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Sarah Stein at (202) 317-4917 (not a toll-free call).