

## Operational Tax News

### FATCA update

#### FATCA reporting: new codes in case of unknown US TINs

**2 April 2021**

In its [publication](#) dated 1 April 2021 (only available in French), the Luxembourg tax authorities (LTA) recommend that Luxembourg financial institutions (FI) use specific codes to complete the tax identification number (TIN) field if the TIN is not available.

The IRS has developed these codes to better understand why a foreign financial institution (FFI) in a Model 1 IGA jurisdiction is unable to obtain a US TIN. The codes are as follows:

- 22222222: a pre-existing individual account with the only US indicia being a US place of birth.
- 33333333: a new individual account that has indicia of a US place of birth, and either:
  - Has a change in circumstances causing the self-certification originally obtained at account opening to be incorrect or unreliable, and a new self-certification has not been obtained; or
  - Was below the threshold for documenting and reporting the account at the time of account opening but subsequently exceeded the threshold, and a self-certification has not been obtained.
- 44444444: pre-existing individual and entity account that has US indicia other than a US place of birth, and either:
  - Has a change in circumstances causing the originally obtained self-certification or other documentation to be incorrect or unreliable, and a new self-certification or other documentation has not been obtained; or
  - Was below the threshold for documenting and reporting the account at the time of account opening but subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.
- 55555555: new individual and entity account that has a US indicia other than a US place of birth, and either:
  - Has a change in circumstances causing the originally obtained self-certification or other documentation to be incorrect or unreliable, and a new self-certification or other documentation has not been obtained; or

- Was below the threshold for documenting and reporting the account at the time of account opening but subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.
- 666666666: pre-existing entity account with an account balance exceeding US\$1,000,000 held by a passive non-financial foreign entity (NFFE) with respect to which no self-certifications have been obtained, and no US indicia has been identified in relation to its controlling persons.

The LTA recommends that Luxembourg FIs use these codes as from the next FATCA reporting submission for the fiscal year 2020 (deadline on 30 June 2021). If the situation is not covered by one of the above codes, Luxembourg FIs must continue to use code #NTA001#.

Finally, the LTA reminds that the absence of US TINs should result in a notification from the IRS for administrative errors and minor mistakes. If the relevant Luxembourg reporting FI does not communicate the unknown US TINs 120 days after receiving the notification, the IRS will assess whether there has been a significant non-compliance. In doing so, the IRS will consider all the facts and circumstances, including:

- The reasons why the unknown US TINs could not be obtained;
- The procedures put in place by the Luxembourg reporting FI to obtain these unknown US TINs; and
- The efforts it made in this regard.

If significant non-compliance is established, the IRS would address the non-compliance determination through the LTA. The relevant Luxembourg reporting FI may be subject to a penalty of up to EUR250,000 by the LTA.

Moreover, if the significant non-compliance is not resolved within 18 months, the relevant Luxembourg reporting FI may be treated as a non-participating FI and could, therefore, be subject to a 30% withholding tax on US source income.

Therefore, Luxembourg reporting FIs must ensure they properly address the issue of unknown US TINs of their US clients (and US controlling persons of passive NFFEs).

Please do not hesitate to contact us should you have any questions.

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