

Operational Tax News

Notice 2017-46 on TIN and DOB requirements published

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On 25 September 2017, the IRS issued [Notice 2017-46](#) that provides transitory relief for financial institutions (“FIs”) in respect of their obligation to obtain and report taxpayer identification numbers (“TINs”) and dates of birth (“DOB”) under chapters 3 and 4 of the Internal Revenue Code. With this notice, the IRS extends several deadlines imposed on FIs under Model 1 Intergovernmental Agreements (“IGAs”) and the recent chapter 3 and 4 final and temporary regulations released on 6 January 2017.

Previous rules

The Model 1 IGA, such as the Luxembourg IGA, generally requires Foreign FIs (“FFIs”) to obtain a U.S. TIN from pre-existing U.S. clients before January 1, 2017, and starting with the FATCA reporting for the 2017 tax year, a U.S. TIN must be reported. In the case of a preexisting account holder, a FFI was not required to report a U.S. TIN for tax years 2015 and 2016 if the TIN was not in the FFI’s records.

As from tax year 2017, a Luxembourg FI failing to include a reportable person’s U.S. TIN would be considered in significant non-compliance, triggering a notice from the IRS to the Luxembourg Tax Authorities. In the case the Luxembourg FI do not comply with the above-mentioned obligation within 18 months after such notification, the U.S. may treat the Luxembourg FI as a non-participating FFI subject to FATCA withholding (30% rate).

New rules

The Notice provides an extension to FFIs that have been unable to obtain TINs, declining to treat FFIs as non-compliant solely because they file tax year 2017, 2018, and 2019 FATCA reports without TINs. In order to benefit from the extension, the Luxembourg FIs must:

- obtain and report the DOB of each reportable account holder and controlling person missing a TIN;
- request annually any missing TIN from such persons; and
- before submitting tax year 2017 reports, search electronically searchable data maintained by the Luxembourg FI for the missing TINs.



In addition, the IRS also informs on this Notice about its intention to amend chapter 3 regulations in order to:

- narrow the circumstances in which Foreign TINs and DOBs are required;
- add exceptions from the Foreign TIN requirement and provide phase-in rules for obtaining Foreign TINs; and
- allow for relief from obtaining a DOB.

The IRS also intends to modify the instructions for Form 1042-S for both calendar years 2017 and 2018 in order to amend the instances in which the TINs will be required.

Should you have any questions regarding the above, please do not hesitate to contact us.

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