



Treasury publishes Notice 2017-46 on TIN and DOB requirements imposed on financial institutions

Closing the distance

On September 25, 2017, the IRS issued [Notice 2017-46](#) addressing financial institutions' ("FIs") obligation to obtain and report taxpayer identification numbers ("TINs") and dates of birth ("DOB") under chapters 3 and 4 of the Internal Revenue Code. This notice extends many of the deadlines imposed on FIs under Model 1 Intergovernmental Agreements ("IGAs") and the recent chapter 3 and 4 final and temporary regulations released January 6, 2017.

Model 1 IGAs: U.S. TIN and DOB Reporting

Under the Model 1 IGAs, Foreign FIs ("FFIs") are required to obtain and report U.S. TINs for all reportable account holders and controlling persons. 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. However, for tax year 2017, a FFI 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 FFI's tax authority. If the FFI remains noncompliant for 18 months after such notification, the U.S. may treat the FFI as a nonparticipating FFI subject to FATCA withholding. 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 such cases, the FFIs must (1) obtain and report the DOB of each reportable account holder and controlling person missing a TIN, (2) request annually any missing TIN from such persons, and (3) before submitting tax year 2017 reports, search electronically searchable data maintained by the FFI for the missing TINs.

Withholding Certificate Validity: Foreign TIN and DOB Requirements

The temporary chapter 3 regulations provide that, as of January 1, 2017, "a beneficial owner withholding certificate provided to document an account maintained at a U.S. branch or office of a withholding agent that is a [FI] is required to contain the account holder's Foreign TIN and, in the case of an individual account holder, the account holder's [DOB]." In the absence of a Foreign TIN, a reasonable explanation can be provided to avoid withholding on payments made on or after January 1, 2018. Additionally, if the DOB is within the FI's files, the withholding certificate will not be considered invalid. All of this information would be reportable on the tax year 2017 Form 1042-S.

In response to industry members' requests for additional time to comply, the IRS and Treasury Department intend to amend the temporary chapter 3 regulations in the following ways:

- Narrow the circumstances in which Foreign TINs and DOBs are required

- The Notice clarifies that the definitions of the terms “account holder,” “account,” and “financial institution” under the temporary regulations align with their meaning under the chapter 4 regulations. It also provides that a Foreign TIN or DOB will not be required where a withholding certificate is obtained solely to avoid Form 1099 reporting and backup withholding.
- Add exceptions from the Foreign TIN requirement
 - The Treasury Department and the IRS intend to exclude from the Foreign TIN requirement any account held by a resident in a jurisdiction that does not have an information exchange agreement with the U.S., the list for which will be updated in future supplemental publications. There will also be an exception for accounts held by residents in jurisdictions that do not issue Foreign TINs, the list for which will also be published in the future but is currently limited to Bermuda, the British Virgin Islands, and the Cayman Islands. Finally, there will be an exception for withholding certificates provided by governments, international organizations, foreign central banks of issue, or residents of U.S. territories.
- Provide phase-in rules for obtaining Foreign TINs
 - The Notice provides a phase-in period through December 31, 2019, to provide withholding agents additional time to obtain Foreign TINs. For withholding certificates signed on or after January 1, 2018, the Foreign TIN—or a reasonable explanation for its absence—must be present on the form. Such Foreign TINs are not required to be validated against any jurisdiction’s format or TIN system provided the withholding agent does not have a reason to know it is invalid.
 - A withholding certificate signed before January 1, 2018, will not be treated as invalid under the amended temporary regulations solely because of a missing Foreign TIN. For payments made before January 1, 2018, a Foreign TIN is not required, and the withholding certificates will be valid until the earlier of “(1) December 31, 2019; (2) the expiration date of the validity period of the withholding certificate [if applicable]; or (3) if applicable, the date when a change in circumstances requiring a revised withholding certificate occurs.” Additionally, such a withholding certificate will remain valid beyond December 31, 2019, if the withholding agent obtains a written record of the Foreign TIN or if the Foreign TIN is otherwise within the withholding agent’s files.
- Allow for relief from obtaining a DOB
 - For individual account holders’ withholding certificates, an otherwise valid certificate signed before January 1, 2018, that is missing a DOB will not be treated as invalid for payments made before January 1, 2019. As with Foreign TINs, a withholding agent is permitted to rely on a DOB on a written statement or within its files.

Form 1042-S Reporting

The IRS also intends to amend the Form 1042-S instructions to require Foreign TINs to be reported for tax year 2018 and beyond where they are available, either from withholding certificates or the alternative procedures outlined above for obtaining Foreign TINs. For tax year 2017, the instructions will be amended to require DOB reporting in instances where the individual account holder’s DOB is available on the withholding certificate or within the withholding agent’s electronically searchable information. For tax year 2018 and beyond, the DOB will be required if it is identified in any of the withholding agent’s files, whether electronically stored or otherwise.

For more information please [click here](#) or contact:

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