

London, 6 February 2023

For the attention of:

Ms Sarah Stein
Office of Associate Chief Counsel (International)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224
Sarah.E.Stein@irscounsel.treas.gov

Re: Notice 2023-11, Foreign Financial Institution Temporary U.S. Taxpayer Identification Number Relief

Dear Ms Stein,

I am writing to you on behalf of the International Banking Federation¹

We welcome the Internal Revenue Service's (IRS) continued recognition of the challenge of obtaining a U.S. taxpayer identification number (U.S. TIN) in all circumstances and the desire of foreign financial institutions (FFIs) to achieve and demonstrate compliance with their FATCA responsibilities. We are grateful for the provision of relief to FFIs in Model 1 intergovernmental agreement (IGA) jurisdictions encountering challenges in reporting certain pre-existing accounts without U.S. TINs.

We are supportive of the development of a workable set of codes to provide more information on circumstances related to U.S. reportable persons that do not have a U.S. TIN; however, it is noted that the current proposals require additional development. As such we hope that it will still be open to FFIs who cannot meet all the conditions for relief set out in the Notice to demonstrate that they are, nevertheless, in substantial compliance with their obligations. This is particularly the case as:

¹ The International Banking Federation (IBFed) was formed in 2004 to represent the combined views of our national banking associations. The IBFed collectively represents more than 18,000 banks, including more than two thirds of the largest 1000 banks in the world. IBFed member banks play a crucial role in supporting and promoting economic growth by managing worldwide assets of over 75 trillion Euros, by extending consumer and business credit of over 40 trillion Euros across the globe, and by collectively employing over 6 million people. The IBFed represents every major financial centre and members' activities take place globally. This worldwide reach enables the IBFed to function as a key international forum for considering regulatory and other issues of interest to the global banking industry

- Relief depends on the Competent Authorities of the relevant Model 1 IGA country also taking certain steps in 2024.
- FIs may not be able to make IT changes needed to use additional TIN codes in time for this year's reporting.
- FIs may be missing date of birth information for older accounts and/or for Controlling Persons.
- There are some circumstances where TINs are missing which are not covered by the missing TIN codes. Some of these circumstances may occur even though the FFI has followed due diligence procedures prescribed in the IGA. Some of these circumstances relate to new and well as pre-existing accounts. Therefore, an additional code named "other circumstances" should be provided
- New accounts may have missing TINs as a result of a "day 2 validation process" or as a result in a change of circumstance.

We eagerly await the publication of the additional TIN codes in early 2023 which we trust will cover the additional legitimate circumstances where FFIs have not obtained a U.S. TIN.

Ahead of publishing the additional TIN codes, it is critical that the IRS consult with the appropriate Competent Authorities to develop workable TIN codes that take into account the circumstances of the impacted jurisdictions before finalizing the framework.

Furthermore, the close proximity of the publication of this notice to the FATCA reporting deadlines in various Model 1 IGA countries and in the absence of the additional TIN codes, we hope that for the current reporting year (calendar year 2022) FFIs can continue to use the 2021 default TIN codes, without precipitating a determination of significant non-compliance. We also note that changes to the reporting codes will impact upon system and technology requirements and may also require a manual review of specific circumstances to determine the relevant reason why a TIN is not present. We would estimate that a minimum of 24 months is required to implement significant changes to reporting of TIN codes once the changes are finalised.

Within the context of the codes the IRS has already developed, the IRS may want to consider the following scenarios and consider adding additional TIN codes to cover them:

- Pre-existing entity accounts with U.S. indicia that have not provided a U.S. TIN (with no change in circumstances or exceeding of de minimis limits).
- Pre-existing individual accounts which had U.S. indicia other than just U.S. Place of Birth (with no change in circumstances or exceeding of de minimis limits) which have not provided a U.S. TIN.
- Pre-existing or new accounts where U.S. account holder has provided a credible reason for not having a U.S. TIN (e.g. a disregarded entity which is not required to obtain a U.S. TIN) or is unable to provide a U.S. TIN before the account is closed.
- Pre-existing accounts where FFIs have not availed themselves of the option of applying thresholds but have failed to obtain a U.S. TIN from the account holder or controlling persons despite numerous outreaches.
- Accounts which are dormant under the FFI's own procedures but do not meet the definition of dormant accounts under Treasury regulations.

- “Other circumstances code”.

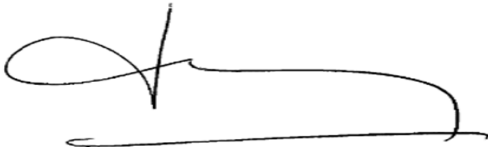
Consideration of TIN codes that correspond to the above scenarios as well as IRS consultations with the appropriate Competent Authorities to develop workable TIN codes would facilitate sufficient transparency to enhance the understanding of the data that the IRS obtains from partner jurisdictions.

Following these consultations, we look forward to receiving confirmation that the provisions in the notice relating to additional actions of IGA Model 1 jurisdictions have been discussed, clarified, and agreed with the U.S. Model 1 IGA partner jurisdictions.

Furthermore, we would suggest that FFIs that correctly report any new accounts falling within a circumstance that corresponds with TIN code 333333333 and 555555555 should benefit from temporary relief from any finding of significant non-compliance.

We thank you for your consideration and we remain at your disposal should you have any questions concerning the above.

Yours sincerely,



Hedwige Nuyens
Managing Director IBFed



Michael Barbour
Chair of the IBFed Tax WG