

F. No. 500/107/2015-FT&TR-III
Government of India
Ministry of Finance
Department of Revenue
(Foreign Tax & Tax Research Division)

Dated the 31st January, 2022

Subject: Clarification on FAQ 6(reporting) and FAQ 3 (reporting) issued by U.S. IRS in respect of FATCA reportable accounts

Clarifications have been requested by certain Reporting Financial Institutions (RFIs) in India in respect of the applicability of FAQ 6(reporting) and FAQ 3(reporting) issued by U.S. IRS in respect of U.S. reportable accounts under the FATCA Intergovernmental Agreement between the United States of America and other Model 1 jurisdictions. Both these FAQs (<https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal#reporting>) deal with situations where the U.S. Taxpayer Identification Number (TIN) data elements in respect of U.S. reportable accounts are not reported by Reporting Financial Institutions.

2. In the context of the above, the following clarifications, *inter alia*, have been sought:

- a) Whether the FAQ 6(reporting) has overridden FAQ 3(reporting) issued earlier by U.S. IRS in respect of codes that may be used by a Reporting Financial Institution to populate the U.S. TIN data element where the U.S. TIN has not been obtained.
- b) Whether there may be instances where FAQ 3(reporting) could still be applicable notwithstanding FAQ 6(reporting) i.e. scenarios where the Reporting Financial Institution can still populate the U.S. TIN data element with nine times A or 0 and not with the codes as specified in FAQ 6(reporting).

3. FAQ 6(reporting) issued by the U.S. IRS states as under:

“As a Model 1 FFI you are required to obtain and exchange the U.S. taxpayer identification number (TIN) data element for each specified U.S. person that is an account holder or a controlling person of a non-U.S. entity (a specified U.S. person) in accordance with the Intergovernmental Agreement between the United States of America and your Model 1 jurisdiction (IGA).

However, in the IRS’ efforts to better understand the issues that FFIs face in obtaining a U.S. TIN, the IRS has developed a series of codes that may be used by a reporting Model 1 FFI to populate the TIN field where the TIN has not been obtained in specified scenarios. The use of these codes is not mandatory and does not mean that an FFI will not be at risk for being found significantly non-compliant due to a failure to report each required U.S. TIN. The IRS will take into account the facts and circumstances leading to the absence of the U.S. TIN, such as the

reasons why the TIN could not be obtained, whether the FFI has adequate procedures in place to obtain TINs, and the efforts made by the FFI to obtain TINs. For example, whether the FFI is contacting account holders annually to request any missing TINs. The expectation is that the use of these codes will allow our tax administrations to better understand the facts and circumstances behind the missing U.S. TINs, both in general and with respect to a specific reporting Model 1 FFI. The TIN field code and related scenarios are as follows:

- *222222222 – Preexisting individual account with only U.S. indicia being a U.S. place of birth.*
- *333333333 – New individual account that (1) has indicia of a U.S. place of birth, and (2) either:*
 - *(a) 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*
 - *(b) was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold, and a self-certification has not been obtained.*
- *444444444 – Preexisting individual and entity account that (1) has U.S. indicia other than a U.S. place of birth, and (2) either:*
 - *(a) has a change in circumstances, causing the self-certification or other documentation originally obtained to be incorrect or unreliable, and a new self-certification or other documentation has not been obtained, or*
 - *(b) was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.*
- *555555555 – New individual and entity account that has a U.S. indicia other than a U.S. place of birth, and (2) either:*
 - *(a) has a change in circumstances causing the self-certification or other documentation originally obtained to be incorrect or unreliable, and a new self-certification or other documentation has not been obtained, or*
 - *(b) was below the threshold for documenting and reporting the account at the time of account opening and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.*
- *666666666 – Preexisting entity account with account balance exceeding \$1,000,000 held by a passive NFFE with respect to which no self-certifications have been obtained, and no U.S. indicia has been identified in relation to its controlling persons.*
- *777777777 – For pre-existing accounts where there is no TIN available and the account has been dormant or inactive, but remains above the reporting threshold, also known as a “dormant account”. For reference, the U.S. defines “dormant account” in U.S. Treasury Regulations §1.1471-4(d)(6)(ii).*

Note that the IRS system will still generate an error notification to indicate the entry is invalid when one of the above codes is used. The error notification will provide 120 days to correct the issues, which is consistent with Paragraph 4.2.2 “Administrative or Other Minor Errors” of the Competent Authority Arrangement. Consistent with the Intergovernmental Agreement (IGA) and Competent Authority Arrangement (CAA), if applicable if the TIN is not provided within that 120 day period, the U.S. will evaluate the data received and determine through a consideration of the facts and circumstances if there is significant non-compliance. (See [Reporting FAQ #3](#) for a full discussion of the significant non-compliance process.)”

4. In view of the above, the Indian RFIs should ensure that the U.S. TIN is reported in respect of all U.S. Reportable accounts. However, if the U.S. TIN is not obtained, the RFI may populate the TIN field with specified codes in scenarios mentioned in the FAQ 6 (reporting) of U.S. IRS. It is to be noted that in all such cases where TIN has not been obtained, the U.S. IRS system will still generate an error notification to indicate that the entry is invalid when one of the above mentioned codes are used. If none of the specified codes as highlighted in FAQ 6(reporting) are applicable to the facts of a particular scenario and the TIN has not been obtained, the RFIs are advised as per FAQ 3(reporting) of U.S. IRS to populate the TIN field with nine times A or 0 (zero) which will also generate an error notification. The error notification in either case will provide 120 days to correct the issues. If the U.S. TIN is not provided within that 120 day period, the U.S. will evaluate the data received and determine through a consideration of facts and circumstances if there is significant non-compliance.

5. RFIs are requested to follow the above guidance in respect of reporting of U.S. reportable accounts. Additionally, RFIs are requested to suitably revise the reports submitted in Form 61B in respect of U.S. reportable accounts pertaining to Calendar Year 2020, if applicable, in conformity with paragraphs 3 and 4 above.



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To,

All Reporting Financial Institutions
