



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 12, 2020

Terhi Järvikare
Director General, Head of Tax Department
Ministry of Finance
Finnish Presidency of the Council of the EU

Dear Mr. Järvikare,

I am writing in response to your letter of December 3, 2019, regarding FATCA – Exchange of Information under Intergovernmental Agreements, in which you raised concerns about the compliance obligations of EU foreign financial institutions (FFIs) under these Agreements, about the U.S. tax obligations of EU residents who are U.S. citizens, and about reciprocity in exchange of financial account information between EU member states and the United States. Since 2012, when we first announced Model Intergovernmental Agreements (IGAs), we have continued to appreciate and value our collaboration with the European Union and its member states in countering offshore tax evasion and improving international tax compliance. As such, we look forward to our continued cooperation in respect of the matters addressed in your letter.

The following sections respond specifically to the issues identified in your letter.

FFI Obligations under IGAs

We recognize the critical role that FFIs play in the implementation by EU member states of IGAs. We appreciate the active role that EU member states are taking in order to ensure that FFIs carry out their diligence and reporting obligations in order to allow member states to satisfy their obligations under IGAs. The United States is similarly committed to carrying out its obligations under those IGAs.

As you are aware, U.S. tax rules require U.S. citizens, wherever resident, to pay tax on their worldwide income, subject to certain exceptions and exclusions. It is essential to the enforcement of those laws that U.S. citizens are compliant with their U.S. tax return filing obligations, and that they provide a taxpayer identification number (TIN) (usually a U.S. Social Security Number) on their return. The Foreign Account Tax Compliance Act (FATCA) was enacted to provide the Internal Revenue Service with additional tools to identify gaps in and reinforce our system of voluntary compliance of U.S. taxpayers with respect to non-U.S. financial accounts or substantial investments in or ownership of certain passive non-U.S. entities. In this respect, to effectively utilize the information under FATCA to improve compliance of U.S. taxpayers, it is critical that the U.S. TINs of U.S. taxpayers are included.

The Treasury Department and the U.S. Internal Revenue Service (IRS) have provided extensive transition relief to FFIs with U.S. customers that have not provided a TIN to the FFI. Further, as you know, the development of the FATCA IGAs established an alternative path for FFIs to comply with FATCA, removed legal issues that had been raised in connection with FATCA and provided simplifying rules for FFIs to document and report information. The transition period provided in Article 6(3) of the Model I IGA, as well as the additional three years provided in IRS Notice 2017-46 for FFIs to obtain U.S. TINs, were intended to provide time for U.S. citizens abroad to take action and obtain Social Security Numbers, if they did not already have one. In light of the importance of this data for the IRS's compliance measures, and in consideration of additional steps recently taken by the IRS to assist U.S. citizens who have relinquished or intend to relinquish their U.S. citizenship,¹ we have not extended the transition period for obtaining U.S. TINs beyond the end of 2019.

The IRS also has recently published a frequently asked question (FAQ) to address concerns raised by FFIs affected by the expiration of the transition period in Notice 2017-46. The FAQ provides that a reporting Model 1 FFI is not required to immediately close or withhold on accounts that do not provide a U.S. TIN beginning January 1, 2020. Consistent with an applicable IGA and Competent Authority Arrangement (CAA), if applicable, if the TIN is not provided within a grace period, the United States will evaluate the data received and determine through a consideration of the facts and circumstances whether there is significant non-compliance. The FAQ provides that the IRS will take account of the facts and circumstances leading to the absence of the TIN, such as the reasons why the TIN could not be obtained, whether the financial institution has adequate procedures in place to obtain TINs and the efforts made by the financial institution to obtain them. Pursuant to the FAQ, the IRS will take into account whether the FFI has used its best efforts to obtain a TIN. The IRS is available for consultation on these procedures with the tax authorities of EU member states through normal channels. FFIs are encouraged to take these measures into account to avoid unnecessarily closing a bank account of an account holder who is a U.S. citizen.

We have been provided with information by some European banks that indicates that there is a substantial number of EU-based U.S. citizens who lack U.S. TINs, and who therefore presumably are not filing U.S. tax returns. This is of concern to us, for the reasons described earlier.

We recognize that included in that number are EU residents who were not aware until recently that they were U.S. citizens and that face a number of obstacles in obtaining Social Security Numbers (SSNs), but we have received only anecdotal information about the extent of that situation. We would welcome discussions with you and with representatives of FFIs on this issue to better understand the number and circumstances of U.S. citizens that are unable to obtain

¹ Last fall, the IRS published Relief Procedures for Certain Former Citizens, *available at* <https://www.irs.gov/individuals/international-taxpayers/relief-procedures-for-certain-former-citizens>. Under the new IRS procedures, an individual who relinquishes his or her U.S. citizenship is not required to obtain a U.S. TIN and will not be subject to certain expatriation taxes if the individual has a low balance of outstanding tax liability, has a net worth of less than \$2 million, submits outstanding tax returns for the prior five years, and meets certain other conditions.

SSNs in light of the relief we have provided, and to collaborate further on this issue in light of the policy objectives of FATCA.

Expatriation

The procedures for relinquishing citizenship are administered by the Department of State, under the Immigration and Naturalization Act. We understand that the fee charged for this process is imposed pursuant to U.S. government-wide guidelines that require that services provided by U.S. government agencies to specific taxpayers cover the costs of those services.

As noted above, the IRS has recently provided substantial relief with respect to tax filing requirements for U.S. citizens who intend to relinquish their citizenship. We are pleased to understand that these procedures will alleviate U.S. tax burdens for most EU-resident U.S. citizens who wish to relinquish their U.S. citizenship.

Exchange of information reciprocity

The United States has long been a leader in taking actions to lower tax secrecy and bank secrecy barriers to providing information to tax authorities, and in the area of automatic exchange of financial information. That leadership has been carried out through enforcement actions against banks that took affirmative measures to hide customer information from the United States and other countries, through the enactment of FATCA and through the negotiation of over 100 IGAs. We are pleased that FATCA has inspired the subsequent adoption of the Common Reporting Standards by EU member states. We share a common goal in promoting the automatic exchange of financial account information between tax authorities.

The U.S. government recognizes its commitments under our reciprocal IGAs and will continue to work towards achieving equivalent levels of reciprocal information exchange.

Sincerely,



L.G. "Chip" Harter
Deputy Assistant Secretary
(International Tax Affairs)
U.S. Department of the Treasury

ccs:

General Secretariat of the Council
Unit FCOMP 2B – Tax Policy, Customs Union and Export Credits

Philippe Etienne
Ambassador of France to the United States

André Haspels
Ambassador of the Kingdom of the Netherlands to the United States