



GMS Flash Alert

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United States - FATCA Relief for Foreign Financial Institutions

On December 30, 2022, the United States Treasury Department issued Notice 2023-11,¹ providing temporary relief procedures for certain foreign financial institutions (FFIs) required to report U.S. taxpayer identification numbers (TINs) such as Social Security numbers (SSNs) of U.S. citizens holding certain pre-existing accounts with those FFIs. This relief applies to calendar years 2022, 2023, and 2024.

WHY THIS MATTERS

Under Notice 2023-11, certain FFIs that follow specified procedures provided by the IRS will not be treated as in significant noncompliance with their reporting obligations for failure to report required TINs with respect to pre-existing reportable accounts. This relief will be welcomed by affected FFIs and also by U.S. citizens holding accounts at those FFIs, particularly if they are “Accidental Americans” (individuals with U.S. citizenship through birth but who have minimal contact with the United States), who may have encountered problems obtaining SSNs.

Background

Under the Foreign Account Tax Compliance Act (FATCA) enacted in 2010, certain FFIs are required by the U.S. Internal Revenue Service (IRS) to report TINs for their account holders or be subject to penalties for failure to comply. In 2017 the IRS provided relief for certain FFIs that had been unable to obtain and report the required information, effective for calendar years 2017, 2018, and 2019.² The 2017 relief was intended to provide FFIs with additional time to implement practices and procedures to obtain and report required TINs.

Notwithstanding the 2017 guidance and relief, Notice 2023-11 indicates that the IRS continues to receive reporting that

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does not include TINs for all pre-existing reportable accounts, with the result that the IRS is not obtaining the information that it deems necessary to determine whether U.S. taxpayers are complying with their U.S. tax obligations.

Notice 2023-11 further indicates that the IRS has received communications expressing concerns that FFIs are closing bank accounts of U.S. citizens resident outside the United States by reason of concerns about FATCA compliance, or are refusing to open accounts for such individuals or are providing access to accounts on less favorable terms than are available to other account holders.

Relief Provided

According to Notice 2023-11, the IRS has determined that merely providing additional time to affected FFIs to implement practices and procedures to obtain and report the required TINs would not address the concerns outlined above. Instead, Notice 2023-11 sets out interim measures intended to address the compliance concerns of FFIs while also providing the IRS with the additional information it requires to enhance compliance procedures and to understand the reasons for prior non-compliance.

To this end, Notice 2023-11 provides that FFIs will not be treated as being in significant noncompliance with their reporting obligations provided that they are FFIs governed by a Model 1 Intergovernmental Agreement (IGA) and that they make good faith efforts to increase the likelihood that U.S. citizens residing in their jurisdictions report their TINs.

This relief applies to reporting for calendar years 2022, 2023, and 2024 and is limited to pre-existing accounts.

Specified Relief Procedures

To be eligible for this relief, the FFI must take the following steps in relation to each reportable account with a missing TIN: (1) obtaining and reporting the date of birth of each account holder that is an individual and controlling person whose TIN is not reported; (2) starting in calendar year 2023, annually requesting from each account holder any missing required TIN, using a method of communication most likely to reach the account holder; (3) starting in calendar year 2023, annually searching electronically searchable data maintained by the FFI for any missing required TINs; and (4) reporting an accurate TIN code (as specified by the IRS) for each account that is missing a required TIN.

KPMG INSIGHTS

The relief provided by Notice 2023-11 will be welcomed by FFIs that otherwise might have been held to be in substantial noncompliance with their FATCA obligations. However, the additional procedures required as a condition for the relief serve to emphasize the IRS' determination to obtain missing TINs and other information required to be provided under the terms of FATCA and the applicable IGAs.

The terms of the Notice make it clear that the IRS sees these reporting requirements as crucial to determining whether U.S. taxpayers are complying with their U.S. tax obligations and there is a potential for an increase in scrutiny and enforcement of these rules in the coming years as Treasury receives additional funding of \$80 billion,³ to be spent over the next decade.

FOOTNOTES:

1 See [IRS Notice 2023-11](#).

2 See IRS [Notice 2017-46](#).

3 The additional funding for the IRS was enacted as part of the Inflation Reduction Act of 2022. See Pub. L. 117-169, sec. 10301.

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