

Revised Guidance Related to Obtaining and Reporting Taxpayer Identification Numbers and Dates of Birth by Financial Institutions

Notice 2017-46

I. PURPOSE

This Notice provides procedures for certain foreign financial institutions (FFIs) required to report U.S. taxpayer identification numbers (U.S. TINs) for certain accounts under a Model 1 intergovernmental agreement (IGA). If such FFIs comply with the procedures described in this Notice, then the Internal Revenue Service (IRS) will not determine that there is significant non-compliance with the obligations under a Model 1 IGA solely as a result of a failure to report U.S. TINs associated with the FFI's U.S. reportable accounts maintained as of the determination date specified in the applicable Model 1 IGA.

This Notice also announces that the Department of the Treasury (Treasury Department) and the IRS intend to amend certain provisions of the temporary regulations under chapter 3 of the Internal Revenue Code (Code). The amendments would provide limitations on, and a phase-in of, the requirement for certain withholding agents to obtain and report the taxpayer identification number issued by an account

holder's jurisdiction of tax residence (Foreign TIN) and, for an account holder that is an individual, the account holder's date of birth. The changes described in this Notice are intended to facilitate an orderly implementation of the obligation to obtain and report taxpayer identification numbers.

II. BACKGROUND

On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Pub. L. No. 111-147, 124 Stat. 71 (2010) (HIRE Act), added chapter 4 of Subtitle A (chapter 4), comprised of sections 1471 through 1474, to the Code. Chapter 4 (commonly known as the Foreign Account Tax Compliance Act, or FATCA) addresses non-compliance by U.S. taxpayers holding foreign financial accounts or assets. FATCA requires certain FFIs to report to the IRS information about financial accounts held by U.S. taxpayers or foreign entities in which U.S. taxpayers hold certain ownership interests. In order to facilitate the exchange of information on financial accounts held by U.S. taxpayers, the Treasury Department collaborated with foreign governments to develop two alternative model IGAs (Model 1 IGA and Model 2 IGA) that are intended to provide an effective and efficient means for complying with FATCA while reducing the burden FATCA compliance imposes on financial institutions. The Model 1 IGA provides that a reporting Model 1 FFI will report certain information on U.S. reportable accounts maintained by the FFI to the partner jurisdiction tax authority, which will automatically exchange such information with the U.S. Competent Authority.

On January 17, 2013, the Treasury Department and the IRS published final regulations under chapter 4 (T.D. 9610, 78 F.R. 5873) (2013 final chapter 4 regulations). On March 6, 2014, the Treasury Department and the IRS published temporary regulations under chapter 4 (T.D. 9657, 79 F.R. 12812) (2014 temporary chapter 4 regulations). On March 6, 2014, the Treasury Department and the IRS also published temporary regulations under chapters 3 and 61 and section 3406 (T.D. 9658, 79 F.R. 12726) (temporary coordination regulations) to coordinate the regulations under those provisions with the 2013 final chapter 4 regulations and the 2014 temporary chapter 4 regulations. On January 6, 2017, the Treasury Department and the IRS published final regulations under chapter 3 (T.D. 9808, 82 F.R. 2046) (final chapter 3 regulations) and chapter 4 (T.D. 9809, 82 F.R. 2124) (final chapter 4 regulations), which generally incorporated the 2014 temporary chapter 4 regulations and the temporary coordination regulations. At the same time, the Treasury Department and the IRS published temporary regulations under chapter 3 (temporary chapter 3 regulations) and chapter 4 to supplement certain provisions of the final chapter 3 regulations and the final chapter 4 regulations.

III. REQUIREMENT FOR REPORTING MODEL 1 FFIS TO REPORT U.S. TINS

A. Background

Each Model 1 IGA provides that a reporting Model 1 FFI shall be treated as complying with, and not subject to withholding under, section 1471 of the Code if the partner jurisdiction complies with its obligations under the IGA with respect to such financial institution and such financial institution complies with its reporting and

registration obligations in accordance with the IGA. Each Model 1 IGA also provides that the United States shall not require a reporting Model 1 FFI to withhold tax under section 1471 or 1472 of the Code with respect to an account held by a recalcitrant account holder (as defined in section 1471(d)(6) of the Code) or to close such account if the U.S. Competent Authority receives certain information specified in the Model 1 IGA with respect to such account.

The information required to be reported by a reporting Model 1 FFI includes the U.S. TIN of each specified U.S. person that is an account holder and, in the case of a non-U.S. entity with one or more specified U.S. persons who are controlling persons, the U.S. TIN of each controlling person (required U.S. TINs). Notwithstanding this reporting requirement, before 2017, a reporting Model 1 FFI was not required to report a required U.S. TIN for an account maintained as of the determination date specified in the applicable Model 1 IGA (preexisting account) that is a U.S. reportable account if the U.S. TIN was not in the reporting Model 1 FFI's records. Similarly, a reporting Model 1 FFI was required to report the date of birth only if the date of birth was in the reporting Model 1 FFI's records. Partner jurisdictions have committed to establish rules for 2017 and subsequent years requiring reporting Model 1 FFIs to obtain and report the required U.S. TINs for such accounts.

Each Model 1 IGA requires that the partner jurisdiction obtain and exchange the information specified in the Model 1 IGA (including each required U.S. TIN) with respect to each U.S. reportable account. The suspension of withholding under sections 1471

and 1472 of the Code pursuant to each Model 1 IGA is conditioned on adequate reporting and exchange of information. If a reporting Model 1 FFI fails to report required U.S. TINs for U.S. reportable accounts, the U.S. Competent Authority may notify the partner jurisdiction competent authority that there is significant non-compliance with respect to the reporting Model 1 FFI, in accordance with the Model 1 IGA. If the reporting Model 1 FFI remains noncompliant for 18 months after such notification, under the relevant Model 1 IGA, the United States may treat the reporting Model 1 FFI as a nonparticipating financial institution that is subject to withholding under section 1471 of the Code.

B. U.S. TIN Reporting by Reporting Model 1 FFIs

The Treasury Department and the IRS understand that some reporting Model 1 FFIs need additional time to implement practices and procedures to obtain and report required U.S. TINs for preexisting accounts that are U.S. reportable accounts. Accordingly, with respect to reporting on preexisting accounts that are U.S. reportable accounts, for calendar years 2017, 2018, and 2019, the U.S. Competent Authority will not determine that there is significant non-compliance with the obligations under an applicable Model 1 IGA with respect to a reporting Model 1 FFI solely because of a failure to obtain and report each required U.S. TIN, provided that the reporting Model 1 FFI: (1) obtains and reports the date of birth of each account holder and controlling person whose U.S. TIN is not reported; (2) requests annually from each account holder any missing required U.S. TIN; and (3) before reporting information that relates to calendar year 2017 to the partner jurisdiction, searches electronically searchable data

maintained by the reporting Model 1 FFI for any missing required U.S. TINs. The IRS expects to provide further instructions regarding appropriate reporting for the TIN data element for preexisting accounts that are U.S. reportable accounts with missing required U.S. TINs.

Reporting Model 1 FFIs should implement practices and procedures promptly to ensure that financial accounts are documented in accordance with the applicable Model 1 IGA and that U.S. reportable accounts are adequately and timely reported in future years. Nothing in this Notice affects a reporting Model 1 FFI's obligations under chapter 3 or 61 with respect to a reportable amount or reportable payment.

IV. REQUIREMENT TO OBTAIN AND REPORT FOREIGN TINs AND DATES OF BIRTH

A. Background

Before the temporary chapter 3 regulations were published, the instructions for Forms W-8BEN and W-8BEN-E and the Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY outlined circumstances under which the person providing the form was required to provide a Foreign TIN and, for an individual, a date of birth. The instructions for Form 1042-S, "Foreign Person's U.S. Source Income Subject to Withholding," for calendar years 2014, 2015, and 2016 described circumstances under which certain withholding agents were required to report these additional items of information on Form 1042-S.

The temporary chapter 3 regulations provide additional changes to the temporary coordination regulations that modified the due diligence and reporting obligations of

withholding agents. In particular, the temporary chapter 3 regulations generally incorporate the requirement from the aforementioned form instructions for certain withholding agents to obtain and report the Foreign TINs of their account holders and, in the case of an individual account holder, a date of birth. These revisions were made to ensure, in part, that the IRS would have adequate information about foreign account holders to facilitate the exchange of foreign account holder information pursuant to an agreement authorizing or requiring the exchange of such information. Section 1.1441-1T(e)(2)(ii)(B) provides that, beginning 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 financial institution is required to contain the account holder's Foreign TIN and, in the case of an individual account holder, the account holder's date of birth in order for the withholding agent to treat the withholding certificate as valid. For withholding certificates associated with payments made on or after January 1, 2018, an account holder that does not provide a Foreign TIN must provide a reasonable explanation for its absence in order for the withholding certificate not to be considered invalid under §1.1441-1T(e)(2)(ii)(B). The temporary chapter 3 regulations also provide that if the withholding certificate does not contain the account holder's date of birth and the withholding agent has the date of birth in its files, the withholding certificate will not be considered invalid.

For calendar year 2017, the instructions for Form 1042-S provide that a withholding agent that is a U.S. office or branch of a financial institution is required to report on

Form 1042-S a recipient's Foreign TIN when the recipient has furnished documentation that provides a Foreign TIN. The instructions provide that, beginning for the 2017 calendar year, the withholding agent is also required to report on Form 1042-S an individual recipient's date of birth when the recipient has furnished documentation that provides a date of birth or the recipient's date of birth is identified in any of the withholding agent's files.

B. Revised Scope and Phased-In Timeline of Requirements for Certain Withholding Agents to Obtain and Report the Foreign TIN and Date of Birth of Account Holders

After the publication of the temporary chapter 3 regulations, the Treasury Department and the IRS received comments from withholding agents regarding the difficulty in obtaining and reporting Foreign TINs and dates of birth from account holders in the time provided. In response to these comments, the Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to narrow the circumstances in which a Foreign TIN and date of birth are required, as described in sections IV.B.1 and IV.B.2 of this Notice; to provide exceptions from the Foreign TIN requirement for certain account holders, as described in section IV.B.3 of this Notice; and to provide a phase-in of the rules for obtaining a Foreign TIN, as described in section IV.B.4 of this Notice. In addition, the Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide relief from obtaining a date of birth with respect to certain withholding certificates signed before January 1, 2018, as described in section IV.B.5 of this Notice.

For purposes of this section IV, the term “withholding certificate” means Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP and, with respect to a qualified intermediary acting as a qualified derivatives dealer (QDD) claiming treaty benefits for dividends, Form W-8IMY. The term “withholding agent” when used in this section IV refers to a withholding agent that is a U.S. branch or office of a financial institution (as defined in section IV.B.1 of this Notice).

1. Accounts and Financial Institutions to Which §1.1441-1T(e)(2)(ii)(B) Applies

The Treasury Department and the IRS intend to amend §1.1441-1T(e)(2)(ii)(B) to clarify that the term “account holder” has the meaning described in §1.1471-5(a)(3) and that the term “account” means a financial account, as defined in §1.1471-5(b) (substituting “U.S. office or branch of a financial institution” for “FFI”). In addition, the Treasury Department and the IRS intend to amend §1.1441-1T(e)(2)(ii)(B) to clarify that the term “financial institution” means an entity that is a depository institution, custodial institution, investment entity, or a specified insurance company, each as defined in §1.1471-5(e).

2. Payments to Which §1.1441-1T(e)(2)(ii)(B) Applies

Section 1.1441-1T(e)(2)(ii)(B) provides that a Foreign TIN (or a reasonable explanation for why the account holder has not been issued a Foreign TIN) and a date of birth (for an individual) are required for withholding certificates associated with “payments,” which includes any payments under sections 1441 through 1446, chapter 4, and chapter 61 (due to references in those sections and chapters to beneficial owner

withholding certificates used to establish foreign status). The Treasury Department and the IRS believe that it is not necessary for a withholding agent to obtain a Foreign TIN (or a reasonable explanation for why the account holder has not been issued a Foreign TIN) or (for an individual) a date of birth on a withholding certificate that the withholding agent obtains solely to avoid Form 1099 reporting and backup withholding or in other cases where a payment associated with a withholding certificate is not otherwise subject to reporting on Form 1042-S. Therefore, the Treasury Department and the IRS intend to amend §1.1441-1T(e)(2)(ii)(B) to limit its scope for this purpose such that a withholding certificate is required to be treated as invalid under §1.1441-1T(e)(2)(ii)(B) only for payments of U.S. source income reportable on Form 1042-S (before the application of §1.1441-1T(e)(2)(ii)(B)). Due to this limitation, a withholding agent will not, for example, be required to withhold under section 3406 on gross proceeds paid to an individual account holder as a result of the application of the section 1441 presumption rules when the account holder provides a withholding certificate that is valid but for the absence of a Foreign TIN and the account holder's date of birth.

3. Exceptions from Foreign TIN Requirement for Certain Accounts

- i. Accounts Held by Residents in Jurisdictions With Which the United States Does Not Have an Agreement Relating to the Exchange of Tax Information in Force

The Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide that a withholding agent is not required to obtain a Foreign TIN (or a reasonable explanation for why an account holder has not been issued a Foreign TIN) for an account held by a resident in a jurisdiction that does not have in effect with

the United States an income tax or other convention or bilateral agreement relating to the exchange of tax information within the meaning of section 6103(k)(4) of the Code pursuant to which the United States agrees to provide, as well as receive, tax information. This limitation is consistent with the limitation on the information reporting requirement in §1.6049-8(a) on U.S. source deposit interest paid to nonresident alien individuals. A list of jurisdictions that a withholding agent is required to reference for purposes of the limitation on reporting under §§1.6049-8(a) and 1.1441-1T(e)(2)(ii)(B) (as revised in accordance with this Notice) is published in section 3 of Revenue Procedure 2014-64, 2014-53 I.R.B. 1022, as supplemented by Revenue Procedure 2016-56, 2016-52 I.R.B. 920, and which may be further updated in future published guidance. If the Treasury Department and the IRS further supplement the list of jurisdictions in section 3 of Revenue Procedure 2014-64, subject to the limitations described in this Notice, a withholding agent must obtain the Foreign TIN (or a reasonable explanation for why an account holder has not been issued a Foreign TIN) of each account holder resident in any such jurisdiction before the time for filing Form 1042-S (with any applicable extension) for the calendar year following the calendar year in which the jurisdiction is added to the list.

ii. Accounts Held by Residents in Jurisdictions That Do Not Issue Foreign TINs

The Treasury Department and the IRS intend to amend §1.1441-1T(e)(2)(ii)(B) to provide that a withholding agent is not required to obtain a Foreign TIN (or a reasonable explanation for why an account holder has not been issued a Foreign TIN) for an

account held by a resident of a jurisdiction that has been identified by the IRS on a list of jurisdictions that do not issue Foreign TINs to their residents. A list of such jurisdictions (when made available) may be viewed at www.irs.gov/FATCA. As of the date of this Notice, the following jurisdictions have been identified as ones that do not issue Foreign TINs to residents and that will be included on the list:

Bermuda

British Virgin Islands

Cayman Islands

Taxpayers may rely on the jurisdictions identified above for purposes of this Notice. The IRS intends to update this list to add jurisdictions that do not issue Foreign TINs (after consultation with the competent authority of any such additional jurisdiction), including in response to taxpayer comments that identify additional jurisdictions that do not issue Foreign TINs. The list maintained by the IRS of jurisdictions that do not issue Foreign TINs to residents will also be updated if a jurisdiction included on the list begins to issue Foreign TINs to its residents.

iii. Accounts Held by a Government, International Organization, Foreign Central Bank of Issue, or Resident of a U.S. Territory

The Treasury Department and the IRS intend to amend §1.1441-1T(e)(2)(ii)(B) to provide that a withholding agent is not required to obtain an account holder's Foreign TIN (or a reasonable explanation for why the account holder has not been issued a Foreign TIN) if the withholding agent has obtained an otherwise valid withholding certificate on which it can rely under the section 1441 regulations to treat the account

holder as a government, an international organization, a foreign central bank of issue, or a resident of a U.S. territory.

4. Phase-In of Requirement to Obtain a Foreign TIN Under §1.1441-1T(e)(2)(ii)(B)

The Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide additional time for a withholding agent to comply with the requirement to obtain a Foreign TIN. As described in more detail below, this section IV.B.4 describes how the requirement to obtain a Foreign TIN under the temporary chapter 3 regulations will be phased in over a period ending on December 31, 2019.

Section IV.B.4.i of this Notice provides rules that will apply to withholding certificates signed on or after January 1, 2018, including rules for determining whether a withholding agent may rely on a Foreign TIN provided on a withholding certificate. Sections IV.B.4.ii, iii, and iv of this Notice generally provide rules for determining the validity of a withholding certificate without a Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN) signed before January 1, 2018, during the phase-in period. Section IV.B.4.v of this Notice provides an alternative procedure for obtaining a Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN) for a withholding certificate signed before January 1, 2018. If a withholding agent obtains the account holder's Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN) in accordance with the alternative procedure (rather than obtaining a new withholding certificate), an otherwise valid withholding certificate will remain valid after the end of

the phase-in period until the earlier of when its validity period ends or it otherwise becomes invalid.

i. Withholding Certificates Signed On or After January 1, 2018

The Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide that a withholding certificate signed on or after January 1, 2018, by an account holder (other than an account holder excepted under section IV.B.3 of this Notice) to document an account maintained at a U.S. branch or office of a withholding agent must contain a Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN).

The Treasury Department and the IRS also intend to amend the temporary chapter 3 regulations to provide that a withholding agent may rely on the account holder's Foreign TIN unless the withholding agent has actual knowledge or reason to know (as described in §1.1441-7(b)(2)) that the Foreign TIN is incorrect. Therefore, a withholding agent will not be required to validate the format or other specifications of the Foreign TIN against the applicable jurisdiction's TIN system. For purposes of §1.1441-1(e)(4)(ii)(D) (prescribing the requirements for a change in circumstances), a withholding agent's reason to know that a Foreign TIN is incorrect will include a notification from the account holder of a new residence address outside the jurisdiction provided on the withholding certificate.

The temporary chapter 3 regulations provide that if an account holder does not have a Foreign TIN, the account holder is required to provide a reasonable explanation for its absence (for example, that the jurisdiction of residence does not issue TINs). This

requirement will be clarified in the regulations to specify that the reasonable explanation must address why the account holder was not issued a Foreign TIN to the extent provided in the instructions for, as applicable, Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and, for a QDD claiming treaty benefits for dividends, Form W-8IMY. Those instructions have each been amended (with revision dates of June or July 2017) to provide that a reasonable explanation for why an account holder was not issued a Foreign TIN is a statement that the account holder is not legally required to obtain a Foreign TIN. If an account holder provides an explanation other than the one described in those instructions, the withholding agent must determine whether the explanation is reasonable. A withholding agent will be permitted to rely on a reasonable explanation unless it has actual knowledge that the account holder has a Foreign TIN.

In addition, if a withholding agent maintains an account on December 31, 2017, that is documented with a valid withholding certificate as of that date, the withholding agent's reason to know that a Foreign TIN is incorrect, or actual knowledge that an account holder has a Foreign TIN despite providing an explanation, is limited to electronically searchable information (as defined in §1.1471-1(b)(38)) that is in the withholding agent's files.

ii. Withholding Certificates for Payments Made Before January 1, 2018

The Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide that an otherwise valid withholding certificate will not be treated as invalid for payments made to the account holder before January 1, 2018, solely

because the withholding certificate does not include the account holder's Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN).

iii. Withholding Certificates Signed Before January 1, 2018, That Have a Three-Year Validity Period

The Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide that an otherwise valid withholding certificate signed before January 1, 2018, that has a three-year validity period under §§1.1441-1(e)(4)(ii)(A) and 1.1471-3(c)(6)(ii)(A) will not be treated as invalid for payments made on or after January 1, 2018, solely because the withholding certificate does not include the account holder's Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN), until the time provided in this section IV.B.4.iii. Such a withholding certificate will be treated as invalid for purposes of this section IV.B.4.iii for payments made after the earlier of (1) December 31, 2019; (2) the expiration date of the validity period of the withholding certificate; or (3) if applicable, the date when a change in circumstances requiring a revised withholding certificate occurs. However, for payments made after December 31, 2019, a withholding agent may rely on the alternative procedure described in section IV.B.4.v of this Notice to obtain a Foreign TIN (or reasonable explanation).

iv. Withholding Certificates Signed Before January 1, 2018, That Have an Indefinite Validity Period

The Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide that an otherwise valid withholding certificate signed before January 1, 2018, that is indefinitely valid under §§1.1441-1(e)(4)(ii)(B) and 1.1471-

3(c)(6)(ii)(B) will not be treated as invalid for payments made on or after January 1, 2018, solely because the withholding certificate does not include the account holder's Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN), until the time provided in this section IV.B.4.iv. Such a withholding certificate will be treated as invalid for purposes of this section IV.B.4.iv for payments made after the earlier of (1) December 31, 2019, or (2) if applicable, the date when a change in circumstances requiring a revised withholding certificate occurs. However, for payments made after December 31, 2019, a withholding agent may rely on the alternative procedure described in section IV.B.4.v of this Notice to obtain a Foreign TIN (or reasonable explanation).

v. Alternative Procedure for Obtaining and Associating Foreign TINs with Withholding Certificates Signed Before January 1, 2018

An otherwise valid withholding certificate that does not include the account holder's Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN) signed before January 1, 2018, will continue to remain valid for payments made after December 31, 2019, if the withholding agent (1) obtains from the account holder its Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN) on a written statement (including a written statement transmitted by email) that the withholding agent associates with the account holder's withholding certificate; or (2) otherwise has the account holder's Foreign TIN in the withholding agent's files and the withholding agent associates the account holder's Foreign TIN with the account holder's withholding certificate. Notwithstanding the preceding sentence,

an otherwise valid withholding certificate signed before January 1, 2018, that does not include the account holder's Foreign TIN (or reasonable explanation) ceases to be valid for payments made after the earlier of the expiration date of the validity period of such withholding certificate (in the case of a withholding certificate with a three-year validity period) or the date when a withholding agent determines that a revised withholding certificate is otherwise required (if applicable), and the withholding agent must obtain on a new withholding certificate the account holder's Foreign TIN (or reasonable explanation). A withholding agent's reliance on a Foreign TIN (or a reasonable explanation for why the account holder was not issued a Foreign TIN) obtained pursuant to the alternative procedure is subject to the standards of knowledge described in section IV.B.4.i of this Notice for a withholding certificate.

5. Requirement to Obtain Date of Birth

The temporary chapter 3 regulations provide that an otherwise valid withholding certificate that does not contain the account holder's date of birth will not be considered invalid if the withholding agent has the account holder's date of birth in its files. The Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to provide an exception to this requirement such that an otherwise valid withholding certificate signed before January 1, 2018, will not be treated as invalid for payments made before January 1, 2019, to an account holder that is an individual, solely because the withholding certificate does not include the account holder's date of birth and the date of birth is not in the withholding agent's files. This allowance is provided to give

withholding agents additional time to comply with the date of birth requirement for withholding certificates signed before January 1, 2018. In addition, the Treasury Department and the IRS intend to amend the temporary chapter 3 regulations to clarify that a withholding agent will be considered to have the account holder's date of birth in its files if it obtains the date of birth on a written statement (including a written statement transmitted by email) from the account holder.

C. Form 1042-S Reporting

The IRS intends to revise the instructions for Form 1042-S to provide that, beginning with reporting for calendar year 2018, a withholding agent must report on each Form 1042-S required to be filed with respect to a financial account maintained at a U.S. branch or office of the withholding agent the account holder's Foreign TIN in any of the following cases: (1) the account holder has furnished to the withholding agent a withholding certificate that includes its Foreign TIN; (2) the withholding agent has obtained the Foreign TIN under the alternative procedure described in section IV.B.4.v of this Notice; or (3) the withholding agent has identified the account holder's Foreign TIN in any of the withholding agent's electronically searchable information (as defined in §1.1471-1(b)(38)).

The instructions for Form 1042-S for calendar year 2017 will be revised with respect to withholding certificates furnished on or after January 1, 2017, to require the reporting of an individual account holder's date of birth if the date of birth is on the withholding certificate or is available in the withholding agent's electronically searchable information

(as defined in §1.1471-1(b)(38)). Furthermore, beginning with reporting for calendar year 2018, the instructions for Form 1042-S will require the reporting of an individual account holder's date of birth if the date of birth is on the withholding certificate or is identified in any of the withholding agent's files.

Penalties for failure to comply with reporting obligations may apply to a failure to report an account holder's Foreign TIN or an individual account holder's date of birth on Form 1042-S to the extent the instructions for Form 1042-S require such information to be reported.

V. TAXPAYER RELIANCE

Before the issuance of the amendments to the temporary chapter 3 regulations described in section IV of this Notice, taxpayers may rely on the provisions of this Notice regarding the content of the amendments.

VI. DRAFTING INFORMATION

The principal author of this Notice is Kamela Nelan of the Office of Associate Chief Counsel (International). For further information regarding this Notice, contact Ms. Nelan at (202) 317-6942 (not a toll-free call).