

Update on Jurisdictions Included on the IRS List of Jurisdictions That Do Not Issue Foreign TINs

Notice 2018-20

I. PURPOSE

This notice announces that the Internal Revenue Service (IRS) will expand the list of jurisdictions that do not issue taxpayer identification numbers to their residents, described in section IV.B.3.ii of Notice 2017-46, 2017-41 I.R.B. 275, to include jurisdictions that make a request to the U.S. competent authority to be included on such list. The Department of the Treasury (Treasury Department) and the IRS intend to amend §1.1441-1T(e)(2)(ii)(B) to incorporate the guidance described in this notice.

II. BACKGROUND

On January 6, 2017, the Treasury Department and the IRS published temporary regulations under chapter 3 of the Internal Revenue Code (T.D. 9808, 82 F.R. 2046) (temporary regulations). Section 1.1441-1T(e)(2)(ii)(B) of the temporary regulations 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 taxpayer identification number issued by the account holder's jurisdiction of tax residence (Foreign TIN) in order for the withholding agent to treat the withholding certificate as valid. Section 1.1441-1T(e)(2)(ii)(B) further provides that 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.

On September 25, 2017, the Treasury Department and the IRS released Notice 2017-46, which provides guidance modifying the requirements of §1.1441-1T(e)(2)(ii)(B) for withholding agents to obtain and report Foreign TINs of their account holders. Among other things, Notice 2017-46 extends the date on which the requirement to obtain Foreign TINs takes effect to January 1, 2018; provides transitional rules for withholding agents obtaining a Foreign TIN for an account holder documented with an otherwise valid Form W-8 that was signed before January 1, 2018; and provides exceptions to obtaining Foreign TINs for certain categories of account holders. In particular, Notice 2017-46 provides that under regulations to be published at a later date, withholding agents will not be 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 (No TIN list). Notice 2017-46 identifies three such jurisdictions, and provides that a list of all such jurisdictions will be made available at www.irs.gov/FATCA and will be updated as necessary. In December 2017, the No TIN list was posted by the IRS and is available at <https://www.irs.gov/businesses/corporations/list-of-jurisdictions-that-do-not-issue-foreign-tins>.

III. EXPANSION OF NO TIN LIST TO INCLUDE JURISDICTIONS THAT REQUEST TO BE ON THE LIST

Since the release of Notice 2017-46, some jurisdictions with laws that restrict the collection or disclosure of the Foreign TINs of their residents have requested that their residents not be required to provide Foreign TINs to withholding agents for purposes of §1.1441-1T(e)(2)(ii)(B). In response to these requests, the Treasury Department and the IRS have decided to expand the No TIN list to include jurisdictions that request to be on the list, even if the jurisdictions issue Foreign TINs to individuals or entities resident in such jurisdictions. To request to be added to the No TIN list, a jurisdiction's competent authority should contact the U.S. competent authority. As of the date of this notice, the following jurisdiction will be included on the No TIN list:

Australia

The Treasury Department and the IRS intend to amend §1.1441-1T(e)(2)(ii)(B) to provide that withholding agents are not required to collect or report Foreign TINs of residents in the jurisdictions on the No TIN list, including the jurisdiction identified above.

IV. TAXPAYER RELIANCE

Before the issuance of the amendment to the temporary regulations described in section III of this notice, taxpayers may rely on the provisions of this notice regarding the content of the amendment and the inclusion of Australia (and any jurisdictions subsequently included) on the No TIN list.

V. EFFECT ON OTHER DOCUMENTS

This notice supplements Notice 2017-46.

VI. DRAFTING INFORMATION

The principal author of this notice is Charles Rioux of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Charles Rioux at (202) 317-4992 (not a toll-free call).