

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

CC:INTL:B01:C.Rioux  
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date: December 03, 2020

to: Kimberly Schoenbacher  
Director, Field Operations Foreign Payments Practice

from: John J. Sweeney  
Special Counsel  
Office of Associate Chief Counsel (International)

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subject: Account Holder Information Request to Participating Foreign Financial Institutions Not Subject to Model 2 IGA

This memorandum responds to your request for advice regarding whether you may request from certain foreign financial institutions (“FFIs”) information relating to the accounts held with them by certain U.S. individuals. This advice may not be used or cited as precedent.

ISSUE

Whether, consistent with the terms of the FFI Agreement set forth in Rev. Proc. 2017-16, 2017-3 I.R.B. 501 (“the FFI Agreement”), the IRS may request from [REDACTED] participating FFIs (“PFFIs”) [REDACTED] of certain U.S. citizens or residents for each year [REDACTED]

CONCLUSION

The IRS may request this information for each year [REDACTED] under the terms of the FFI agreement. This request is permitted under the FFI agreement without regard to whether the United States has a tax exchange agreement in effect with the country of residence of any of the PFFIs.

FACTS

[REDACTED]

[REDACTED] to section 6.02 of the FFI Agreement (covering a PFFI's requirement to report U.S. accounts).

LAW AND ANALYSIS

Under section 1471(a), an FFI which does not meet the requirements of section 1471(b) is subject to withholding on withholdable payments made to it at the rate of 30 percent. The requirements of section 1471(b) are met with respect to any FFI that has an agreement in effect between such institution and the IRS under which such institution agrees to (among other things) obtain such information regarding each account holder of each account maintained by such institution as is necessary to determine which (if any) of such accounts are United States accounts. See section 1471(b)(1)(A). Under section 1471(b)(1)(E), the FFI must also agree to comply with requests by the IRS for additional information with respect to any United States account maintained by such institution.

An FFI may comply with section 1471(b) by registering with the IRS to enter into an FFI Agreement to become a PFFI. Treas. Reg. §1.1471-4(a). A PFFI includes both an FFI in a jurisdiction with a Model 2 IGA in effect (a reporting Model 2 FFI) and an FFI in a jurisdiction with no IGA in effect. Treas. Reg. §1.1471-1(b)(91). The FFI agreement requires a PFFI to report certain information for each calendar year to the IRS on Form 8966, FATCA Report, with respect to its U.S. accounts, which includes accounts held by individuals who are U.S. citizens or residents.

Section 8.04(A) of the FFI agreement permits the IRS to request certain other information from a PFFI that is not a reporting Model 2 FFI. Based upon the information reporting forms and tax returns (including Form 8966) filed by the PFFI with the IRS for a calendar year, the IRS may request from the PFFI additional information with respect to the information reported, or required to be reported, on such forms, and may also request the account statements described in §1.1471-4(d)(4)(v). The IRS is also permitted to request from the PFFI any additional information to determine a PFFI's compliance with its FFI Agreement and to assist the IRS with its review of account

holder compliance with tax reporting requirements. The FFI agreement requires that a PFFI that produces, in the ordinary course of its business, account statements that summarize the activity of an account (including withdrawals, transfers, and closures) for any calendar year in which the account was required to be reported to the IRS to retain a record of such account statements for the longer of six years or the retention period under the FFI's normal business procedures. A PFFI may be required to extend the six-year retention period if the IRS requests such an extension prior to the expiration of the period. Section 6.08(A) of the FFI Agreement. None of the provisions described in this paragraph relating to an IRS request for information from an FFI is dependent on the United States having any treaty or other agreement to exchange tax information with the jurisdiction of the FFI's residence or any jurisdiction in which the FFI operates.

In this case, [REDACTED] the provisions of section 8.04(A) of the FFI agreement apply to each FFI.<sup>1</sup> Section 8.04 specifically permits the IRS to request the account statements relating to accounts reported to the IRS for a calendar year. As each FFI has been a PFFI [REDACTED]

[REDACTED]

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Charles Rioux at (202) 317-4992 if you have any further questions.

cc: Mike Hayden  
Director, Treaty Administration, Automatic Exchange of Information

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<sup>1</sup> A PFFI might have an offshore branch that could be in a jurisdiction with an IGA in effect, which would require an analysis beyond the scope of this memorandum (as each account in question was maintained in the FFI's jurisdiction of residence, which, as stated, does not have an IGA in effect).