



Dutch Ministry of Finance  
State Secretary for Finance Mr E.D. Wiebes MBA  
PO Box 20201  
2500 EE DEN HAAG

**Datum** 14 October 2016  
**Referentie** BR2572

Re: FATCA reportable accountholders without US TINs

Dear Mr Wiebes,

The Dutch Banking Association requests your attention for the following.

Despite significant efforts to reach out to their accountholders, our members have been unable to obtain US TINs from *all* their US Persons and other FATCA reportable persons. We fear that this situation will not change in 2017, when formally - according to the Intergovernmental Agreement with the United States (hereafter: IGA) implementing the *Foreign Account Tax Compliance Act* (FATCA) - all FIs in the Netherlands should obtain the US TINs of all FATCA reportable persons and report the relevant data including US TINs as of February 2018. Since our members cannot bear the threat of the ultimate sanction of being significantly non-compliant, we ask for your help.

After the implementation of the obligations under the IGA in the Dutch tax legislations our members have intensively tried to obtain the clients' information that they are required to report for FATCA purposes. They have been successful in obtaining a substantial number of US TINs, however in quite a large number of cases neither the actual confirmation from the accountholder that he or she actually is a US taxpayer nor his or her US TIN could be collected, despite all reasonable efforts to contact the accountholder.

Prior to FATCA, there was no need to record information on non-EU tax residence. Therefore, there was also no need to request or retain information on foreign TINs. This applies to individual and entity accountholders, but even more so to controlling persons of passive Non-Financial Foreign Entities (NFFE). Based on existing 'Know Your Customer regulations' (largely based on the international FATF standards), it was only necessary to document the ultimate beneficiary owners or controlling persons, without the obligation to collect information where those ultimate beneficial owners or controlling persons were tax resident and their TIN.

Generally speaking, our banks have been unable to obtain TINs from the majority of their accountholders that were existing accountholders at the time of the entry into force of the IGA (July 1<sup>st</sup>, 2014). The same applies to accounts in case a change in circumstances occurs. For new accounts obtaining the TIN is less burdensome, but also in some cases still difficult. The issue of not being able to obtain the US TINs with respect to both new and existing accounts can have a variety of causes. Namely:

- The accountholder does not respond to the (often repeated) request for confirmation of his or her FATCA status. In those cases the rules prescribe that banks then have to assume



- that the account is a US reportable account. Obviously, in this situation no US TIN is available for the accountholder.
- The accountholder does confirm that he or she is an US taxpayer, but does not provide his or her US TIN. Again, this can have several causes:
    - o The accountholder has never realized that he or she is a US taxpayer (i.e. accidental Americans) and therefore does not have a US TIN. In those situations, the accountholder is requested by the bank to obtain such US TIN. Our members have received complaints from accountholders that this is a burdensome process.
    - o The accountholder does not want to provide his or her US TIN as the accountholder is protective of his or her privacy. Efforts by the bank to explain the necessity of providing the US TIN are often resisted.
  - The accountholder is a passive NFFE and does not have the information on the TINs of its controlling persons. It therefore cannot provide this information to the bank. As the controlling persons of the accountholder are no customers of the bank, the bank cannot reach out to these persons directly.

As our members have already reached out multiple times to these accountholders to obtain the US TIN information, they see no further alternatives then to report the available information in their databases on these accountholders without their US TINs. As the banks will report information on addresses and date and place of birth of the individual accountholders, it is our opinion that the threat of the ultimate sanction of being significantly non-compliant is not justified. The same applies on the available information on controlling persons of passive NFFEs.

Considering that the Dutch banking community wants to operate in an accurate and consistent way in accordance with the applicable tax laws, we ask your help. Could you contact the Competent Authorities of the United States and request confirmation that a bank that - after reasonable efforts - is not able to obtain a US TIN is in compliance with the IGA if it provides *all other available information* required by the IGA.

Yours sincerely,

Chris Buijink  
President