



FATCA FILINGS – FAILURE OR FALLACY?

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**BUILDING
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FUTURES**

On the 1st July 2014, compliance officers at Foreign Financial Institutions (FFIs) all over the world took a deep breath and braced for impact. (For those of you who don't usually work with US regulations, 'Foreign' is the label given to Persons and Entities that are non-US.) FATCA went live in the UK and changed our Ops Tax teams forever.

As we approach the 10th anniversary of that historic event, I find myself reflecting across the years on implementation, process change and improvement, mistakes and challenges, highs and lows, and my own personal contribution and efforts towards making this regime a success.

Imagine my dismay when 2023 began with an Internal Revenue Service (IRS) notice about FATCA that essentially states FFIs are not doing a good enough job.

Amongst other things, Notice 2023-11, Foreign Financial Institution Temporary U.S. Taxpayer Identification Number Relief¹ mandates the use of a series of reason codes that must be used in FATCA reports where the US Taxpayer Identification Number (TIN) is missing, instead of the standard dummy entry of nine 0s or As. The suggestion being enough time has passed to get our pre-existing accounts (those opened on or before 30th June 2014) due diligence up to date, and had it been done correctly, we wouldn't have any missing TINs now.

Whilst I can't speak for every FATCA Reporting Officer outside of the US, I do work with a lot of different types and sizes of FFI, and I am yet to encounter anyone that could be accused of purposeful non-compliance, quite the opposite in fact. I could not count the number of hours spent on projects to identify, collect and validate the information relating

to US Persons, TINs in particular. It feels a bit like the IRS haven't considered the impact of their own, quite far-reaching requirements.

With much stricter indicia rules than the Common Reporting Standard (CRS), and the default reportability of certain accounts, the number of account holders queried for FATCA must be far higher than the number of account holders with a genuine US tax liability. And whilst those queries remain unresolved, we must report those accounts. For those 'Accidental Americans' (persons born in the US, but subsequently haven't lived or worked there), and for those with incidental Indicia (eg a US telephone number that is actually a global routing number), there may never be a US TIN to provide, but the FATCA rules state we must report them until this is fully established. We can't force customers to give us their TIN...a fact that has been pointed out to the IRS on several occasions.



As you can tell, it was niggling at me quite a lot. How many missing TINs are we talking about here? It didn't take me long to find out why the IRS were telling us off. I found a report from TIGTA (Treasury Inspector General for Tax Administration – oversight office for the IRS) from April 2022, "Additional Actions Are Needed to Address Non-Filing and Non-Reporting Compliance Under the Foreign Account Tax Compliance Act"¹ complaining that FATCA is not the success it should have been by now. The IRS throws blame towards the volume of missing TINs from FATCA reports, which prevents them from matching the report to a US taxpayer in their system.

Statistics within this report (averaging the years 2016-2019) show that only 44% of FATCA reports have a valid TIN attached, 7% have a blank TIN and 48% have an invalid TIN (These figures are straight from the report and must have been rounded as they only equal 99%). One can only assume that the dummy 0 or A entries are being included in the 'invalid TIN' numbers, as the xml reporting schema does not allow for a US TIN field to be left blank. But it does leave an unclear situation on how many of those invalid TINs are ones that have been presented to FIs on a W-9 or Self-Cert and have turned out to be invalid. For those scenarios, FFIs have met their due diligence responsibilities, and if a 9 digit number has been offered, identifying it as an invalid TIN isn't always easy unless it's 123456789. I am still without an exact answer to my question, but "quite a few" missing TINs seems to be the case.

So, why 'reason codes'? These will allow the IRS to see, at a glance, the due diligence situation for each account missing a TIN. They are defining if the account is new or pre-existing, held by an entity or an individual, and what type of Indicia or Self-Cert situation has arisen for inclusion on the report. FFIs reporting outside the UK may have already used

these codes for reports submitted in 2023, but HMRC only mandates the requirements for reports submitted from 2024 onwards. For some firms, it is no small task to assess all their FATCA reportable accounts without a TIN and assign the appropriate code. System updates are required so that codes can be stored on account records, new fields and validation rules to be designed. If you have in-house reporting technology, consider how that code is transposed without changing the account record to look like it now has a TIN. If you use a managed service for reporting, how are you going to track and compare the use of these codes year on year? Plenty to think about, and plenty to do.

If my experience reflects the full FFI population, it is hoped that the use of these reason codes will help the IRS to understand that the reports with no TIN are there because we are doing what they have asked. And with any luck, they may reconsider the approach to due diligence, especially for pre-existing accounts.

Change is in the air with the US now. Choosing to do their own thing with FATCA, they have recently committed to joining the OECD model for the upcoming Crypto-Asset Reporting Framework, a new regime they will participate in rather than imposing something different. A change in FATCA rules may be considered wishful thinking... I guess we just need to keep validating those TINs and watching this space.

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¹ <https://www.irs.gov/pub/irs-dmub-23-11.pdf>

² <https://www.irs.gov/foia/foia-requests/2022-06/202200191-01>

