

## KPMG AEOI Updates & Tracking Service

### FATCA Alert

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<b>Country:</b>	India
<b>Regime:</b>	FATCA

#### India: Issued Clarification on FAQs for FATCA Reportable Accounts

On 31 January 2022, the Income Tax Department of India issued a circular clarifying the applicability of Frequently Asked Questions (FAQ) 6 and 3, issued by the IRS regarding US reportable accounts under the FATCA Intergovernmental Agreement (IGA) between the United States and other Model 1 jurisdictions. Both of the FAQs deal with situations where a US Tax Identification Number (TIN) was not provided for US reportable accounts by the Reporting Financial Institution (RFI).

The clarification is as follows:

- FAQ 6 (reporting): According to IRS guidelines, any Model 1 Foreign Financial Institution (FFI) must obtain and exchange the US TIN data element for each specified US person that is an account holder or a controlling person of a non-US entity, per the IGA between US and the Model 1 jurisdiction.

The requirement to obtain a US TIN has been revised by the IRS, which developed a new series of codes after recognizing that Foreign Financial Institutions (FFIs) in a Model 1 jurisdiction are not able to obtain the US TIN. The use of these codes is optional and does not signify that the FFI will not be at risk of being found significantly noncompliant due to failure to report the required US TIN. The IRS will take into account the facts and circumstances leading to the absence of the US TIN, such as the reasons why the TIN could not be obtained, whether the FFI has sufficient procedures in place to obtain TINs, and the efforts made by the FFI to obtain the TIN. The codes are as follows:

- 22222222, for pre-existing individual account where the only US indicia is a US place of birth,
- 33333333, for new individual account with indicia indicating a US place of birth, and either:
  - has had a change in circumstances to cause the self-certification obtained originally at account opening to

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- be incorrect or unreliable, and a new self-certification has not been obtained, or
- was below the threshold at the time of account opening, for documenting and reporting the account and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.
- 444444444, for a pre-existing individual or entity account that has US indicia other than a US place of birth, and either:
  - has had a change in circumstances, to cause the self-certification or other documentation obtained originally to be incorrect or unreliable, and a new self-certification or other documentation has not been obtained, or
  - was below the threshold at the time of account opening, for documenting and reporting the account and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.
- 555555555, for a new individual or entity account with US indicia other than a US place of birth and either:
  - has had a change in circumstances to cause the self-certification or other documentation obtained originally to be incorrect or unreliable, and a new self-certification or other documentation has not been obtained, or
  - was below the threshold at the time of account opening, for documenting and reporting the account and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.
- 666666666, for pre-existing entity account with an account balance exceeding US\$1,000,000 held by a passive NFFE, for which no self-certifications have been obtained, and no US indicia has been identified in relation to its controlling persons; and
- 777777777, for pre-existing accounts with no TIN available, and the account has been dormant or inactive, but remains above the reporting threshold, also known as a “dormant account”.

The IRS system will still generate an error notification to indicate the entry is invalid when one of the above codes is used. FIs will have 120 days to correct this error from the date of receipt of the error notice, in accordance with Paragraph 4.2.2, “Minor error or other administrative errors,” of the Competent Authority Agreement (CAA). If the TIN is not provided within the 120-day period, the IRS will evaluate the data received and determine through a consideration of the facts and circumstances if there is significant non-



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compliance. ([Reporting FAQ #3](#) can be referred to for a full discussion of the significant non-compliance process.)

- Indian RFIs must ensure that a US TIN is reported for all US reportable accounts and, in cases where the US TIN is not obtained, the specified series of codes should be used as mentioned in FAQ 6. It should be noted that in all such cases, the IRS system will still generate an error notification to indicate the entry is invalid when one of these codes is used. Also, If none of the codes from FAQ 6 are applicable, and the TIN is still not obtained, then the RFIs are advised to populate the TIN field with nine times A or 0 (zero), per FAQ 3, which will also generate error notification.  
The error notification in both cases needs to be rectified within 120 days. If not rectified, the US will evaluate the data received and determine if there is any significant non-compliance.
- RFIs are requested to revise the reports submitted in Form 61B for US reportable accounts pertaining to the 2020 calendar year, if applicable, per the points mentioned above.

Reference: [Circular](#) (PDF 135KB)

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