



8<sup>th</sup> May, 2017

Department of the Treasury  
Mr. Steven T. Mnuchin  
Secretary of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington D.C. 20220  
United States of America

### **FATCA - Exchange of information under Intergovernmental Agreements**

Dear Mr. Mnuchin

We, as European Union (EU) Member States, would like to draw your attention to the problems faced by residents, financial institutions and governments of EU Member States in relation to FATCA. All EU Member States have signed an Intergovernmental Agreement (“IGA”) with the United States relating to FATCA to facilitate the exchange of information on financial accounts held with European financial institutions.

Under all these IGA’s, parties have agreed to obtain and exchange information in relation to so called Reportable Accounts. The information that has to be exchanged includes tax identification numbers (“TIN”), e.g. a social security number (SSN). The U.S. as the receiving jurisdiction can easily identify the account holder if the TIN is provided and, as such, we agree that it is useful to provide these TINs. However, it has proven to be very difficult for financial institutions to obtain the TINs in relation to certain US Persons that have a financial account with that financial institution. Financial institutions in EU Member States are concerned that they could be considered ‘non compliant’ in relation to FATCA where this is the case and may thus be confronted with a 30% US withholding tax on income from US sources.

Part of the problem can be explained by the fact that it is burdensome for US Persons without a TIN to obtain a TIN (or SSN). This issue is of particular relevance for individuals who are both resident in an EU Member State and a US-person, even though they may have very minimal nexus with the US. It is pertinent to note that in certain cases, these individuals have only recently learned they are US citizens.. We understand that, currently, these persons are confronted with administrative hurdles when trying to obtain a US TIN and/or filing US income tax returns, whilst having been good faith residents of a Member State of the EU.

A solution for part of the problems may be that financial institutions that show best efforts and act in good faith may still be considered compliant, even if not all TINs of all US Persons with a financial account with that financial institution can be provided. Where, despite such best efforts/good faith, of the financial institution could not obtain the TIN, it would need to provide the date of birth of the relevant account holder. In most cases, the combination of name and date of birth should give US tax authorities sufficient information to identify the account holder. Furthermore, through such a solution, EU financial institutions would experience less compliance risks in providing regular financial services to US Persons.

We hope that this letter contributes to a workable solution for EU financial institutions and US persons living in our countries, without affecting the goals of the exchange of information. We also believe that a solution to the above mentioned problem could contribute to the quality of the information exchange on a reciprocal basis and to further convergence with the international standard.

Yours sincerely,



Office of the Commissioner for Revenue  
Maltese Presidency of the Council of the EU