# Tax Solutions – Client Alert

Notice 2017-46: Additional Foreign Taxpayer Identification Number ("FTIN") Guidance

October 2017

# Product Update for September 2017 FTIN Guidance

The IRS issued Notice 2017-46 in late September providing additional guidance related to the collection and maintenance of foreign taxpayer identification numbers (FTINs).  This was released in response to the tremendous amount of feedback the IRS received in the wake of the updates to the §1441 regulations released in January 2017.

Notice 2017-46 relaxes the rules for when a form must contain a foreign TIN and allows withholding agents more time to remediate.

Tax Solutions will provide a software update to MD³® and E-W8™. Following this update, Forms W-8 that do not contain an FTIN will no longer expire as of January 1, 2018 but will rather be subject to the additional logic changes described in this Client Alert. Your Tax Solutions contact will provide an exact date for the delivery of this update.

As a reminder, these requirements only apply to direct account holders (with the exception of indirect beneficial owners receiving payments through a non-financial intermediary), and IPS" is not impacted by this change.

This update will be applicable only for withholding agents who maintain accounts in the U.S. Therefore, the updates discussed in this alert are relevant only for the onshore instances of MD³ and not for the offshore instance.

## FTIN Logic Update for MD³

Based on updates to the §1441 regulations, form instructions, IRS FAQs, and Notice 2017-46, MD³ will now require a Form W-8 to contain a FTIN if:

1. The account is maintained onshore (Onshore or Funds form types).

2. The Chapter 3 status is not International Organization, Central Bank of Issue, or Government.

3. The permanent address country is not:
    - a U.S. possession,
    - a country that does not issue TINs, or
    - a country that does not have an agreement in force to exchange tax information with the U.S.

4. The form is for a direct account holder.

If each condition above is met and the filer does not provide a FTIN on the Form W-8, MD³ will return the following validation results for an otherwise valid form:

***If the form is signed on or before 31 Dec 2016:***
  *Validation Result* = Valid
  *Expiration Date* = 3 years from the end of the calendar year in which the form was signed
  *Valid Pending Queue* = None

***If the form is signed between 1 January 2017 and 31 December 2017:***
  *Validation Result* = Valid
  *Expiration Date* = 12/31/2019
  *Valid Pending Queue* = Foreign TIN

***If the form is signed on or after 1 January 2018:***
  *Validation Result* = Not Valid

*Expiration Date* = None
*Valid Pending Queue* = Foreign TIN

To clear the Foreign TIN queue, the filer must provide either its FTIN (only applicable if the form is dated before January 1, 2018) or a reasonable explanation for why it does not have one.

☐ **FTIN Provided**< - Was the formed signed before 1 January 2018 and has the account holder provided a Foreign TIN?
**Foreign TIN:**

☐ **Reasonable Explanation** - Has the account holder provided a reasonable explanation for the absence of a Foreign Taxpayer Identification Number (FTIN)?
**Explanation:**
Other ▼

## NOTES

- **FTIN Format Check** – Notice 2017-46 explicitly states that withholding agents are not required to check the format of an FTIN. Therefore, $MD^3$ will also not apply any format check to the FTIN provided on a Form W-8. This logic, however, has already been developed for CRS purposes, so if the IRS issues new guidance requiring this check, $MD^3$ can easily be updated to accommodate such requirement.

- **Backup Withholding** – The notice limits withholding for lack of a FTIN or reasonable explanation to Forms W-8 being used "for payments of U.S. source income reportable on Form 1042-S" [Notice 2017-46 – page 10]. At the time of onboarding, however, the user generally will not know the type of income that is being paid to the account. $MD^3$ will therefore take the conservative approach and not consider this exception that is dependent upon income type.

- **Date of Birth Transitional Rule** – The notice provides a limited transitional rule for forms signed prior to January 1, 2018 being used to document account holders receiving payment prior to January 1, 2019. Given the operational complexity that this additional transitional rule would cause and the limited date range for which this exception is applicable, $MD^3$ will not apply this transitional rule in the logic. Instead, the system will retain the existing rule which would cause a Form W-8 to be invalid if the form does not contain a date of birth and the withholding agent does not otherwise have the date of birth in its files. This approach will likely have minimal operational impact as in practice, withholding agents often have a date of birth in their files.

## FTIN Remediation

Notice 2017-46 will mean that withholding agents are now only required to remediate pre-existing forms that were signed in 2017 and did not include an FTIN. Moreover, withholding agents now have until the end of 2019 to perform this remediation. The FTIN Remediation search functionality will be updated to reflect these new requirements.

For users who have already used the FTIN Remediation tool to re-process forms, Tax Solutions has developed a database script that will update these validations to conform with Notice 2017-46. If applicable, this script will be provided along with the release to update the MD$^3$ system logic.

## New Change in Circumstance

Notice 2017-46 provides that a withholding agent will have reason to know an FTIN is incorrect if the withholding agent receives notice from the account holder of a new residence address outside the jurisdiction provided on the withholding certificate.

To conform with this new rule, a new CIC will be added to the system that will trigger if:

1. A FTIN is required;
2. A FTIN is provided on the form (*i.e.,* no reasonable explanation required); and
3. The account records are updated with a new permanent address country code that does not match the permanent address country on the form.

If all the conditions above are met, the Form will be considered invalid and placed in the FTIN queue for curing.