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Room 5203, Internal Revenue Service

Copy for information to:

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12 November 2015

Dear Madam/Sir,

### Elimination of automatic extension to file certain forms

I am writing to you as Chief Executive of the European Banking Federation (EBF) which is the voice of European banks, uniting 32 national banking associations in Europe that together represent some 4,500 banks - large and small, wholesale and retail, local and international - employing about 2.5 million people. Launched in 1960, the EBF is committed to creating a single market for financial services in the European Union and to supporting policies that foster economic growth.

On 13 August 2015 the IRS published final and temporary regulations that remove the automatic extension of time to file certain information returns, including Forms 1042-S and 1042. These changes are due to come into effect in time for the 2017 filing season<sup>1</sup>. While we fully understand the IRS' rationale behind the changes, and appreciate the importance of combating identity theft and refund fraud, we have concerns that this measure, if adopted in its current form, would put a significant strain on non-US banks and their ability to file Forms 1042 correctly as part of their FATCA and QI compliance requirements.

Non US-banks which are QIs generally rely on a US withholding agent, which in practice furnishes Forms 1042-S to its payees only on or immediately prior to the 15 March filing deadline. QIs use these Forms 1042-S from their upstream agent as a final check that the information received from the upstream agent throughout the year reconciles with the summation of the Forms 1042-S that the QIs are required to file in respect of their own recipients. As part of providing accurate reporting to the IRS, a QI would normally encounter and resolve a number of issues (for example, discrepancies in income codes) for which it needs to contact its US withholding agent and request a revised Form, or, as the case may be, a revised file of underlying data, all of which may result in payment data to customers needing to be amended. The issue is further complicated by income reclassifications on distributions from REITs and RICs, which are typically made close to (or in some cases after) the Form

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<sup>1</sup><https://www.federalregister.gov/articles/2015/08/13/2015-19933/extension-of-time-to-file-certain-information-returns>

1042 filing deadline. In order to have data fully reconciled and be able to lodge correct and accurate returns with the IRS, many non-US agents rely systematically on the available 30-day automatic extension. Further complications can arise in scenarios where a non-US bank has downstream QI customers, which creates another layer of reporting (and dependency for adhering to filing deadlines).

An alternative arrangement to the withdrawal of the automatic extension of time to file would be for the US withholding agent to be required to provide the Forms 1042-S to its downstream QI by 31 January of the year following the relevant tax year. This may however be challenging for US withholding agents to be able to adhere to.

Further, we note that any requirement for QIs to have to request an extension in writing will result in the IRS having to manually approve potentially thousands of individual requests for extension to file, creating a significant additional burden for the IRS.

For the practical reasons set out above, we would suggest that the current automatic 30-day extension to file Forms 1042-S and 1042 for non-US financial institutions be maintained, since failure to do so would, in our view, most likely be detrimental to the quality of the underlying data reported to the IRS, resulting in a substantial number of amended returns.

I thank you in advance for paying attention to our comments and remain at your disposal if you have any questions or you would wish to discuss our views in more details.

Yours sincerely,



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