

FATCA

what is this

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What is FATCA

- * Foreign Account Tax Compliance Act
- * FATCA targets non-compliance by U.S. taxpayers using foreign accounts and is quickly becoming the international standard for curbing tax evasion.
- * The law requires
- * U.S. persons, including those living overseas, to report their financial accounts held outside of the
- * non-U.S. financial institutions to report details of their U.S. clients to the Internal Revenue Service (IRS).
- * Over 100 countries have already signed an agreement with the U.S.
- * The Indian agreement promotes mutual information sharing.

How does FATCA work?

- * FATCA has two reporting requirements – one for individuals and one for foreign financial institutions.
- * For individuals, specified U.S. persons holding financial assets outside the U.S. must report those assets to the IRS, , Statement of Specified Foreign Financial Assets. The Form 8938 must be attached to the taxpayer's annual tax return.
- * For FFIs in countries like India which have an agreement with the U.S., FFIs report this information to their respective governments.

Who is specified as a U.S. person?

- * Under FATCA, a U.S. person is defined as
- * a citizen or resident of the U.S. (including a green card holder),
- * a U.S. incorporated entity (including partnerships and trusts),
- * or a non-U.S. incorporated entity having shareholding of 10 percent or more held by a U.S. citizen, U.S. resident, individual with a U.S. mailing address, or U.S. incorporated entity.

What is a Foreign Financial Institution?

- * FATCA defines foreign financial institutions as
- * depository institutions (for example, banks),
- * custodial institutions (for example, mutual funds),
- * investment entities (for example, hedge funds or private equity funds),
- * interests in foreign partnerships, and insurance companies that have cash value products or annuities.

The following financial institutions are exempt from reporting under FATCA

- * Most governmental entities;
- * Most non-profit organizations;
- * Certain small, local financial institutions;
- * Certain retirement entities.

- * Further, FFIs do not have to report amounts less than US \$50,000 per individual. For specified U.S. persons disclosing their foreign financial assets, amounts less than US \$50,000 for individuals residing in the U.S.,
- * and \$200,000 for individuals residing overseas do not need to be reported on Form 8938. Form 8938 does not apply to domestic U.S. entities, only to individuals.
- * However, taxable income arising from these assets still needs to be reported on Form 1040, U.S. Individual Tax Return.
- * Exemption from reporting does not mean exemption from tax. Further, individuals required to file Form 8938 may have to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR) as well.

What are the penalties for non-compliance?

- * Failure to report foreign financial assets on Form 8938 may result in a penalty of \$10,000, and a penalty up to \$50,000 for continued failure after IRS notification.
- * Further, underpayments of tax attributable to non-disclosed foreign financial assets are subject to an additional understatement penalty of 40 percent.

IGA

* The Indian Government signed an Inter-Governmental Agreement (IGA) with the United States (US) on 9 July 2015 to implement the Foreign Account Tax Compliance Act (FATCA) in India

Adoption CRS

India is one of the early adopters of the CRS and has committed to exchange information automatically by 2017 as under:

First exchange in September, 2017 for new accounts (both individuals and entity) opened after 1.1.2016 and for pre-existing (as on 31.12.2015) individual high value accounts (balance more than USD 1,000,000)

Exchange in September, 2018 of pre-existing (as on 31.12.2015) individual low value accounts and pre-existing (as on 31.12.2015) entity accounts

FFIs

- * foreign financial institutions (FFIs) in India are required to report tax information about US account holders to the Indian Government which will, in turn, relay that information to the US Internal Revenue Service (IRS).
- * Furthermore, the US IRS will provide similar information about Indian citizens having any accounts or assets in the US.
- * This automatic exchange of information is scheduled to begin on 30 September 2015.

Income Tax Rules and Forms

- * Following the signing of the IGA, on 7 August 2015, the Indian Government enacted rules relating to FATCA reporting in India.
- * **Notification no. 62 dated 07-08-2015**
- * Rules 114F - Definitions
- * Rule 114G – Information to be maintained and reported
- * Rule 114H- Due diligence requirements
- * Form 61B
- * Guidance notes on implementation Dated 31-08-2015

Summary

- * Reporting Financial Institutions
- * To maintain and report certain information in respect of each Reportable Account
- ☐ Step 1: Is it an Entity?
- ☐ Step 2: Is the Entity a Financial Institution?
- ☐ Step 3: Is the Financial Institution in India?
- ☐ Step 4: Is the Financial Institution a Non-Reporting Financial Institution?

Summary

- * **Accounts which are Financial Accounts and therefore need to be reviewed**
- * **Financial Accounts which are Reportable Accounts**
- * **Reportable Accounts by virtue of the Account Holder**
- * **Reportable Accounts by virtue of the Account Holder's Controlling Persons**

Due diligence

- * Split between Preexisting Accounts and New Accounts
- * Due Diligence for Pre-existing Individual Accounts
- * Due Diligence for Pre-existing Entity Accounts
- * Due Diligence for New Individual Accounts
- * Due Diligence for New Entity Accounts
- * Alternate Procedure in case of US Reportable Accounts

Reporting Requirements

- * Information to be maintained and reported
- * Due date for furnishing the Report
- * Other Issues related to Reporting
- * Procedure for Furnishing the Report
- * Monitoring and Compliance -By Income Tax Department
- * By Regulators
- * Requirement of obtaining GIIN

Rule 114F Definitions

financial account means an account maintained by a financial institution, and includes-

- (i) a depository account – Means All type of Bank accounts, and Insurance company account with guaranteed returns.
- (ii) a custodial account;
- (iii) in the case of an investment entity, any equity or debt interest in the financial institution. - Equity interest includes Partnership an Trusts.

Insurance

any cash value insurance contract and any annuity contract,

other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an excluded account.

Insurance does not include an amount payable under an insurance contract,-

- (A) solely by reason of the death
- (B) as a personal injury or sickness benefit, indemnification of an economic loss
- (C) as a refund of a previously paid premium

“financial asset” includes a security, partnership interest, commodity, swap, insurance contract or annuity contract, or any interest in a security, partnership interest, commodity, swap, insurance contract, or annuity contract:

“financial institution” means a custodial institution, a depository institution, an investment entity, or a specified insurance company.

(a) “custodial institution” means any entity that holds, as a substantial portion of its business, financial assets for the account of others and where its income attributable to the holding of financial assets and related financial services equals or exceeds twenty per cent. of its gross income during the three financial years preceding the year in which determination is made or the period during which the entity has been in existence, whichever is less;

(b) “depository institution” means any entity that accepts deposits in the ordinary course of a banking or similar business;

“investment entity” means any entity,

- (i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading; or
- (ii) individual and collective portfolio management; or
- (iii) otherwise investing, administering, or managing financial assets or money on behalf of other persons;

“non-reporting financial institution” means any financial institution that is

- (a) a Governmental entity, International Organisation or Central Bank
- (b) a Treaty Qualified Retirement Fund; a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; or a Pension Fund of a Governmental entity, International Organization or Central Bank;
- (c) a non-public fund of the armed forces, Employees’ State Insurance Fund, a gratuity fund or a provident fund;
- (d) an entity that is an Indian financial institution only because it is an investment entity
- (e) a qualified credit card issuer;

(f) an investment entity established in India that is a financial institution only because it,-

- (I) renders investment advice to, and acts on behalf of; or
- (II) manages portfolios for, and acts on behalf of;

or

- (III) executes trades on behalf of,

- * an exempt collective investment vehicle;
- * a trust established under any law for the time being in force to the extent that the trustee of the trust is a reporting financial institution and reports all information required to be reported under rule 114G with respect to all reportable accounts of the trust;
- * a financial institution with a local client base;
- * a local bank;
- * a financial institution with only low-value accounts;
- * sponsored investment entity and controlled foreign corporation, in case of any U.S. reportable account; or
- * sponsored closely held investment vehicle, in case of any U.S. reportable account.

“passive income” includes income by way of

- * dividends;
- * interest;
- * income equivalent to interest;
- * rents and royalties
- * annuities;
- * the excess of gains over losses from the sale or exchange of financial assets which gives rise to the passive income;
- * the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any financial assets;
- * the excess of foreign currency gains over foreign currency losses;
- * net income from swaps; or
- * amounts received under cash value insurance contracts:

“reporting financial institution” means

- * a financial institution (other than a non-reporting financial institution) which is resident in India, but excludes any branch of such institution, that is located outside India; and
- * any branch, of a financial institution (other than a non-reporting financial institution) which is not resident in India, if that branch is located in India;

U.S. person” means

- * an individual, being a citizen or resident of the United States of America ;
- * a partnership or corporation organized in the United States of America or under the laws of the United States of America or any State thereof;
- * a trust if,-
 - * (i) a court within the United States of America would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust; and
 - * (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust; or
- * an estate of a decedent who was a citizen or resident of the United States of America;

U.S. reportable account

financial account maintained by a reporting financial institution and, pursuant to the due diligence procedures provided in rule 114H, is identified to be held by one or more specified U.S. persons or by an entity not based in the United States of America with one or more controlling persons which is a specified U.S. Person;

U.S. source withholdable payment

- * means any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States of America:
- * Provided that a U.S. source withholdable payment shall not include any payment that is not treated as a withholdable payment in relevant Treasury Regulations of the United States of America;

114H. Due diligence requirement.

- * An account shall be treated as a reportable account beginning as on the date it is identified as such pursuant to the due diligence procedure specified information with respect to a reportable account shall be reported annually in the calendar year following the calendar year to which the information relates.

Split between Preexisting Accounts and New Accounts

* The date from which the procedure for New Accounts would be applicable is

☐ 1st July, 2014 in case of U.S. Reportable Accounts

☐ 1st January, 2016 in case of other Reportable Accounts

Due Diligence for Pre-existing Individual Accounts

Not covered

In case of US reportable accounts

- * Where the balance or value as on 30th June, 2014 does not exceed an amount equivalent to US\$ 50,000
- * Which is a cash value insurance contract or an annuity contract, the balance or value does not exceed an amount equivalent to US\$ 2,50,000 as on 30th June, 2014

In case of US reportable accounts as well as other reportable accounts

- * which is a cash value insurance contract or an annuity contract, the reporting financial institution, under any other law for the time being in force in India or of the USA, is prevented from selling such contract to a person who is a resident of the USA

high value account

- * ☒ In case of U.S. Reportable accounts, balance or value exceeding an amount equal to one million dollars as on 30th June, 2014 or 31st December of any subsequent year
- * ☒ In case of other reportable accounts, balance or value exceeding an amount equal to one million dollar as on 31st December, 2015 or 31st December of any subsequent year.

Lower Value account

- * ☒ In case of U.S. Reportable accounts, balance or value exceeds an amount equal to US\$ 50,000 but does not exceed an amount equal to one million dollars as on 30th June, 2014 or 31st December of any subsequent year
- * ☒ In case of other reportable accounts, does not exceed an amount equal to one million dollars as on 31st December, 2015 or 31st December of any subsequent year.

Procedure

- * Reporting Financial Institutions must review electronically searchable data maintained

Furnishing of statements

- * the statement pertaining to calendar year 2014 shall be furnished by the 31st day of August, 2015.
- * The statement shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose under the digital signature in accordance with the data structure specified in this regard by the Principal Director General of Income-tax (Systems).

- * Principal Director General of Income Tax (Systems) shall specify the procedures, data structures and standards for ensuring secure capture and transmission of data, evolving and implementing appropriate security, archival and retrieval policies.
- * Every reporting financial institution shall communicate to the Principal Director General of Income-tax (Systems) the name, designation and communication details of the Designated Director and the Principal Officer and obtain a registration number;
- * The statement shall be signed, verified and furnished by the Designated Director of the reporting financial institution on the basis of information available with the institution:

THANKS

- * No QUESTIONS please.

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