

REPORTING REQUIREMENT UNDER FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA) AND COMMON REPORTING STANDARDS (CRS)

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As you are aware, India has signed the Inter-Governmental Agreement (IGA) with the USA on July 9, 2015, for Improving International Tax Compliance and implementing the Foreign Account Tax Compliance Act (FATCA). India has also signed a multilateral agreement on June 3, 2015, to automatically exchange information based on Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters under the Common Reporting Standard (CRS), formally referred to as the Standard for Automatic Exchange of Financial Account Information (AEOI).

2. In this regard, Government of India has notified the amendments to Income Tax Rules (Rules) vide notification dated August 7, 2015 (copy attached) and have added Rule 114F (definitions), 114G (Information to be maintained and reported) and 114H (due diligence requirement) for operationalisation of IGA and CRS. This information regarding US reportable persons and other reportable persons have to be furnished in a form 61B, which has also been notified with the above mentioned notification.

3. All the concerned 'financial institutions' (this term throughout the circular has the same meaning as defined in the Rules) should refer to the amended rules and take steps for complying with the reporting requirements. Accordingly, all the concerned financial institutions should register on the related e-filing portal of Income Tax Department as Reporting Financial Institution by submitting the requisite details. Thereafter, the reports can be submitted online by using the digital signature of the 'Designated Director' by either uploading the Form 61B or 'NIL' report. In this regard, Central Board of Direct Taxes (CBDT) is developing a schema, which would be shared with all the regulated entities shortly.

4. Some important issues which need to be kept in mind while complying with the reporting requirements are enumerated below:

- i.* The IGA between India and USA is expected to come into force on August 31, 2015.
- ii.* The due diligence procedure for pre-existing individual accounts has been provided in Rule 114H (3) and for pre-existing entities accounts the procedure has been provided in Rule 114H (5).
- iii.* FIs have to treat an account as a reportable account as on the date it is identified pursuant to the due diligence procedure specified in sub-rule (3) to (8) of Rule 114H and, unless otherwise provided, information with respect to a reportable account will be required to be reported annually in the calendar year following the calendar year to which the information relates.
- iv.* FIs have to decide the 'high value account' and 'lower value account' as on June 30, 2014 for pre-existing individuals in the case of a US reportable account and as on December 31, 2015 in case of other reportable account as per Rule 114H (2) (b) & (c), subject to value search carried out as on the specified dates.
- v.* FIs have to properly segregate 'pre-existing accounts' from 'new accounts' and apply due diligence procedure as applicable to them under the Rules. 'Pre-existing' accounts and 'new accounts' have been defined vide Rule 114H (2) (d), (e), (f), (h), (i) and (j).
- vi.* The alternate procedure prescribed for identification of US Reportable Accounts in Rule 114H (8) will be applicable for accounts opened from July 1, 2014 to August 31, 2015 and will not be applicable for accounts opened after September 1, 2015.
- vii.* As per the alternate procedure for accounts opened from July 1, 2014 to December 31, 2014, a value search should be carried out as on December 31, 2014 and for accounts opened between January 1, 2015 to August 31, 2015, a value search should be carried out as on December 31, 2015 and due diligence exercise should be carried out in

- required cases. The due diligence procedure under alternative procedures have to be completed before August 31, 2016, after which the accounts where the required self-certification or documentation are not received will need to be closed. The progress of the Reporting Entities (REs) in this regard will be monitored on a milestone basis and the detailed modalities of such monitoring will be advised separately.
- viii. For the new accounts opened after September 1, 2015, the due diligence procedures specified in Rule 114H (4) and 114H (6) would be applicable. Since it may not be possible in all cases to change the system of taking information, self-certification, etc., from the clients at such a short notice, it was decided that the FIs may undertake a value search for such new accounts opened after September 1, 2015 and upto October 31, 2015, as on December 31, 2015 and carry out and complete due diligence in required cases for such accounts within a period of 90 days i.e., by March 31, 2016. The actual on boarding of new accounts in the IT platform of the REs should start from November 1, 2015, with FATCA/CRS compliant account opening form and documentation. Therefore, all the REs should upgrade their IT system well before October 31, 2015 to ensure actual on boarding of new accounts as per Rules and Form 61B.
 - ix. For carrying out value search on various dates mentioned in Rule 114H, REs may refer to the spot reference rates published by Foreign Exchange Dealers' Association of India (FEDAI) on their website at <http://www.fedai.org.in/RevaluationRates.aspx>.
 - x. For the purpose of value search, the threshold limit for a depository account of individuals (both 'pre-existing' and 'new' accounts) coming under the purview of due-diligence procedures for determining US reportable accounts is greater than USD 50,000.00. There is no such threshold limit for determining other reportable accounts.
 - xi. Similarly, for the purpose of value search, the threshold limit for a depository account of entities (only 'pre-existing' accounts and new entity accounts opened between July 1, 2014 and December 31, 2014) coming under the purview of due-diligence procedures for determining US reportable accounts and other reportable accounts is greater than USD 250,000.00.
 - xii. For the purpose of value search, the procedures relating to aggregation of account balance and currency will be as per Rule 114H (7) (c) (i) to (iv).
 - xiii. All the FIs have to submit reports online using the digital signature of the designated director by either uploading Form 61B or Nil Report by September 10, 2015. The first reporting will be with respect to calendar year 2014 if an account has been identified as US reportable account consequent to completion of due-diligence procedures as laid down in Rule 114H. Therefore, the reasons for the Nil report should be captured as under
 - (a) For pre-existing accounts
 - a. Option 1: Due diligence procedure not completed
 - b. Option 2: Due diligence procedure completed but no reportable US account identified
 - (b) For new accounts
 - a. Option 1: Alternative procedure invoked
 - b. Option 2: Due diligence procedure as applicable to new accounts completed but no reportable US account identified
 - xiv. Reporting Entities are requested to register in the e-Filing portal at the link <https://incometaxindiaefiling.gov.in/> post login --> My Account --> Register as Reporting Financial Institution. After successful Registration, submission of Nil statement of Form No. 61B can be done post login --> e-File --> Submit Form 61B/Nil Statement.
 - xv. All the regulated entities should develop their IT system for carrying out due diligence

procedure and also for recording and maintaining the same, as provided in Rule 114H and complete the reporting requirement with respect to each calendar year beginning 2014.

- 5.** CBDT is in the process of issuing a detailed guidance note detailing the reporting requirements. The respective Financial Institution by going through the Rules should determine whether they are Reporting Financial Institution or not and whether they are falling within one of exemptions (Non-Reporting Financial Institutions (NRFI) as per Rule 114F (5)) provided in the Rule.
- 6.** All the regulated entities should take action appropriately for the implementation of due diligence and reporting requirements as laid down in the Rules and ensure compliance in a manner that lends itself to credible auditability including audit of the IT system which should be suitably upgraded to not only maintain the information required under the Rules but also to record and store the due diligence procedures. In due course, the detailed guidelines for carrying out audit of IT system for ascertaining the degree and level of compliance with due diligence procedures as laid down in the Rules will be issued.
- 7.** As the implementation of provisions of FATCA and CRS as laid down in the Rules are in the nature of fulfillment of country's obligations under various international agreements and non-compliance can lead to huge penalties in addition to loss of reputation, it is incumbent on the Chairperson/CEO of the RE to form a "High Level Monitoring Committee" under the Designated Director or any other equivalent functionary to ensure that the reporting entities are in a position to meet all the deadlines for completing due diligence procedure and for reporting requirements or for such other deadlines on a milestone basis that the Regulator may prescribe from time to time.
- 8.** These instructions are issued under Section 35A of the Banking Regulation Act, 1949 and Section 45 of the Reserve Bank of India Act, 1934. Any contravention thereof or non-compliance shall attract penalties under the Act.

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