

F.No. 500/632/2015-FT&TR-III  
Government of India  
Ministry of Finance  
Department of Revenue  
(Foreign Tax & Tax Research Division)

R.No.706,  
'C' Wing, Hudco VishalaBldg,  
14, Bhikaji Cama Place,  
New Delhi, dated the 30<sup>th</sup> July, 2020

**CLARIFICATION**

**Sub: Guidance Note on FATCA and CRS dated 30.11.2016 – Clarification -**

India has signed the Multilateral Competent Authority Agreement (MCAA) on June 3, 2015 for exchanging information automatically under the Common Reporting Standard (CRS).

2. In this regard, amendments to Income-tax Rules, 1962 were effected vide Notification No. 62 of 2015 dated August 7, 2015 by inserting Rules 114F to 114H and Form 61B to provide a legal basis for the Reporting Financial Institutions (RFIs) for maintaining and reporting information about the Reportable Accounts. The Central Board of Direct Taxes (CBDT) has also issued guidance from time to time to provide clarifications to issues raised by RFIs. A comprehensive Guidance Note was issued on 31st August, 2015 to provide guidance to the RFIs, Regulators and officers of the Income Tax Department. This was updated on 31.12.2015, 31.05.2016 and 30.11.2016.

3. In addition to the guidance and clarifications already issued in this regard, the CBDT in exercise of its powers u/s 119 of the Income-tax Act, 1961, hereby issues the following clarification as a partial modification to the Guidance Note dated 30.11.2016, for the removal of any doubts with respect to reporting of accounts other than U.S. reportable accounts.

**A. Due-Diligence procedures for the purpose of determination of Controlling Person**

3.1 Rule 114H(5)(d)(iii)(B) of Income-tax Rules, 1962 ("Rules") provides that for purposes of determining the controlling persons of a passive non-financial entity holding a pre-existing account referred to in Rule 114H(5)(b) of the Rules, a reporting financial institution may rely on information collected and maintained in accordance with the rules made under the Prevention of Money-laundering Act, 2002. Rule 114H(6)(a)(ii)(B) of the Rules provides that for purposes of determining the controlling persons of a passive non-financial entity holding a new entity account, a reporting financial institution may rely on information collected and maintained in accordance with the rules made under the Prevention of Money-laundering Act, 2002. In the above context, it is hereby clarified that reliance on the information collected and maintained in accordance with the rules made under the Prevention of Money-laundering Act, 2002 shall be to the extent that such rules conform to the 2012 recommendations of the Financial Action Task Force (FATF).

3.2 As per Explanation (B) to Rule 114F(6) of the Rules, the term "controlling person" means the natural person who exercises control over an entity and includes a beneficial owner as determined under sub-rule (3) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005. As per sub-rule (3) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, where the client is a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

However, Explanation 2 below Explanation (B) to Rule 114F(6) of the Rules provides that in the case of a trust, the controlling person means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, the said expression means the person in equivalent or similar position.

3.3 In the above context, it is hereby clarified that notwithstanding the identification of beneficial owner in respect of a trust as referred in sub-rule (3) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, the term "controlling person" in respect of a trust takes its meaning from Explanation 2 below Explanation (B) to Rule 114F(6) of the Rules and hence, all Reporting Financial Institutions shall comply with due diligence procedures in respect of a trust having regard to the definition of controlling person in respect of a trust in Explanation 2 below Explanation (B) to Rule 114F(6) of the Rules. In view of the above, it is hereby clarified that in the case of trusts, the Reporting Financial Institutions shall treat all settlors, trustees, beneficiaries or class of beneficiaries (irrespective of the size of their interest in the trust), and any other natural person exercising ultimate effective control over the trust as Controlling Persons for the purposes of due diligence procedures, even if such persons may not be otherwise required to be identified as beneficial owners under the sub-rule (3) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005.

**B. Determining whether the Controlling Person of a Passive Non-Financial Entity is Reportable in cases of new entity accounts**

3.4 Rule 114H(6)(a)(ii)(C) of the Rules provides that for the purposes of determining whether a controlling person of a passive non-financial entity holding a new entity account is a reportable person, a reporting financial institution may rely on a self-certification from the account holder or such controlling person. In this context, it is hereby stated that the relevant portion of Section 5.8 of the Guidance Note dated 30.11.2016 issued by the CBDT on the issue of Due Diligence for new entity accounts - Review of controlling person, draws reference to the Commentary to Section VI of the CRS under para 5.8.9. The said Commentary states that, for purposes of determining whether a controlling person of a passive non-financial entity holding new entity accounts is a reportable person, a reporting financial institution may only rely on a self-certification from the account holder or such controlling person. It is, therefore, clarified that reporting financial institutions are expected to conduct due-diligence in accordance with the stipulation in the CRS Commentary as above and rely only on the self-certification submitted by the account holder or the controlling person of the passive non-financial entity holding new entity accounts for determining whether the controlling person is a reportable person.

  
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Under Secretary, FT&TR-III(1)

**To all Financial Institutions**