

## ***FATCA update: Indian Government notifies rules for FATCA reporting; due date for 2014 reporting set at 31<sup>st</sup> August 2015***

August 11, 2015

### ***In brief***

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 (refer to our newsflash dated 10 July 2015 for details). According to the IGA read with the FATCA provisions, 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.

Following the signing of the IGA, on 7 August 2015, the Indian Government enacted rules relating to FATCA reporting in India. This news alert provides a snapshot of the new rules and also provides a brief overview of the due diligence requirements and information that needs to be maintained and reported by financial institutions.

### ***In detail***

The rules have been divided into three specific segments which deal with various aspects of the FATCA reporting regime as follows:

- Rule 114F – Definitions of the various terms referred to in the rules;
- Rule 114G – Information to be maintained and reported; and
- Rule 114H – Due diligence requirement.

#### ***Rule 114G - Information to be maintained and reported by the Indian Financial Institutions***

The Reporting Financial institution (RFI) is expected to maintain and report the following information with respect to each reportable account:

- a) the name, address, taxpayer identification number [TIN (assigned in the country of residence)] and date and place of birth [DOB, POB (in the case of an individual)];
- b) where an entity has one or more controlling persons

that are reportable persons:

- the name and address of the entity, TIN assigned to the entity by the country of its residence; and
- the name, address, DOB, POB of each such controlling person and TIN assigned to such controlling person by the country of his residence;
- c) account number (or functional equivalent in the absence of an account number);

- d) account balance or value (including, in the case of a cash value insurance contract or annuity contract, the cash value or surrender value) at the end of the relevant calendar year;
- e) in the case of any custodial account:
  - the total gross amount of interest or dividends or other income generated with respect to the assets held in the account during the calendar year; and
  - the total gross proceeds from the sale or redemption of financial assets during the calendar year with respect to which the reporting financial institution acted as a custodian, broker, nominee, or otherwise as an agent for the account holder
- f) in the case of any depository account, the total gross amount of interest paid or credited to the account during the relevant calendar year; and
- g) in the case of any account other than that referred to in clauses (e) or (f), the total gross amount paid or credited to the account holder with respect to the account during the relevant calendar year; and
- h) in case of any account held by a non-participating financial institution (NRFI), for the calendar years 2015 and 2016, the name of NRFI and aggregate amount of such payments.

The reporting requirements for different calendar years have been summarized in the table that follows:

Calendar Year	Accounts to be reported	Information to be reported
2014	US reportable accounts*	(a) to (d) above
2015	US reportable accounts	(a) to (d), (f), (g), (h), and (i) above
2016	All reportable accounts	(a) to (h) above
2017 onwards	All reportable accounts	(a) to (g) above

*Note: \*TIN of US reportable accounts is not required to be reported if the TIN is not in the records of RFI as on 30 June 2014.*

Other relevant provisions of rule 114G are summarized below:

- If a person is a resident of more than one country, RFI needs to maintain and report maintain the TIN of each country;
- If the reportable account is a pre-existing account, the TIN and DOB are not required to be reported if they are not available. However, RFI needs to obtain it by 31 December 2016;
- POB is not required to be reported unless it is available in the electronic searchable data maintained by RFI;
- A statement of reportable accounts is to be provided by RFI in respect of each account, identified following due diligence specified in rule 114H (explained below);
- NIL statement needs to be filed, even if no account is identified as a reportable account;

- Statement to be provided online in Form 61B for every calendar year by 31 May. **Statement with respect to calendar year 2014 needs to be provided by 31 August 2015;**
- Every RFI shall communicate the name, designation and communication details of the Designated Director and the Principal Officer to the respective reporting authority and shall also obtain a registration number;
- A regulator, who governs and regulates the activities of RFI, shall issue instructions or guidelines to provide the procedure and manner of maintaining the information by the RFI.

**Rule 114H lays out the specific due diligence procedures for identifying reportable accounts**

These rules provide for specific guidelines for conducting due diligence of reportable accounts, viz. US reportable accounts and other reportable accounts.

Overall, these accounts are further classified into individual account, entity account and NRFIs wherein entity and individual accounts are sub-classified into new and pre-existing accounts.

A brief overview of the select accounts is summarized in the table overleaf.

Account	Details	
Reportable Account	a financial account identified, following the specified due diligence procedures, as held by: (a) a reportable person; or (b) entity not based in the US but controlled by a specified US person; or (c) a passive non-financial entity with one or more controlling persons.	
US Reportable Account	a financial account held by a US person or entity not based in the US but controlled by a specified US Person	
Other Reportable Account	a reportable account which is not a US reportable account	
New Account	<b>US Reportable Account</b>	<b>Other Reportable Account</b>
	financial account opened on or after 1st July 2014	financial account opened on or after 1st January 2016
Pre-Existing Account	<b>US Reportable Account</b>	<b>Other Reportable Account</b>
	financial account maintained as on 30 June 2014	financial account maintained as on 3 December 2015
Non-participating financial institution	A financial institution other than an Indian financial institution and financial institutions based on jurisdiction having an agreement with the US for implementation of FATCA.	

The pre-existing individual accounts are further classified into high value, low value and other accounts, details of which are below:

High Value Account		Low Value Account		Other Accounts <sup>1</sup>	
US Reportable	Others	US Reportable	Others	US Reportable	Others
> USD 1 million as on 30 June 2014 or 31 December of any subsequent year	> USD 1 million as on 31 December 2014 or 31 December of any subsequent year	USD 50K to USD 1 million as on 30 June 2014	< USD 1 million as on 31 December 2015.	< USD 50K for individual accounts as on 30 June 2014; < USD 250K for cash value insurance contract or an annuity contract, as on the 30 June, 2014;	cash value insurance/ annuity contract, prevented from sale to an Indian resident

The table below summarizes high-level diligence requirements for pre-existing individual account holders:

Type of individual accounts	Due diligence summary
Other accounts	Not required to be reviewed, identified or reported
Low value account	Review of electronically searchable data required by the reporting entity for Indicia <sup>1</sup> .
High value account	Review of electronically searchable data required by the reporting entity for any Indicia, paper record search (if necessary) and findings of the relationship manager (if applicable).

<sup>1</sup> Indicia test:

- Identification of the account holder as a foreign resident for tax purposes or by place of birth in U.S.; or
- current mailing or residence address (including a post office box) in any country or territory outside India; or
- one or more telephone numbers in a country or territory outside India and no telephone number in India; or
- standing instructions (other than with respect to a depository account) to transfer funds to an account maintained in a country or territory outside India; or
- currently effective power of attorney or signatory authority granted to a person with an address in a country or territory outside India; or
- a "hold mail" instruction or "in-care-of" address in a country or territory outside India if the reporting financial institution does not have any other address on file for the account holder;

Identification of reportable accounts among pre-existing entity accounts:

- a) *The reporting financial institution is not required to review, identify, or report following reportable pre-existing entity accounts with a balance:*
  - **US Reportable Account:** < USD 250K as on the 30 June, 2014
  - **Other Reportable Account:** < USD 250K as on the 31 December, 2015
- b) *The reporting financial institution is required to review, identify, or report following reportable pre-existing entity accounts with a balance:*
  - **US Reportable Account:** > USD 250K as on the 30 June, 2014 or 31 Dec 2015.
  - **Other Reportable Account:** > USD 250K as on the 31 December, 2015 or 31 Dec 2016.
- c) **Reportable Account:** Reportable accounts are only accounts which are held by:
  - one or more entities which are reportable persons; or
  - a passive non-financial entity with one or more controlling persons who are reportable persons.

The table below summarizes high-level diligence requirements for pre-existing entity account holders:

Type of Account holder	Due diligence summary
Reportable person	Review of information maintained for regulatory or customer relationship purposes.
Passive non-financial entity owned by reportable persons	<ul style="list-style-type: none"> <li>• self-certification from the account holder</li> <li>• Controlling persons to be determined through information collected and maintained under PMLA or a self-certification with an account balance or value which exceeds an amount equivalent to one million US dollars.</li> </ul>
Non-participating financial institutions	<ul style="list-style-type: none"> <li>• Account holder is an Indian financial institution or other partner jurisdiction financial institution and treated by the US as a non-participating financial institution.</li> <li>• Non-Indian financial institution or other partner jurisdiction financial institution unless it obtains a self-certification or is defined in the IGA.</li> </ul>

Furthermore, additional timelines have been prescribed for due diligence of high-value pre-existing individual and entity accounts. With respect to new accounts opened on or after 1st July 2014, the rules have laid out alternative procedures. Under these procedures, the Indian financial institutions have additional time to collect the necessary information/ self-certification from the new account holders.

### Way forward

The Indian Government has quickly come out with the rules for implementation of FATCA and has notified the reporting framework and due diligence requirements.

- Other regulators such as RBI, SEBI and IRDA are expected to come out with specific guidelines for implementation

of FATCA with reference to the notification issued by the CBDT.

- Filing of the FATCA Report is expected to be made in .xml format similar to the tax return filing process for which the software related modalities are expected to be notified shortly.
- The financial institutions are expected to notify their officials as Designated Director and Principal Officer respectively in-charge of FATCA implementation.
- Non-compliance with the FATCA requirements would attract penal provisions prescribed under the Income-tax Act, 1961. Specific penalties will be levied for failure to provide a statement of financial transactions or reportable accounts. Inaccurate reporting will also attract penal provisions.

- Financial institutions are also required to obtain a separate registration number from the Principal Director General of Income-tax (Systems).
- Portability of pre-existing mutual fund accounts under the FATCA regime needs to be implemented and watched for probable challenges.

Importantly, the information collated by India or the US or any other country is likely to be used the respective Revenue authorities in initiating audits. They would like to map it with the disclosures and information furnished by the tax payer in his income-tax return. Follow on consequences about interest or penalties to the tax payer in either jurisdictions may arise in case of non-compliance. Accordingly, the implications of the above regime needs also be evaluated carefully from an individual perspective.

Furthermore, it is also important for the Indian financial institutions to have a robust implementation plan and an appropriate formal customer interactions to confirm the details shared under this regime.

Given that there's an immediate reporting deadline of 31 August 2015 for the calendar year 2014 to enable the Indian Government to meet the deadline for exchange of information with the US IRS, it is important that the Indian

financial institutions start the implementation process to report the required information within the stipulated time period.

***Related links***

Complying with FATCA in US:  
<http://www.pwc.com/us/en/financial-services/what-is-fatca.jhtml>

***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact:

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