
FATCA & CRS update: CBDT issues updated Guidance Note for implementation of rules for FATCA & CRS reporting in India (Fourth Edition)

December 8, 2016

In brief

In 2015, the Indian Revenue Authorities amended the Income-tax Rules, 1962 (Rules) relating to Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS) reporting in India. Rules 114F to 114H and Form 61B were enacted to provide a legal basis to the Reporting Financial Institutions for maintaining and reporting information about the reportable accounts (for the notified rules, clarifications and previous guidance notes on FATCA reporting, please refer to our [news alert dated 11 August 2015](#); [news alert dated 07 January, 2016](#); [newsflash dated 19 February, 2016](#) and [newsflash dated 04 April, 2016](#)).

On 30 November, 2016 the Indian Revenue authorities issued the fourth edition of the updated Guidance Note on implementation of FATCA and CRS reporting requirements as prescribed under the Rules. The guidance note endeavours to explain FATCA and CRS reporting requirements in a simple manner in order to assist Indian Financial Institutions in complying with the reporting requirements.

This news alert provides an overview of the key aspects clarified by the Indian Revenue authorities in the guidance note.

In detail

Entity managed by another entity

The term “Investment Entity” refers to an entity whose primary income is from the business of investing, reinvesting or trading in financial assets, and *such an entity is managed by another entity* that is a depository institution, a custodial institution, an investment entity or a specified insurance company. The gross income of

the entity from such business activities is more than 50% of the entities’ gross income over a three-year period.

The guidance note now provides the definition of the phrase “entity managed by another entity” as follows:

“An entity is ‘managed by’ another entity if the managing entity performs, either directly or through another service provider, any of the activities or operations on behalf of the managed entity.”

However, an entity does not manage another entity if it does not have discretionary authority to manage the entity’s assets (in whole or part). In a case where an entity is managed by a mix of Financial Institutions, NFEs or individuals, the entity is considered to be managed by another entity that is a depository institution, a custodial institution, a specified insurance company, or an investment entity if any of the managing entities is

such an entity.

The activities and operations described here are similar to the primary business activities on the basis of which the entity is considered an investment entity.

Branch

The guidance note clarifies that a “branch” is a unit, business or office of a Financial Institution that is treated as a branch under the regulatory regime of a jurisdiction or that is otherwise regulated under the laws of a jurisdiction as separate from other offices, units or branches of the Financial Institution.

A branch includes a unit, business or office of a Financial Institution located in a jurisdiction in which the Financial Institution is resident, and a unit, business or office of a Financial Institution located in the jurisdiction in which the Financial Institution is created or organised.

All units, businesses or offices of a Reporting Financial Institution in a single jurisdiction shall be treated as a single branch.

Definition of Non Active Non Financial Entity (NFE)

An entity will not be treated as an active NFE that functions or holds itself out as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes.

Self-certification

The guidance note has clarified that all Reporting Financial Institutions (RFIs) must make all efforts to collect the self-certification with respect to a Controlling Person of a Passive NFE.

If self-certification is not obtained with respect to a Controlling Person of a Passive NFE, in order to determine whether it is a Reportable Person, the RFI must rely on its review of electronically searchable data to identify any indicia that it has in its records for the Controlling Person. If the RFI has no such indicia in its records, then no further action would be required until there is a *change in circumstances* that results in one or more indicia with respect to the Controlling Person being associated with the account.

Scope of “Change in Circumstances”

“Change in circumstances” includes any change that results in the addition of information relevant to a person’s status or otherwise conflicts with such person’s status previously declared with Financial Institutions. In addition, a change in circumstances would include any change or addition of information to the account holder’s account (including the addition, substitution or other changes to an account holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules), if such change or addition of information affects the status of the account holder.

In case of change in circumstances with respect to a Pre-existing Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the RFI must re-determine the status of the account in accordance with the due diligence procedure at the earliest. This should be done by the later of the last day of the relevant calendar year or 90 calendar days

following the notice or discovery of the change in circumstances.

Due Diligence

For the purpose of due diligence procedures, “documentary evidence” includes any of the following:

- (i) A certificate of residence issued by an authorised Government body, including a Government agency or a municipality, of the country or territory in which the payee claims to be a resident;
 - (ii) With respect to an individual, any valid identification issued by an authorised Government body, including a Government agency or a municipality, that includes the individual’s name and is particularly used for identification purposes;
 - (iii) with respect to an entity, any official documentation issued by an authorised Government body, including a Government agency or a municipality, which includes the name of the entity and either the address of its principal office in the country or territory in which it claims to be a resident or the country or territory in which the entity was incorporated or organised; and
 - (iv) any financial statement, third-party credit report, bankruptcy filing, or a report of the Government agency regulating the securities market. Any such financial statement should be audited by an appropriate authority.
- RFI is expected to institute procedures to ensure that any change that constitutes a change in circumstances is identified by the RFI.
 - RFI is expected to notify any person providing a self-certification of the person’s obligation to notify the RFI of a change in circumstances.

- RFI must keep records of the steps undertaken and any evidence relied upon for the performance of the due diligence procedures.
- RFI must be able to obtain those records when required. RFI should also record the date on which the due diligence for an account was completed.

Every RFI has to maintain information in respect of financial accounts in accordance with the procedure and manner specified by its sectoral regulator periodically. In a rare situation,

where no such procedure and manner has been specified by sectoral regulator, the information in respect of financial accounts shall be maintained for at least six years as specified under the Income-tax Act, 1961.

The takeaways

The latest guidance note issued by the Indian Revenue authorities discusses and reiterates the Government's intent to achieve maximum compliance in terms of FATCA and CRS reporting.

This also reiterates the Government's approach in ensuring registration and

reporting compliance by all Financial Institutions.

As the deadline for FATCA and CRS due diligence falls on 31 December, 2016 and the reporting deadlines for both falls on 31 May, 2017 respectively, it is pertinent for the Financial Institutions to review the status of due diligence procedures and complete the necessary compliances in a timely manner.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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