

SEBI advises DDPs/ custodians to take necessary steps for due diligence and reporting compliances for FPIs

The Securities and Exchange Board of India (SEBI), over the past few years has been instructing all registered intermediaries, including banks and custodians to take necessary steps to ensure compliance with the Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS) reporting framework legislated by the Indian tax authorities.

In continuation to the above, the SEBI *vide* its recent circular,¹ has issued further instructions to all Designated Depository Participants (DDPs) and Custodian of Securities (custodians) to consider certain aspects while completing due diligence and reporting procedures of their account holders. The SEBI has introduced certain additional reporting requirements, which needs to be complied with by DDPs/ custodians, in the implementation of the FATCA and CRS reporting framework.

Key aspects of the circular have been summarised as follows:

Carrying out necessary due diligence and reporting for Foreign Portfolio Investors (FPIs)

DDPs and custodians have been advised to ensure compliance with requirements as specified in Rules 114F, 114G and 114H of the Income-tax Rules, 1962 (Rules) in the context of FPIs.

- Obtain valid FATCA and CRS self-certifications/ declaration forms with documentary evidence as part of the account opening process.
- While custodians were required to carry out due diligence for accounts held by global custodian end-clients on the basis of the FATCA and CRS related documentation obtained by the global custodian, it has now been clarified that the obligation for due diligence and reporting remains on the custodian who shall be able to access all documents in relation to such accounts.
- Create a process/ system to capture and validate the information collected.
- Develop a framework for carrying out due diligence procedures and maintaining information.
- Furnish relevant information on identified reportable accounts in Form 61B on an annual basis.
- Develop a system of audit for compliance with the Rules.
- Ensure compliance with any updates issued by the Central Board of Direct Taxes from time to time.

Additional compliances and filings to be made to the SEBI in prescribed timelines

Apart from the annual filing of Form 61B, reporting information on reportable accounts, RFIs are now also required to provide the SEBI with the following data on FATCA and CRS implementation:

- Certification with respect to compliance with the Rules is also to be included as part of the audit report on internal control submitted by RFIs to SEBI annually.
- FPI registration is to be granted by DDPs only after obtaining valid/ duly filled self-certification forms. In this regard, DDPs are required to submit a monthly certificate confirming completion of due diligence procedures for new registrations granted.
- SEBI, at the time of inspection of DDPs/ custodians, to examine compliance in terms of due diligence/ self-certification obtained.

Therefore, DDPs and custodians will have to ensure necessary modifications to their systems to capture such changes. In addition, the circular refers to RFIs, which is generally a wider term and the requirements in this circular may extend to other intermediaries qualifying as RFIs. Hence, these requirements will now require RFIs to develop an elaborate data system to capture such data and make it available at the time of such audits/

scrutiny by the regulator. From an investor's perspective, while RFIs have already been obtaining such information from FPIs at the time of account opening, the proposed additional reporting requirements will require FPIs to submit timely and detailed data at the time of account opening. Hence, it will be important for organisations to ensure compliance in this domain through proper documentation and reporting.

¹ SEBI circular no. IMD/ FPIC/ CIR/ P/ 2018/53 dated 21 March, 2018

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