



Global Business Tax Alert Sharp Insights

CBDT notifies rules for
FATCA and CRS
compliance

Issue no: GBTA/47/2015

In this issue:

- Background
- CBDT Notification
- Way Forward
- Upcoming Dbriefs - Register
- Contacts

Background

- Section 285BA of the Income tax Act, 1961 provides for reporting by prescribed financial institution of information with respect to financial accounts held by specified persons.
- On 9 July 2015, India signed Model 1 Inter-Governmental Agreement (IGA) with the US IRS for implementation of FATCA to promote transparency between the two nations on tax matters.
- On 3rd June 2015 India signed the Organisation for Economic Co-operation and Development (OECD) Common Reporting Standard (CRS) Multilateral Competent Authority Agreement (MCAA) which will be effective from 1 January 2016.
- FATCA / CRS requires -
 - Indian Financial Institutions to ascertain whether it is a reportable or non-reportable financial Institution
 - A reportable Financial Institution will require to register and carry out procedures to identify, classify financial accounts maintained with it and report US / Other Reportable accounts
 - Non-Financial Entities (NFEs) will require to certify its FATCA status as Active or Passive entities.
 - Passive Entities to certify and provide details of its controlling Persons

CBDT Notification

- The CBDT vide Notification dated 7 August 2015 notified the Income-tax (11th Amendment) Rules, 2015 to provide for registration of persons, due diligence, maintenance of information, and for matters relating to statement of reportable accounts.
- These Rules shall come into force on the date of their publication in the Official Gazette. Rules 114F (Definitions), 114G (Information to be maintained and reported) and 114H (Due diligence requirement) are introduced. Further reporting format in new Form No. 61B has been prescribed along with Instructions for guidance.

- Rule 114F provides for definitions of various terms like financial account, excluded account, financial asset, financial institution, non-participating financial institution, non-reporting financial institution, reportable account, active non-financial entity, controlling person, passive non-financial entity, passive income, reporting financial institution, reportable person, U.S. Person, U.S. reportable account, U.S. source withholdable payment, etc.
- “financial institution” means a custodial institution, a depository institution, an investment entity, or a specified insurance company.
- Types of financial institutions covered are as under:

Depository Institution	Custodial Institution	Investment Entity	Specified Insurance Company
Any entity that accepts deposits in the ordinary course of a banking or similar business	Any entity that holds, as a substantial portion of its business, financial assets for the account of others and where its income attributable to the holding of financial assets and related financial services equals or exceeds twenty per cent. of its gross income during the three financial years preceding the year in which determination is made or the period during which the entity has been in existence, whichever is less;	Any entity,- (A) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer, namely:- (i) trading in money market instruments; foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading; or (ii) individual and collective portfolio management; or (iii) otherwise investing, administering, or managing financial assets or money on behalf of other persons; or (B) the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, if the entity is managed by another entity that is a depository institution, a custodial institution, a specified insurance company, or an investment	“specified insurance company” means any entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

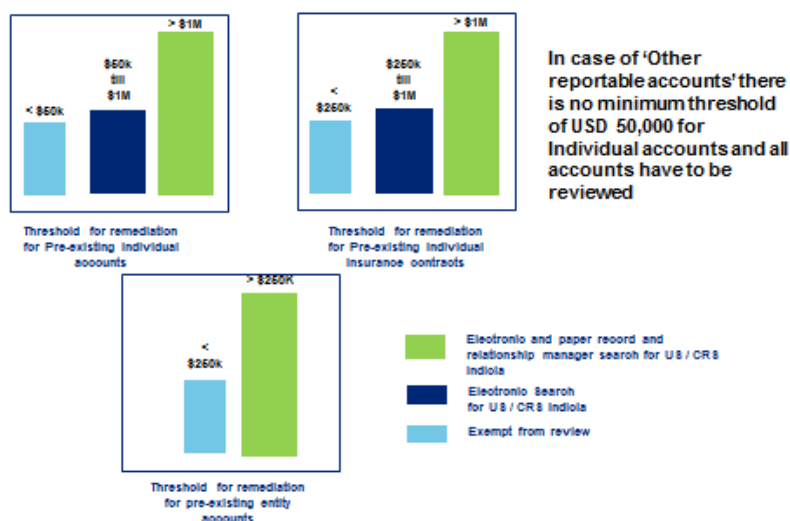
		entity mentioned at (A) above.	
Financial Account			
<p>“depository account” includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a financial institution in the ordinary course of a banking or similar business and also an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon;</p>	<p>“custodial account” means an account (other than an insurance contract or annuity contract) for the benefit of another person that holds one or more financial assets;</p>	<p>“equity interest” in a financial institution, being-</p> <p>(i) a partnership firm, means either a capital or profits interest in the partnership firm;</p> <p>(ii) a trust, means any interest held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust;</p>	<p>“insurance contract” means a contract (other than an annuity contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk;</p> <p>“annuity contract” means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals;</p>
<p>For e.g. banks, housing finance companies accepting depository accounts , non-banking finance companies accepting depository accounts, etc.</p>	<p>For e.g. depository participants, custodians, brokers, etc.</p>	<p>For e.g. mutual funds, private equity funds, brokers other than those that execute trades and satisfy prescribed criteria, etc.</p>	<p>For e.g. life insurance companies, etc.</p>

Financial Institutions other than ‘non-reporting financial institutions’ are required to register with US IRS and obtain a Global Intermediary Identification Number (GIIN) and also register with Indian tax authorities for reporting.

Due diligence

- Reporting Financial Institutions will require to carry out due diligence process to identify accountholders.
- Rule 114H prescribes the due diligence procedures for identifying accounts held by Specified US persons and Specified CRS persons.
- “Preexisting account” means a financial account maintained by a reporting financial institution as of:
 - i. in case of a U.S. reportable account, 30 June, 2014; and
 - ii. in case of other reportable account, 31 December 2015.
- “new account” means a financial account maintained by a reporting financial institution opened on or after:
 - i. in case of a U.S. reportable account, 01 July, 2014; and
 - ii. in case of other reportable account, 01 January 2016.
- “preexisting individual account” means a preexisting account held by one or more individuals.
- “new individual account” means a new account held by one or more individuals.
- “preexisting entity account” means a preexisting account held by one or more entities.
- “New entity account” means a new account held by one or more entities.

Threshold for remediation of Pre-existing Accounts



Timeline for completion of Due diligence Process

	US Reportable Account	Other Reportable Account
Pre-existing High Value Individual account	31st December, 2015	30th June, 2016
Pre-existing Low Value Individual account	30th June, 2016	30 June 2017
Pre-existing Entity Account	30 th June 2016	30 June 2016
Pre-existing individual account not a high value account as on the 30th June, 2014 (for U.S. reportable account), or as the case may be, 31 st December, 2015 (for other reportable account), but becomes a high value account as on the last day of year 2015 (for U.S. reportable account) or last day of any subsequent calendar year (for all reportable accounts),	31st December, 2016	31 December 2017

Alternative Procedures for due diligence

- The Rules provide for alternative procedures in case of a U.S. reportable account opened on or after the 1st July, 2014 but before the date of entry into force of FATCA agreement, which can be used in lieu of the due diligence procedure prescribed in Rule 114H.
- The due diligence as per alternative procedures to be completed **within one year after** the date of entry into force of the FATCA agreement.
- Reporting financial institutions shall close any new account for which it was unable to collect the required self-certification
- The closed accounts are also required to be reported
- In respect of new entity accounts which are U.S. reportable accounts opened on or after the 1st July, 2014, and before the 1st January, 2015 the reporting financial institution may, in lieu of the alternative procedure, treat such accounts as pre-existing entity accounts and apply the due diligence procedure related to pre-existing entity accounts without regard to the account balance or value threshold specified.

Reporting

- The reporting Financial Institutions that have identified accountholders have to report the same in Form 61B to the income tax authorities in India.
- Rule 114G prescribes the information to be maintained and reported by a reporting financial institution in respect of each reportable account.
- Accountholder Type for US Reportable Account is
 - F1 - Owner-Documented FI with specified US owner(s)
 - F2 - Passive Non-Financial Entity with substantial US owner(s)
 - F3 - Non-Participating FFI
 - F4 - Specified US Person
 - F5 - Direct Reporting NFFE
 - XX –Not Applicable
- Accountholder type for “Other Reportable Account”
 - C1- Passive Non-Financial Entity with – one or more controlling person that is a Reportable Person
 - C2 - Other Reportable Person
 - C3 - Passive Non-Financial Entity that is a CRS Reportable
 - XX – Not Applicable
- The statement shall be furnished in Form No. 61B for every calendar year by the 31 May following that year. However that the statement pertaining to calendar year 2014 shall be furnished by the 31 August, 2015.

Information and timeline for reporting

Reporting Year	In respect of	Information to be reported	Reporting date to the CBDT
2014	Each identified Specified US Person holding a Reportable Account	i. Name ii. Address iii. US TIN and Date of Birth (if on record) iv. Place of Birth v. Account number or functional equivalent vi. 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 relevant calendar year or, if the account was closed during such year, immediately before closure.	31 August 2015

2015	Each Specified US Person (Individual and Entity) either holding a Reportable Account Or as a Controlling Person of an Entity Account	Same as 2014 plus: Custodial Accounts Total gross amounts of interest, dividends and other income paid or credited to the account during the calendar year Depository Accounts Total amount of gross interest paid or credited to the account during the calendar year All other accounts The total gross amount paid or credited to the account including the aggregate amount of any redemption payments during the calendar year.	31 May 2016
2015	Non-participating Financial Institution	the name of each non-participating financial institution to which payments have been made and the aggregate amount of such payments	31 May 2016
2016	US Reportable Accounts and Other Reportable Accounts	Same as 2015 plus: Custodial Accounts Total gross proceeds from the sale or redemption of financial assets paid or credited to the account during the calendar year	31 May 2017
2016	Non-participating Financial Institution	the name of each non-participating financial institution to which payments have been made and the aggregate amount of such payments	31 May 2017
2017 onwards	US Reportable Accounts and Other Reportable Accounts	All of the above as stated for 2016 (other than information relating to Non-participating Financial Institution)	31 May following the end of the reporting year

- The statement shall be furnished to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose under the digital signature in accordance with the data structure specified in this regard by the Principal Director General of Income-tax (Systems).
- The Form no.61B is divided into two parts – Part A - Details of the Financial Institution; Part B - Information to be provided for each Account being reported. There are separate sections for information details to be provided for Individual account holder, Entity Account holder and each controlling person of the entity.

Way Forward

- The Rules provide for a methodical approach for registration of reporting financial institutions, classification of account holders, conducting due diligence to identify reportable accounts and the format for reporting reportable accounts.
- The Financial Institutions will be required to meet the strict time line for reporting by 31 August 2015 for the calendar year 2014 in line with the India USA IGA.
- The non-financial entities will be required to identify its FATCA status to be provided to the financial institutions with which they hold financial accounts

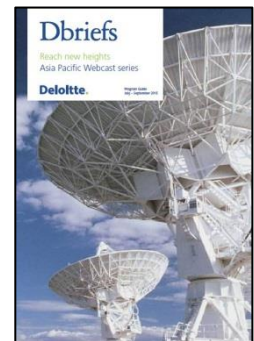
Source: CBDT Notification no. 62/2015 [F. No. 142/21/2015 TPL] dated 7 August 2015.

Upcoming Dbriefs - Register

India's New Export Incentive Schemes: A Real Boost for Exporters of Goods and Services

Thursday, 27 August 2015, 11:30 AM – 12:30 PM IST

As a step further to raise the global competitiveness of the Indian manufacturing and service sectors, the new FTP has revamped various export incentives available to the exporters of goods and services. The two new schemes under the FTP, namely Merchandise Export from India Scheme (MEIS) and the Service Exports from India Scheme (SEIS), aim to provide benefits to all exporters doing business in India. For more information, visit the [Dbriefs](#) page.



Register now

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