



Global Business Tax Alert Sharp Insights

India to exchange information with US and CRS countries. Indian Institutions to comply with FATCA and CRS

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Latest Development

- 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 1 January 2016.
- Till date, the U.S. has entered into IGAs with 65 countries (58 Model 1 IGAs and 7 Model 2 IGAs). Additionally, there are 47 Jurisdictions that have reached agreements in substance and have consented to being included on such list.
- Further the OECD has developed a framework for multilateral automatic exchange of tax information based on the Model 1 IGAs under the U.S. FATCA. Till date, 61 jurisdictions have signed the OECD CRS MCAA for automatic exchange of information.
- The obligation of reporting account information held by prescribed reporting financial institution is built into section 285BA of the Income tax Act, 1961 (the Act) as amended by the Finance (No.2) Act, 2014. The rules prescribing the reporting requirements and the form of reporting are awaited.
- One of the policy initiatives laid out by the Finance Minister in the Union Budget 2014 was the introduction of uniform KYC norms and inter-usability of the KYC records across the entire financial sector.
- Both the signing of the IGA with U.S. as well as the MCAA are two important milestones in India's fight against the menace of black money as it would enable the Indian tax authorities to receive financial account information of Indians from foreign countries on an automatic basis.

FATCA and CRS Regulations and Implementation

- FATCA is a new chapter 4 in the U.S. Internal Revenue Code added by the Hiring Incentives to Restore Employment (HIRE) Act.
- FATCA is one of the most extensive tax information reporting regimes created by the U.S. Internal Revenue Service (IRS) and U.S. Treasury with objective to address perceived abuses by US taxpayers with respect to assets held offshore, away from the USA.
- FATCA requires Financial Institutions outside the USA (FFI) to identify, classify and report US accounts and Non-Financial Foreign Entities (NFFEs) to certify no-US beneficial owners or provide details of US owners to FFIs.
- FFIs include: Banks, Life Insurance companies, NBFC, Brokers, PMS, Funds, Depository Participants (DPs), Investment entity, etc.
- The OECD CRS draws on the U.S. FATCA regime and contains the reporting and due diligence standard that supports the automatic exchange of financial account information within the countries joining this initiative.

FATCA & CRS Compliance Requirements

- FFI will require to register with the U.S. IRS to obtain a Global Intermediary Identification Number (GIIN).
- Compliance with FATCA will generally require modifications to FFIs' existing policies, procedures and systems, together with substantial updating of business documentation.
- Individuals and Entities both Financial and Non-Financial will require to determine their status under FATCA and to provide self-certifications to the Financial Institutions with which they maintain financial accounts.
- It is essential to focus on the most immediate requirements for new customer onboarding effective from a date to be notified to identify, classify and capture data for

reporting requirements under FATCA. In addition, there will need to be a look back exercise covering records as of June 30, 2014 and for the period 1 July 2014 till the date to be notified, to gather and report information to the U.S. IRS. The first reporting under FATCA is scheduled to begin on 30 September 2015.

- Under CRS, the new customer on-boarding time line is 1 January 2016, whereas the look back has to be done for records as of 31 December 2015.

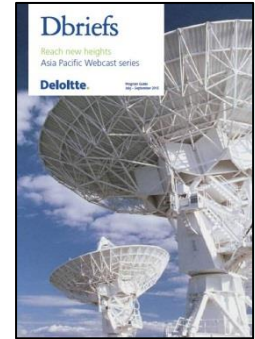
Way Forward

- It will be necessary for a Financial Institution to consider a number of questions to determine how the legislation applies, namely:
 - Is it a Financial Institution as defined under the reporting regime?
 - If Financial Institution and not a deemed complaint institution, it will require Registration with US IRS and Indian tax authorities.
 - Does the Financial Institution hold Financial Accounts?
 - Are there indicators that any of the account holders' are Reportable Persons?
 - What needs to be reported of the reportable accounts?
 - In case of Non-Financial Foreign Entities (NFFE) to determine whether it is Active or Passive NFFE and if Passive NFFE to report US / CRS controlling Persons to FFI who in turn will report to Indian tax authorities for automatic exchange of information with US and CRS countries.

Source: www.irs.gov, www.oecd.org, CDBT Press Release dated 9 July, 2015

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