



## Global Business Tax Alert Sharp Insights

Guidance notes on reporting requirements under rules 114F to 114H of the Income-tax Rules issued

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# Background

On 9 July 2015, India signed Model 1 Inter-Governmental Agreement (IGA) with the United States Internal Revenue Services (US IRS) for implementation of Foreign Account Tax Compliance Act (FATCA) to promote transparency between the two nations on tax matters and facilitate exchange of information. 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 for exchange of information.

Necessary amendments were made in section 285BA of the Income tax Act, 1961 (the Act) for reporting by prescribed financial institution of information with respect to financial accounts held by specified persons. Reporting needs to be done for a wide range of financial products, by a wide variety of financial institutions, including banks, depository institutions, collective investment vehicles and insurance companies.

The Central Board of Direct Taxes (CBDT) vide Notification dated 7 August 2015 had 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.

The Foreign Tax and Tax Research Division, Department of Revenue, Ministry of Finance has issued guidance notes on implementation of reporting requirements under rules 114F to 114H (the Rules) vide letter no. F. No. 500/137/2011-FTTR-III dated 31st August, 2015 (Guidance Notes). The Guidance Note describes the process to be followed in identification of reporting financial institution and having been identified as such; determining which accounts are financial accounts and therefore need to be reviewed and reported. Also it provides guidance on the due diligence procedures to be applied in identifying reportable accounts.

## Objective of the Guidance Note

- To provide guidance to the Financial Institutions, Regulators and officers of the Tax

Department for facilitating compliance of the reporting requirements under the Rules.

- To explain the complex reporting requirements and provide further guidance wherever required

## Clarifications covered

- Individuals, including sole proprietorships are not Reporting Financial Institutions (RFIs) as it is not an entity.
- Entities that safe keep Financial Assets for the account of others, such as custodian banks, brokers and central securities depositories, would generally be considered Custodial Institutions.
- An Entity is considered to be engaged in a “banking or similar business” if, in the ordinary course of its business with customers, the Entity accepts deposits or other similar investments of funds and regularly engages in one or more of the following activities:
  - makes personal, mortgage, industrial, or other loans or provides other extensions of credit;
  - purchases, sells, discounts, or negotiates accounts receivable, installment obligations, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness;
  - issues letters of credit and negotiates drafts drawn thereunder;
  - provides trust or fiduciary services;
  - finances foreign exchange transactions; or
  - enters into, purchases, or disposes of finance leases or leased assets.

Savings banks, commercial banks, savings and loan associations, and credit unions would generally be considered Depository Institutions.

- In case of Trusts, the reporting requirement is on the Trustees resident in India, unless the required information is being reported elsewhere because the trust is treated as a resident there.
- National Pension System Trust (NPS Trust) is an RFI and would report the information for the relevant NPS investors.

- f. A Reportable Account is an account, which has been identified pursuant to the due diligence procedure prescribed in Rule 114H, as held by one or more Reportable Persons or by a Passive Non-Financial Entity with one or more Controlling Persons that is a Reportable Person.
- g. For carrying out due diligence procedure, the prescribed standardized approach has to be followed for ensuring quality of information to be reported and exchanged. The existing processes used for Anti Money Laundering purposes have been incorporated in the Rules particularly in case of Preexisting Accounts since it is more challenging and costly for FIs to obtain new information from the Account Holder. However any other process in place for identification of the accountholders for any other purposes or under any Act, Regulations etc., including under Income-tax Act 1961 does not form part of the standardized procedure prescribed.
- h. Persons opening New Accounts from 1 November 2015 will be required to provide additional information so that FIs can determine where they are resident in a country/territory outside India.
- i. The date of entry into force of the IGA between India and USA has been notified as 31st August, 2015.
- j. The alternate procedure prescribed for identification of US Reportable Accounts in Rule 114H (8) will be applicable for accounts opened from July 1, 2014 to August 31, 2015 and will not be applicable for accounts opened after September 1, 2015. The due diligence procedure under alternative procedures i.e. obtaining of self-certification, have to be completed by August 31, 2016 and if it is not obtained the said account needs to be reported as reportable account and closed.
- k. For accounts opened between 1 September 2015 to 31 October, 2015 due diligence procedures should be followed.
- l. The statement of reportable accounts need to be furnished in respect of each account identified by carrying out due diligence procedure and in case when no account is identified as reportable account, a Nil statement needs to be furnished. A NIL statement can also be furnished if the RFI has not completed the due diligence procedures.
- m. Reasons have to be provided for furnishing Nil statement for both Pre-existing and New accounts are:
  - For pre-existing accounts
    - a. Option 1: Due diligence procedure not completed

- b. Option 2: Due diligence procedure completed but no reportable US account identified
  - For new accounts
    - a. Option 1: Alternative procedure invoked
    - b. Option 2: Due diligence procedure as applicable to new accounts completed but no reportable US account identified
- n. The reporting of information (if not Nil) for calendar year 2014 for only US reportable accounts needs to be furnished by 31st August, 2015 which has been further extended to 10th September, 2015 by an order issued by the CBDT on 25th August, 2015.
- o. The reporting of information for calendar year 2015 for only US reportable accounts needs to be furnished by 31st May 2016.
- p. An RFI may submit different registration information under different RFI categories.
- q. If the designated director is the same as the person authorized to verify the return of income of the reporting financial institution as per the provisions of section 140 of the Act, Form 61B or NIL statement has to be submitted with the digital signature certificate of the said authorized signatory. In other cases, the necessary facilities are being developed to enable filing of statement by designated directors who are not authorized to sign the return of income.
- r. The RFIs having U.S. Reportable Accounts have to register with the U.S. IRS and obtain Global Intermediary Identification Number(GIIN)
- s. GIIN also needs to be obtained by the RFI claiming exemption as Non-reporting Financial Institution on the grounds of being a “financial account with a local client base” since they need to report the financial accounts held by a specified U.S. person.

# Comments

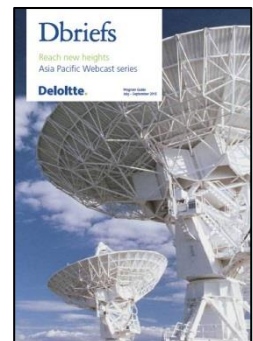
RFIs have to report 'reportable accounts' which are identified pursuant to the due diligence procedures prescribed under the Rules. A NIL statement can be furnished if the RFI has not completed the due diligence procedures. It may be noted that penalty provisions have been prescribed under section 271FA and 271FAA for non-furnishing or statement of reportable account / furnishing of inaccurate information. This Guidance Note provides basic clarifications on the reporting requirements provided in Rules 114F to 114H of the Rules. All the stakeholders have been requested to provide feedback and suggestions so that an updated version of the Guidance Note including Frequently Asked Questions can be issued before 1st January, 2016, when most of the requirements will commence.

## Upcoming Dbriefs - Register

**Transfer Pricing Developments in India: Range, Multiple Year Data, Advance Pricing Agreements, and Audits**

**On 10 September 2015 from 11:30 AM to 12:30 PM IST**

Recent transfer pricing developments in India include proposals from the Government to reduce the extent of audits and litigation. The range and multiple year data concept will soon be incorporated into law. Furthermore, some high profile judgments are ensuring that the path to transfer pricing certainty slowly becomes clear in India. What does this mean for your Indian operations? Find out how companies impacted by Indian transfer pricing can navigate the regime with these updates. For more information, visit the [Dbriefs](#) page.



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