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FOREIGN TAX AND TAX RESEARCH DIVISION

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**GUIDANCE NOTES ON IMPLEMENTATION OF REPORTING  
REQUIREMENTS UNDER RULES 114F TO 114H OF THE  
INCOME-TAX RULES**

1. Introduction.....	1
1.1 New Global Standards on Automatic Exchange of Information .....	1
1.2 Enactment of FATCA and signing of IGA .....	1
1.3 Commitment to Implement CRS on AEOI .....	2
1.4 Steps taken for Implementation of CRS on AEOI and IGA .....	2
1.5 Purpose of the Guidance Note.....	2
2. Reporting Financial Institutions .....	3
2.1 Introduction .....	3
2.2 Step 1: Is it an Entity? .....	3
2.3 Step 2: Is the Entity a Financial Institution? .....	4
2.3.1 Custodial Institution .....	4
2.3.2 Depository Institution .....	4
2.3.3 Investment Entity .....	5
2.3.4 Specified Insurance Company .....	5
2.4 Step 3: Is the Financial Institution in India? .....	5
2.5 Step 4: Is the Financial Institution a Non-Reporting Financial Institution? ..	6
2.6 NPS Trust as RFI.....	7
3. Accounts which are Financial Accounts and therefore need to be reviewed.....	7
3.1 Introduction .....	7
3.2 Categories of Financial Accounts .....	7
3.3 Excluded Accounts.....	8
4. Financial Accounts which are Reportable Accounts.....	9
4.1 Introduction .....	9
4.2 Reportable Accounts by virtue of the Account Holder.....	9
4.3 Reportable Accounts by virtue of the Account Holder's Controlling Persons .....	10

5. Due Diligence Procedure.....	11
5.1 Introduction .....	11
5.2 Split between Preexisting Accounts and New Accounts .....	11
5.3 Due Diligence for Pre-existing Individual Accounts.....	12
5.4 Due Diligence for Pre-existing Entity Accounts.....	16
5.5 Due Diligence for New Individual Accounts.....	18
5.6 Due Diligence for New Entity Accounts .....	19
5.7 Alternate Procedure in case of US Reportable Accounts .....	20
6. Reporting Requirements .....	22
6.1 Information to be maintained and reported.....	22
6.2 Due date for furnishing the Report.....	23
6.3 Other Issues related to Reporting .....	24
7. Procedure for Furnishing the Report .....	25
8. Monitoring and Compliance .....	26
8.1 By Income Tax Department .....	26
8.2 By Regulators .....	26
8.3 Requirement of obtaining GIIN .....	27
9. Contact details for further clarification .....	27
Annexure: Jurisdictions committed to implement AEOI in accordance with CRS and signatories of MCAA .....	28

## **1. Introduction**

### **1.1 New Global Standards on Automatic Exchange of Information**

To combat the problem of offshore tax evasion and avoidance and stashing of unaccounted money abroad requiring cooperation amongst tax authorities, the G20 and OECD countries working together developed a Common Reporting Standard (CRS) on Automatic Exchange of Information (AEOI). The CRS on AEOI was presented to G20 Leaders in Brisbane on 16<sup>th</sup> November, 2014. The Hon'ble Prime Minister of India speaking on the occasion supported the new global standard as it would be instrumental in getting information about unaccounted money hoarded abroad and in its eventual repatriation. The CRS on AEOI requires the financial institutions of the "source" jurisdiction to collect and report information to their tax authorities about account holders "resident" in other countries, such information having to be transmitted "automatically" on yearly basis. The information to be exchanged relates not only to individuals but also to shell companies and trusts having beneficial ownership or interest in the "resident" countries. Further, the 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 Standard and its Commentary are available at <http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-information-in-tax-matters.htm>.

### **1.2 Enactment of FATCA and signing of IGA**

Earlier, in 2010, the USA enacted a law known as FATCA with the objective of tackling tax evasion through obtaining information in respect of offshore financial accounts maintained by USA residents and citizens. The provisions of FATCA essentially provide for 30% withholding tax on US source payments made to Foreign Financial Institutions (FIs) unless they enter into an agreement with the Internal Revenue Service (IRS) to provide information about accounts held with them by USA persons or entities (firms/companies/trusts) controlled by USA persons. Since domestic laws of sovereign countries, (including India) may not permit sharing of client confidential information by FIs directly with USA, USA has entered into Inter-Governmental Agreement (IGA) with various countries. The IGA between India and USA was signed on 9<sup>th</sup> July, 2015, which provides that the Indian FIs will provide the necessary information to Indian tax authorities, which will then be transmitted to USA automatically. Under the IGA, USA will also provide substantial information about Indians having financial assets in USA although the exchange of information is not fully reciprocal as yet. The text of the IGA signed between India and USA is available at

[http://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/375/india\\_iga\\_final-india\\_english.pdf](http://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/375/india_iga_final-india_english.pdf).

### **1.3 Commitment to Implement CRS on AEOI**

In keeping with its leadership role in developing the new global standards, India is one of the early adopters of the CRS and has committed to exchange information automatically by 2017 as under:

- First exchange in September, 2017 for new accounts (both individuals and entity) opened after 1.1.2016 and for pre-existing (as on 31.12.2015 ) individual high value accounts (balance more than USD 1,000,000)
- Exchange in September, 2018 of pre-existing (as on 31.12.2015) individual low value accounts and pre-existing (as on 31.12.2015 ) entity accounts

The Government of India has also joined the Multilateral Competent Authority Agreement (MCAA) on 3<sup>rd</sup> June, 2015, for exchanging information as per the above timelines. By August, 2015, 93 jurisdictions have committed to exchange information as per the new global standards, 58 of them from 2017 and the balance 35 from 2018. 61 of the 93 jurisdictions have also joined the MCAA. Table in Annexure provides a list of the 93 jurisdictions and the time time for exchanging information.

### **1.4 Steps taken for Implementation of CRS on AEOI and IGA**

In view of our commitment to implement the CRS on AEOI and also the IGA with USA, and with a view to provide information to other countries, necessary legislative changes have been made through Finance (No. 2) Act, 2014, by amending section 285BA of the Income-tax Act, 1961. Income-tax Rules, 1962 were amended vide Notification No. 62 of 2015 dated 7<sup>th</sup> August, 2015 by inserting Rules 114F to 114H and Form 61B to provide a legal basis for the Reporting Financial Institutions (RFIs) for maintaining and reporting information about the Reportable Accounts. These Rules have been developed in consultation with Regulators and Financial Institutions in order to smoothen the reporting requirements and to address their concerns wherever possible. A copy of the Notification No. 62 of 2015 modifying the Income-tax Rules, 1962, is at <http://www.incometaxindia.gov.in/communications/notification/notification%20no.%2062%20dated%2007-08-2015.pdf>.

### **1.5 Purpose of the Guidance Note**

The purpose of this Guidance Note is to provide guidance to the Financial Institutions, Regulators and officers of the Tax Department for ensuring

compliance with the reporting requirements provided in Rules 114F to 114H and Form 61B of the Income-tax Rules, 1962. The Guidance Note is intended to explain the complex reporting requirements and provide further guidance wherever required. Since a large part of the Rules is based on CRS on AEOI, the Financial Institutions may refer the CRS and its Commentary to get further understanding of the terms used. In this Guidance Note, reference to the CRS and Commentary has been given for further reference. All the stakeholders are requested to provide feedback and suggestions so that an updated version of the Guidance Note can be issued before 1<sup>st</sup> January, 2016, when most of the reporting requirements will commence including Frequently Asked Questions (FAQs).

## **2. Reporting Financial Institutions**

### **2.1 Introduction**

Rule 114G (1) casts an obligation on “Reporting Financial Institutions” to maintain and report certain information in respect of each “Reportable Account”. “Reporting Financial Institution” is defined in Rule 114F (7) to mean

- (a) a financial institution (other than a non-reporting financial institution) which is resident in India, but excludes any branch of such institution that is located outside India; and
- (b) any branch of a financial institution (other than a non-reporting financial institution) which is not resident in India, if that branch is located in India.

Following Steps may be followed to determine whether a person is a Reporting Financial Institution (RFI) and thus has reporting obligations:

- Step 1: Is it an Entity?
- Step 2: Is the Entity a Financial Institution?
- Step 3: Is the Financial Institution in India?
- Step 4: Is the Financial Institution a Non-Reporting Financial Institution?

### **2.2 Step 1: Is it an Entity?**

Only Entities can be RFIs. The term “Entity” would include legal persons and legal arrangements, such as corporations, partnerships, trusts, and foundations. Individuals, including sole proprietorships, are therefore not RFIs.

**(Ref: Page 60 of CRS and 201 of Commentary)**

## **2.3 Step 2: Is the Entity a Financial Institution?**

The definition of Financial Institution is very wide and includes custodial institutions, depository institutions, investment entities and specified insurance companies.

### **2.3.1 Custodial Institution**

Explanation (a) to Rule 114F(3) defines a “custodial institution” to mean 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 20% 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. 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.

**(Ref: Page 44 of CRS and 160 of Commentary)**

### **2.3.2 Depository Institution**

Explanation (b) to Rule 114F(3) defines a “depository institution” to mean any entity that accepts deposits in the ordinary course of a banking or similar business. 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:

- (a) makes personal, mortgage, industrial, or other loans or provides other extensions of credit;
- (b) purchases, sells, discounts, or negotiates accounts receivable, installment obligations, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness;
- (c) issues letters of credit and negotiates drafts drawn thereunder;
- (d) provides trust or fiduciary services;
- (e) finances foreign exchange transactions; or
- (f) 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.

**(Ref: Page 44 of CRS and 160 of Commentary)**

### **2.3.3 Investment Entity**

Explanation (c) to Rule 114F(3) defines an “investment entity” to be primarily of two types

- Entities which primarily conduct as a business one or more of the following activities or operations for or on behalf of a customer, namely:-
  - trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading; or
  - individual and collective portfolio management; or
  - otherwise investing, administering, or managing financial assets or money on behalf of other persons;
- Entities whose gross income is primarily attributable to investing, reinvesting, or trading in financial assets, if the said entity is managed by another entity that is a depository institution, a custodial institution, an investment entity or a specified insurance company.

**(Ref: Page 44 of CRS and 161 of Commentary)**

### **2.3.4 Specified Insurance Company**

Explanation (d) to Rule 114F(3) defines “specified insurance company” to mean 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. A “cash value insurance contract” is defined in Explanation (f) of Rule 114F(1) is defined to mean an insurance contract (other than an indemnity reinsurance contract between two insurance companies) that has a cash value and in case of a U.S. reportable account such value is greater than an amount equivalent to US\$ 50,000. A single premium life insurance contract which does not permit an amount to be paid on surrender or termination of the contract and which does not allow amounts to be borrowed under or with regard to the contract, shall not constitute a cash value insurance contract.

**(Ref: Page 44 of CRS and 165 of Commentary)**

## **2.4 Step 3: Is the Financial Institution in India?**

The Financial Institutions resident in India, their branches located in India and branches of Foreign Financial Institutions that are located in India are the Reporting Financial Institutions while Foreign Financial Institutions, their foreign