



Impact/ Implication of FATCA on NRIs

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Impact/Implication of Foreign Account Tax Compliance Act (FATCA) on NRIs

Introduction

India has signed the Inter-Governmental Agreement (**IGA**) with the USA on 9th July 2015, for improving International Tax Compliance and implementing FATCA. According to IGA read with provisions of FATCA, Foreign Financial Institutions in India are required to furnish tax information about US account holders to the Indian Government which will further relay information to US Internal Revenue Service (IRS). US IRS will also provide similar information about Indian Citizens having any accounts or assets in the USA.

India has committed to exchange information automatically by 2017 as under:-

- ♦ First exchange in September, 2017 for new accounts (both individuals and entity) opened after 1st January 2016 and for pre-existing (as on 31st December 2015) individual high value accounts (balance more than USD 1,000,000).
- ♦ Exchange in September, 2018 of pre-existing (as on 31st December .2015) individual low value accounts and pre-existing (as on 31st December 2015) entity accounts.

Given below is a snapshot of how FATCA impacts NRIs.

Applicability

FATCA is applicable to -

- ♦ U.S. citizens (Individuals of Indian origin who are US citizens having assets in India)
- ♦ U.S. individual residents
- ♦ Non-resident individuals (Indian citizens living and working in USA such as green card holders, holders of H1B visas etc.)

who own certain *foreign financial accounts* or other *offshore accounts*

Foreign Financial Accounts include amongst other things, foreign partnership interests, foreign mutual funds, etc.

Therefore any institution holding financial accounts/assets (including banks, mutual funds, life insurance companies and depositories) with the following type of clients is required to report under FATCA.

- ♦ Indians who are US Citizens or Lawful Permanent Residents (Green Card holders) of USA.
- ♦ Indians with an H1B, H4, L1B, L2, J1, or J2 visa working and living in the USA, and are obligated to file a US income tax return.
- ♦ Indian IT, medical and finance professionals working in the USA as well as Indian-American business community
- ♦ Indian companies with substantial ownership of US person(s).

These assets are to be **reported in Form 8938** to Internal Revenue Service (IRS). This Form must be attached to the taxpayer's annual tax return.

Threshold

Form 8938 is required to be filled in the following cases:-

| Type of tax payers | Total value of specified foreign financial assets |
|---|--|
| Unmarried taxpayers living in the US | <ul style="list-style-type: none"> ▲ >\$50,000 at the end of the tax year; or ▲ >\$75,000 any time during the tax year |
| Married taxpayers filing a joint income tax return and living in the US | <ul style="list-style-type: none"> ▲ >\$100,000 on the last day of the tax year; or ▲ >\$150,000 at any time during the tax year. |
| Married taxpayers filing separate income tax returns and living in the US | <ul style="list-style-type: none"> ▲ >\$50,000 on the last day of the tax year; or ▲ >\$75,000 at any time during the tax year. |
| Taxpayer living abroad:@ @ <i>You are a taxpayer living abroad if:</i> <ul style="list-style-type: none"> ▲ <i>You are a U.S. citizen whose tax home is in a foreign country and you are either a bona fide resident of a foreign country or countries for an uninterrupted period that includes the entire tax year, or</i> ▲ <i>You are a US citizen or resident, who during a period of 12 consecutive months ending in the tax year is physically present in a foreign country or countries at least 330 days</i> | <ul style="list-style-type: none"> ▲ You are filing a return other than a joint return and the total value of your specified foreign assets is- <ul style="list-style-type: none"> ● >\$200,000 on the last day of the tax year or ● > \$300,000 at any time during the year; or ▲ You are filing a joint return and the value of your specified foreign asset is- <ul style="list-style-type: none"> ● >\$400,000 on the last day of the tax year or ● >\$600,000 at any time during the year |

Note: Taxpayers who do not have to file an income tax return for the tax year (in USA) do not have to file Form 8938, regardless of the value of their specified foreign financial assets.

Impact of non-declaration

If you are a US citizen, even though you have paid your taxes in India and are resident in India, you may receive a request for certification of your accounts or other financial assets held in India. Non-compliance attracts harsh penalties under FATCA as well as US laws.

Failure to report foreign financial assets on Form 8938 may result in –

- ♦ A penalty of \$10,000 (and a penalty up to \$50,000 for continued failure after IRS notification).
- ♦ Underpayments of tax attributable to non-disclosed foreign financial assets will be subject to an additional substantial understatement penalty of 40%

Indian Income Tax Laws

In view of the ongoing partnership between US & India regarding tax compliance, Government of India has notified amendments to the Income Tax Rules, 1962 and has added Rule 114F (definitions), 114G (Information to be maintained and reported) and 114H (due diligence requirement).

Synopsis of the new Rule is given below:-

- ♦ This rule lays down what procedure to be followed by the financial institutions in India regarding reporting of financial accounts and assets held by US citizens in India.
- ♦ The Rules require information to be reported by the reporting financial institution in respect of each reportable account like- name, address, taxpayer identification number, account balance etc.
- ♦ These reporting requirements begin from calendar year 2014 and are applicable to pre-existing accounts as on 30th June 2014 and new accounts opened after 1st July 2014.
- ♦ Every financial institution has to maintain information of the financial accounts as per the procedure and manner specified by the Government so as to enable reporting of information prescribed under the Rule 114G and perform due diligence procedure specified under Rule 114H.
- ♦ The financial institution should obtain self-certification (which may be part of account opening documentation) from account holders and asset owners in India (who are US citizens or have US reportable accounts) and will also report these to the US govt.
- ♦ The financial institution is required to close account for which it was unable to collect the required self-certification

Source of information:

<https://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-FATCA>

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10005&Mode=0>

<https://rbidocs.rbi.org.in/rdocs/content/pdfs/ITRFATC280815.pdf>

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