Indian Banks' Association

CORPORATE & INTERNATIONAL BANKING

No.C&I/FATCA/2014-15/184
June 18, 2014

To,
The Chief Executives of All Member Banks

Dear Sir/Madam,

Foreign Account Tax Compliance Act (FATCA)

United States of America (US) has introduced chapter no. 4 in the US Internal Revenue Code as a part of the Hiring Incentives to Restore Employment (HIRE) Act, which was enacted by the US legislature to create employment opportunities in US. The HIRE Act includes Foreign Account Tax Compliance Act (FATCA), which now forms a part of the US-IR Code. The regulations for FATCA have undergone revision since 2010 and the final regulations make the FATCA provisions effective from July 1, 2014.

2. The objective of FATCA is to detect “US Persons”, who evade US taxes by using financial account maintained outside US. The US persons are defined as those who have either US citizenship or US residency. The FATCA stipulates reporting on -
   i. US taxpayers about certain foreign financial accounts and offshore assets.
   ii. Foreign Financial Institutions (FFIs) about financial accounts with them of US taxpayers or foreign entities in which US taxpayers hold substantial ownership interest.

FFIs are required to periodically report information on accounts of US persons, who maintain balances above a threshold. In the event of a default in the reporting of information on accounts of US taxpayers, a withholding of 30% of the payment made from US sources will be imposed on the recalcitrant account holders and non-participating Financial Institutions.

3. The FATCA provides for FFIs to register with the US IRS, obtain a Global Intermediary Identification Number (GIIN) and enter into an agreement with US IRS to report US accounts. To avoid entering into an agreement and direct reporting by individual FFIs to the US IRS, there is a provision for Inter-Governmental Agreement (IGA) between a Partner Government and US Government. The IGA arrangement provide for all FFIs that resident in / organized in the jurisdiction of a Partner Government to identify US accounts.
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and report through the partner Government to US IRS. As a consequence of the IGA arrangement, the FATCA compliance becomes easier as the Inter-Governmental Agreement-

i. Removes domestic legal impediments to compliance by information sharing.

ii. Reduces burden of FFIs located in partner jurisdictions from direct compliance obligation to US IRS.

4. IBA had taken up the mater regarding implementation of FATCA with Reserve of India and Government of India. The US IRS website has reported that on April 11, 2014, India is included in the list of jurisdictions that have reached agreements in substance and have consented to being included on this list from April 11, 2014 for entering into IGA Model-I with USA. Consequent to this arrangement, FFIs in India will report relevant information on accounts of US persons to the Indian Revenue Authorities rather than to the US IRS. The Indian Authorities will then exchange the information with US IRS under existing Indian-US Tax Convention. Consequently, Indian FFIs and customers of Indian FFIs will not be subject to US withholding of 30% on US sourced payments.

5. The implementation of FATCA has following timelines:

i. Registration with US IRS till December 22, 2014. The on-line registration has to be done by the corporate/head office of the FI on Form no. 8957 on US IRS site. Overseas branches of Indian FFIs will have to be registered by the Head Office of the legal entity. However, those FFIs with foreign branches organized in countries without an IGA, may evaluate registration by 30 June 2014.

ii. The identification of US accounts is required in respect of all new accounts opened on or after July 1, 2014. However, identification and due diligence process for all new accounts can be done within one year after the date of entry into force of the IGA with respect to new Accounts opened after July 1, 2014 but before entry into force of IGA or Indian Government notifies to comply with the due diligence subject to Indian Government giving a notice to this effect in writing to the US IRS. This relaxation has been provided in the alternative procedure in the IGA Model-I issued on June 6, 2014.

iii. In respect of all accounts Pre-existing as on June 30, 2014, the identification for US person is required to be done by June 30, 2016 except for high value individual accounts, which needs to be done by June 30, 2015.

iv. The identification of US person will be based on one or more of following indicia-

a. Identification of the Account Holder as a US citizen or resident;

b. Unambiguous indication of a US place of birth;

c. Current US mailing or residence address (including a US post office box);

d. Current US telephone number;

e. Standing instructions to transfer funds to an account maintained in USA;

f. Current effective power of attorney or signing authority granted to a persons with a US address; or

g. An "in-care-of" or "hold mail" address that is the sole address the Indian Financial Institution has on the file for the Account Holder.
6. The implementation of FATCA by Indian FIs is subject to the formal approval of Government of India and Reserve Bank of India for exchange of information between India & USA, which is awaited. However, it will be desirable that the banks initiate the process to sensitize their staff, particularly the front-line, dealing with NRI/PIO accounts to obtain-
   i. Full KYC details of passport number, country of citizenship/resident, tax identification numbers, contact details including full address, telephone numbers, email ids etc., in all accounts of foreign nationals, business entities and other legal entities opened on or after July 1, 2014, at the time of account opening itself.
   ii. Initiate the process of obtaining above details in respect of all Pre-existing accounts using search for above US indicia by making electronic and/or paper search of the database.

7. Incidentally, G20 in their meeting held on September 6, 2013 endorsed an accord for exchange of information regarding the accounts opened by citizens of one member country in the other member country within the G20, to which India is also a signatory. A Common Reporting Standard on Automatic Exchange of Information was further endorsed by G20 Finance Ministers’ in their February, 2014 meeting. It was also decided that to adopt rules for exchange of information by entering into Competent Authority Agreement (CAA) between the G20 member states. This arrangement is expected be made effective by 2015 and would be broadly in the lines of FATCA.

8. In addition to the requirements indicated in para 6 above, the FIs in India will also need to undertake following activities-
   i. Modify Account opening forms to collect information as indicated above.
   ii. Make changes in the CBS platform as per the reporting format to be finalised by Government of India.
   iii. Facilitate reporting by electronic data transfer to the designated authority in the Government of India

9. The final reporting requirements etc. under the India - US Inter-Governmental Agreement (IGA) for FATCA reporting will be advised by Government of India/Reserve Bank of India after the arrangement is finalized. FIs in India, both Indian and Foreign may note that till the FATCA arrangement is approved by Government of India to provide for exchange of information, they should not make any reporting under FATCA.

Yours faithfully,

(Sangeet Shukla)
Senior Advisor