

FATCA

vis-à-vis

**Manual on Exchange of
Information**

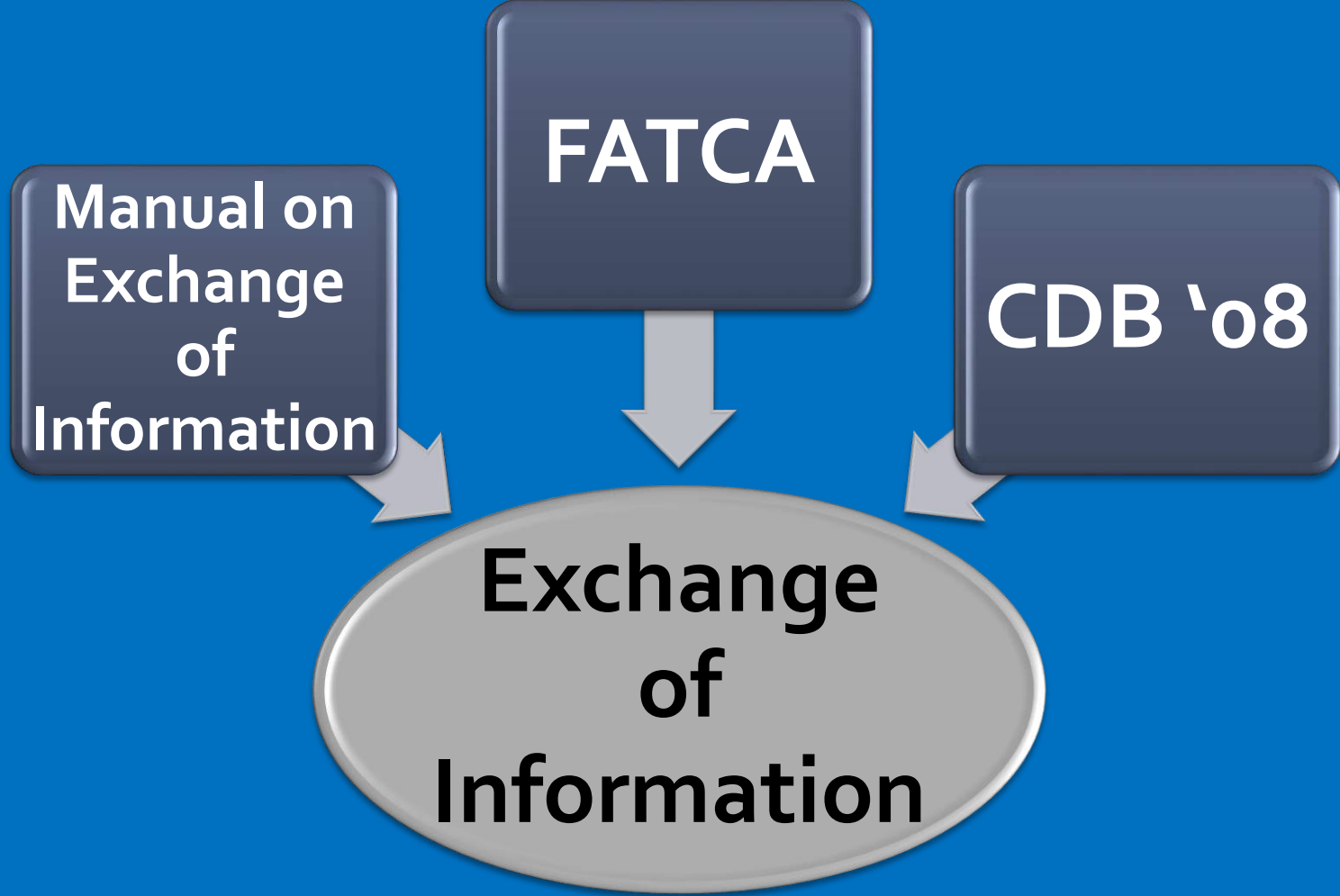
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CDB '08

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Information
exchange





The Foreign Account Tax Compliance Act [“FATCA”]

Introduction

- The Foreign Account Tax Compliance Act (FATCA) is
 - US tax legislation that aims to prevent or detect tax evasion by U.S. Persons who
 - Hold bank deposits and/or securities in offshore accounts, or
 - Own foreign investment entities (e.g., personal investment corporations and trusts)
- FATCA was enacted into law on 18/3/2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act of 2010 of United States.
- Added new Chapter 4 to the Internal Revenue Code of US Code.

Objective of FATCA

- ❖ FATCA aims to identify U.S. persons* trying to avoid U.S. tax obligations by holding assets in non-U.S. structures and products
- ❖ **Foreign Financial Institutions (FFIs)**, which include CSDs, are invited to enter into “participating” agreements with the U.S. to:
 - ❖ Identify and annually report on U.S. accounts
 - ❖ Withhold 30% of withholdable payments made to “recalcitrant” accounts or non-participating FFIs
 - ❖ Have a responsible officer certify FFI’s compliance with the obligations under the agreement
- ❖ U.S. withholding agents and participating FFIs are required to withhold 30% of withholdable payments made to recalcitrant (opposing) account holders or non-participating FFIs
- ❖ ** US persons in this context is much broader than simply Citizens*

MEANING OF RECALCITRANT ACCOUNT HOLDERS

**A “Recalcitrant” account holder
of a participating FFI (“PFFI”)**

**Any person refusing
to supply identifying
information relevant
to their FATCA
status ; or**

**Any identified US
person that does not
waive any local legal
restrictions on
reporting relevant
information to the IRS**

Impact Of FATCA & Its Implementation

- Non-U.S. entity that accepts deposits in conjunction with a banking or similar business, insurance company, engages primarily in the business of investing or trading securities, commodities, partnerships or any interests in such positions. Broadly, all non-US banks, broker dealers, insurance companies, pension plans, mutual Funds, Hedge Funds and Private Equity Funds that **holds financial assets for the account of others as a substantial part of its business will be FFIs**

Contd..

- FFIs must comply with FATCA or be subject to negative impacts
 - 30% withholding tax which will apply to all payments of U.S. source income and gross proceeds, regardless of treaties or statutory exceptions
 - 30% withholding on certain foreign source payments, which may apply even when there is no direct investment in U.S. assets
 - Market pressure from counterparties and clients
- **The rules apply to all FFIs even if they do not have U.S. clients!**

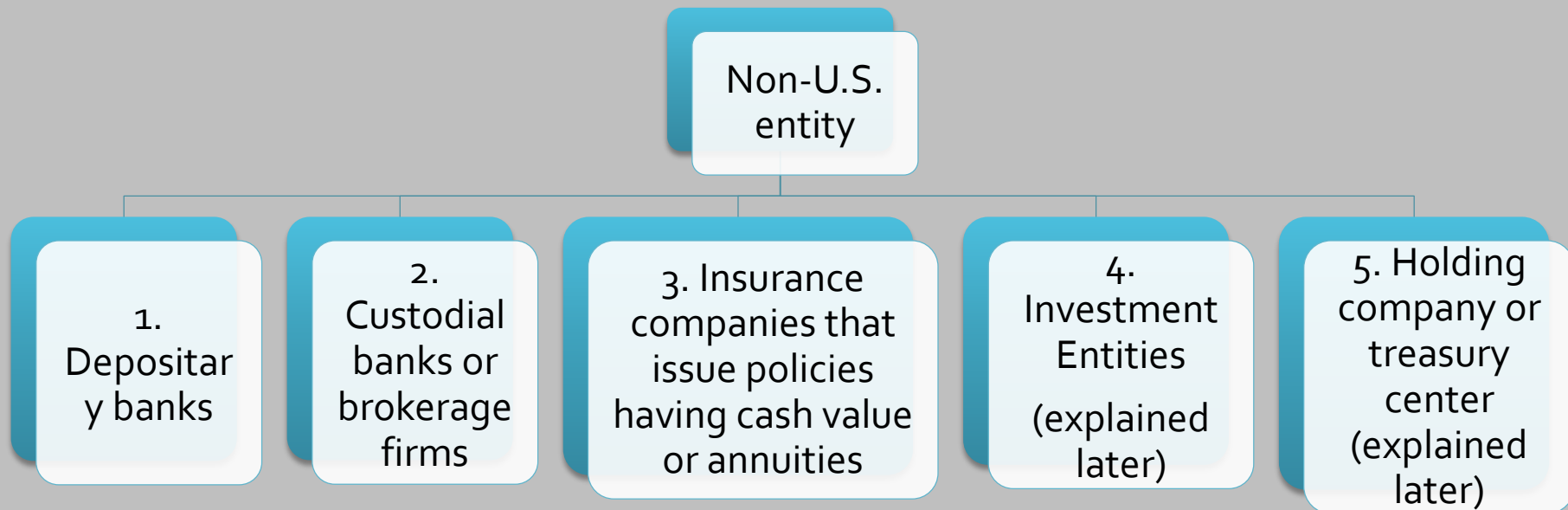
What are withholdable payments

30 Percent FATCA
Withholding
Imposed on
“withhold-able”
payments,
including

- U.S. source income from securities
- Interest on bank deposit accounts maintained in the United States or in a foreign branch of a U.S. bank
- Gross proceeds from the sale/redemption of U.S. securities (not until 2017)

How Do We Define FFI For FATCA

The term “foreign financial institution” includes investment entities and certain holding companies as well as traditional financial institutions



How Do We Define FFI For FATCA

Non-U.S. entity

4. Investment Entities

Entities that conduct the following activities as a business on behalf of customers

Collective investment vehicles, mutual funds, hedge funds, and private equity funds

Trading in financial assets

Portfolio management

Investing, administering, or managing money or financial assets

5. Holding company or treasury center

Is part of an expanded affiliated group (EAG) that includes another FFI

Is formed in connection with or availed of by certain investment entities

Contd..

- To avoid the 30% withholding an FFI generally must:
 - **Enter into an agreement** with the IRS to comply with certain requirements
 - Under the FFI agreement, a PFFI will be required to:
 - **Obtain information** on all account holders to determine which accounts are US accounts
 - Comply with required **due diligence/verification** procedures and certify completion of such procedures
 - **Report** information on US accounts
 - **Deduct and withhold** a 30% tax on any “passthru payment” to recalcitrant account holders and nonparticipating FFIs
 - Comply with IRS information requests
 - Attempt to **obtain a waiver** of applicable bank secrecy or other information disclosure limitations or close the US account (if necessary)

Foreign Entities that are not FFIs

(Section 1472 General Rule of INTERNAL REVENUE CODE of US)

Withholding applies at a 30 percent rate on withholdable payments unless:

The FE (or beneficial owner) provides the withholding agent either:

(a) with a certification that the FE does not have a Substantial U.S. Owner or

(b) the name, address and TIN of each Substantial U.S. Owner to the IRS;

The withholding agent does not know, or have reason to know, that any information provided above is incorrect; and

The withholding agent reports the information to the IRS in such manner as the IRS may provide.

Or an exception applies.

Foreign Entities that are not FFIs

(Section 1472 General Rule of INTERNAL REVENUE CODE of US)

Publicly traded corporation (or corporation that is in the same expanded affiliated group of publicly traded corporation).

Any entity organized in a U.S. possession wholly-owned by one or more bona fide residents of such possession.

Foreign government.

International Organization.

Foreign Central Bank of Issue.

Exception for Certain Payments

Foreign governments.

Political subdivisions of foreign governments.

International organizations.

Foreign central banks.

Any other class of persons identified by the Secretary as posing a low risk of tax evasion for purposes of section 1471 of the U.S. Internal Revenue Code would be excluded from application of section 1471 of the U.S. Internal Revenue Code withholding.

Passthru Payment

Definition: Any withholdable payment or other payment to the extent attributable to a withholdable payment.

- Includes:

- A withholdable payment made by an FFI to a Recalcitrant Account Holder.
- A withholdable payment made by an FFI to another FFI which does not meet the requirements of Chapter 4 (**Non-Compliant FFI**).
- A withholdable payment made to an FFI that has entered into an agreement with the IRS and which has in effect an election with respect to such payment (and meets such other requirements as the Secretary may provide).
 - In the case of a withholdable payment, the passthru payment is so much of the withholdable payment as is allocable to accounts held by Recalcitrant Account Holders or Non-Compliant FFIs.
 - To the extent provided by the Secretary, the election may be made with respect to certain classes or types of accounts of the FFI.

Rules to identify U.S. account holders – Individual Accounts

Pre-existing individual accounts (only applies to FFIs, not USFIs)

- \$50,000 or less – Certain accounts are exempt from review
- \$50,000 to \$1,000,000 – Search electronically searchable account information for US indicia
- More than \$1,000,000 (“high value accounts”)– Inquire into actual knowledge of relationship manager; if certain required fields are not electronically searchable, also search all other account information and documentation

Rules to identify U.S. account holders – Individual Accounts

New individual accounts (only applies to FFIs, not USFIs)

- Must collect documentation sufficient to establish account holder's FATCA status (e.g., U.S. or non U.S.)
- Review all of the information provided at the opening of the account, including identifying information collected under AML/KYC rules for indicia
- If an indicator of U.S. ownership is found, obtain additional documentation or treat the account as held by a recalcitrant account holder

Diligence rules to identify U.S. account holders – Entity Accounts

■ Pre-existing entity accounts

- \$250,000 or less – Excluded from review, until account balance exceeds \$1,000,000
- Search existing information / documentation on file to determine an account holder's FATCA status. Generally can rely on documentation and information collected as part of AML/KYC or existing account opening procedures. However, if existing information / documentation is not sufficient, must request additional documentation.
- Passive NFFEs – Must identify substantial U.S. owners

Diligence rules to identify U.S. account holders – Entity Accounts

New entity accounts

- Upon account opening, request and obtain withholding certificates, documentary evidence, and additional statements from entity account holders (e.g., letters of counsel, withholding statements, statements made in account opening documents, etc.)
- Must review all documentation collected upon account opening along with other information collected as part of AML/KYC to determine the account holder's status under FATCA (i.e. U.S. Entity, PFFI, NPFFI, Registered Deemed-Compliant FFI, Certified Deemed-Compliant FFI, Exempt Beneficial Owner, Passive NFFE, U.S. owned foreign entity, Excepted NFFE, etc)

BENEFICIAL OWNERSHIP

- A foreign account holder (*e.g., a trust or a nominee*) that is not the beneficial owner of a payment must provide the QI with an IRS Form W-8IMY for itself, along with specific information about each beneficial owner to which the payment relates.
- A QI that has actual knowledge that an account holder is not the beneficial owner of a payment may not reduce the rate of withholding on that payment.
 - However, foreign corporations treated as “opaque” beneficial owners.

Contd..

- If the account holder (or beneficial owner) to which the payment relates is a U.S. person, the account holder must provide the QI with an IRS Form W-9 or appropriate evidence that supports the account holder's status as a U.S. person.
 - Such information must be provided to the IRS.
- Certain presumption rules must be applied if the QI cannot associate a payment with valid documentation from account holder.

Obligations of FFI

Obligations of FFI

- Identify U.S. accounts
 - Obtain information regarding each account holders to determine which (if any) of such accounts are U.S. accounts
- Comply with due diligence procedures
 - Comply with verification and due diligence procedures required by the IRS/Treasury with respect to the identification of U.S. accounts

Obligations of FFI

- Report annually for U.S. accounts
 - If the FFI maintains U.S. accounts, it must report on an annual basis certain account information to the IRS
- Withhold on passthru payments
 - The FFI must deduct and withhold a tax equal to 30 percent on certain payments to recalcitrant account holders (account holder that doesn't provide valid documentation) and non-participating FFIs - RESERVED by the IRS

Obligations of FFI

- Provide further information upon request
 - A FFI must comply with requests by the IRS/Treasury for additional information with respect to any U.S. account
- Obtain a waiver when necessary
 - If foreign law prevents the reporting of any information the FFI must attempt to obtain a waiver from relevant investors in a reasonable period of time or exit the account

Consequences of FATCA

- FATCA complicates US tax compliancy (confusion between the FBAR FINcen Form 114 and FATCA Form 8938), increasing the risk of filing errors and subjects individuals to steep willful tax evasion penalties for simple reporting errors.
- FATCA is causing some foreign financial institutions to turn away American clients; refusing them services, closing their accounts or charging them higher fees to service their accounts.
- FATCA is creating unnecessary added bureaucracy for the US with little financial return to the US. FATCA passed Congress with no cost/benefit analysis and recent data indicates that the revenue predictions for FATCA are highly overestimated.
- FATCA increases the risk of identity and data theft, of particular concern for Americans living overseas with the heightened threat of global terrorism.
- FATCA dis-incentivizes investment in US markets as foreigners owning US securities are subject to the same reporting and withholding penalties as Americans.

Consequences of FATCA

- FATCA has touched off a global movement for automatic exchange of information in order to fight tax evasion. Foreign governments aim for reciprocity with the United States through the IGAs (bilateral intergovernmental agreements) However, unlike the United States, many foreign governments operating under residence-based tax policy want to receive information on individuals residing in their countries and not declaring income, whereas the United States seeks information on all US residents, living both domestically and internationally, because of its unique citizenship-based taxation (CBT).

Suggestion of Same Country Exemption

- A "SAME COUNTRY" EXEMPTION FOR ACCOUNTS OF US TAXPAYERS RESIDING IN A FOREIGN COUNTRY WOULD HELP RELIEVE THE "LOCK-OUT" PROBLEM AND THE PROBLEM OF UNNECESSARILY BURDENSOME REPORTING. IT IS ALSO, AS CAN BE SEEN, REMARKABLY QUICK AND EASY TO PUT IN PLACE.
- The FATCA regulations and the regulations under section 6038D, which mandates Form 8938, should be mended by Treasury Department to provide a simple "same country" exemption. Just as the rules for local banks in the FATCA regulations and the various Intergovernmental Agreements and the reporting thresholds for Form 8938 were instituted administratively, the Treasury Department should promulgate rules permitting individuals to elect, if they wish, to have their local financial accounts, in effect, exempted from FATCA

FATCA

IN

INDIA

FATCA in INDIA

- The Foreign Account Tax Compliance Act or FATCA was signed on 9th July 2015 by Revenue Secretary Shaktikanta Das and US Ambassador Richard Verma.
- Under the inter-governmental agreement, Indian financial institutions will have to reveal information about US tax payers to the revenue department which will be passed on to the US tax authorities.
- The law also requires foreign financial institutions to report directly to the US Internal Revenue Service details of accounts held by US taxpayers or foreign entities in which US taxpayers hold a substantial ownership interest.
- Any entity failing to register will face a higher withholding tax rate of 30% on payments from all US firms that they deal with.
- But Indian financial entities will not face this trouble as the government will directly share information with the US authorities.

FATCA in INDIA

- The US revenue authorities will in turn provide similar information about Indian account holders in the United States .
- This automatic exchange of information is scheduled to begin on September 30. The current reporting period beginning October 1 would be for July-December 2014.
- The agreement in substance was completed under terms of a Model 1 Inter Governmental Agreement, which includes reciprocity. *(discussed later)*

**Agreement between
'Government of the USA'
and
'Government of the
Republic of India'
to Improve International Tax
Compliance and to
Implement FATCA**

**Obligations to Obtain and
Exchange Information with
Respect to Reportable
Accounts
(Article 2)**

Information to be Obtained & Exchanged

In the case
of *India*
w.r.t. each
U.S.
Reportable
Account of
each
Reporting
Indian
Financial
Institution:

1. the name, address, and U.S. TIN of each Specified U.S. Person that is an Account Holder of such account and, in the case of a Non-U.S. Entity that, after application of the due diligence procedures set forth in Annex I, is identified as having one or more Controlling Persons that is a Specified U.S. Person, the name, address, and U.S. TIN (if any) of such entity and each such Specified U.S. Person;

Information to be Obtained & Exchanged

In the case
of *India*
w.r.t. each
U.S.
Reportable
Account of
each
Reporting
Indian
Financial
Institution:

2. the account number (or functional equivalent in the absence of an account number)
3. the name and identifying number of Reporting Indian Financial Institution;
4. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year, immediately before closure;

Information to be Obtained & Exchanged

- In the case of India w.r.t. each U.S. Reportable Account of each Reporting Indian Financial Institution:
- 5. in the case of any Custodial Account:**
- the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
 - the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Indian Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;

Information to be Obtained & Exchanged

In the case
of *India*
w.r.t. each
U.S.
Reportable
Account of
each
Reporting
Indian
Financial
Institution:

6. in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
7. in the case of any account not described in subparagraph 2(a)(5) or 2(a)(6) of this Article, the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Indian Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

Information to be Obtained & Exchanged

In the case of the United States, with respect to each Indian Reportable Account of each Reporting U.S. Financial Institution

1. the name, address, and Indian TIN of any person that is a resident of India and is an Account Holder of the account;
2. the account number (or the functional equivalent in the absence of an account number); ;
3. the name and identifying number of the Reporting U.S. Financial Institution;

Information to be Obtained & Exchanged

In the case
of the
United
States, with
respect to
each Indian
Reportable
Account of
each
Reporting
U.S.
Financial
Institution

4. the gross amount of interest paid on a Depository Account
5. the gross amount of U.S. source dividends paid or credited to the account; and
6. the gross amount of other U.S. source income paid or credited to the account, to the extent subject to reporting under chapter 3 of subtitle A or chapter 61 of subtitle F of the U.S. Internal Revenue Code

***Time and Manner of
Exchange of Information
(Article 3)***

Time and Manner of Exchange of Information

3. With respect to paragraph 2 of Article 2 of this Agreement, information is to be obtained and exchanged with respect to 2014 and all subsequent years, except that:
- a) In the case of *India*:
 - 1) the information to be obtained and exchanged with respect to 2014 is only the information described in subparagraphs 2(a)(1) through 2(a)(4) of Article 2 of this Agreement;
 - 2) the information to be obtained and exchanged with respect to 2015 is the information described in subparagraphs 2(a)(1) through 2(a)(7) of Article 2 of this Agreement, except for gross proceeds described in subparagraph 2(a)(5)(B) of Article 2 of this Agreement; and

Time and Manner of Exchange of Information

3. With respect to paragraph 2 of Article 2 of this Agreement, information is to be obtained and exchanged with respect to 2014 and all subsequent years, except that:
 - a) In the case of *India*:
 - 3) the information to be obtained and exchanged with respect to 2016 and subsequent years is the information described in subparagraphs 2(a)(1) through 2(a)(7) of Article 2 of this Agreement;
 - b) In the case of the *United States*,
 - 1) the information to be obtained and exchanged with respect to 2014 and subsequent years is all of the information identified in subparagraph 2(b) of Article 2 of this Agreement.

Time and Manner of Exchange of Information

4. Notwithstanding paragraph 3 of this Article, with respect to each Reportable Account that is maintained by a Reporting Financial Institution as of June 30, 2014, and subject to paragraph 4 of Article 6 of this Agreement, the Parties are not required to obtain and include in the exchanged information the Indian TIN or the U.S. TIN, as applicable, of any relevant person if such taxpayer identifying number is not in the records of the Reporting Financial Institution. In such a case, the Parties shall obtain and include in the exchanged information the **date of birth** of the relevant person, if the Reporting Financial Institution has such date of birth in its records.

Time and Manner of Exchange of Information

6. The Competent Authorities of India and the United States shall enter into an agreement or arrangement under the mutual agreement procedure provided for in Article 27 of the Convention, which shall:
 - a) establish the procedures for the automatic exchange obligations described in Article 2 of this Agreement;
 - b) prescribe rules and procedures as may be necessary to implement Article 5 of this Agreement; and
 - c) establish as necessary procedures for the exchange of the information reported under subparagraph 1(b) of Article 4 of this Agreement.
7. All information exchanged shall be subject to the confidentiality and other protections provided for in the Convention, including the provisions limiting the use of the information exchanged.

Time and Manner of Exchange of Information

8. Following entry into force of this Agreement, each Competent Authority shall provide written notification to the other Competent Authority when it is satisfied that the jurisdiction of the other Competent Authority has in place
 - I. appropriate safeguards to ensure that the information received pursuant to this Agreement shall remain confidential and be used solely for tax purposes, and
 - II. the infrastructure for an effective exchange relationship (including established processes for ensuring timely, accurate, and confidential information exchanges, effective and reliable communications, and demonstrated capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges and to administer the provisions of Article 5 of this Agreement).

The Competent Authorities shall endeavor in good faith to meet, prior to September 2015, to establish that each jurisdiction has such safeguards and infrastructure in place.

9. The obligations of the Parties to obtain and exchange information under Article 2 of this Agreement shall take effect on the date of the later of the written notifications described in paragraph 8 of this Article.

Time and Manner of Exchange of Information

10. This Agreement shall terminate on September 30, 2015, if Article 2 of this Agreement is not in effect pursuant to paragraph 9 of this Article by that date.

***Application of FATCA to
Indian Financial Institutions
(Article 4)***

1. Treatment of Reporting Indian Financial Institutions

Each Reporting Indian Financial Institution shall be treated as complying with, and not subject to withholding under, section 1471 of the U.S. Internal Revenue Code if India complies with its obligations under Articles 2 and 3 of this Agreement with respect to such Reporting Indian Financial Institution, and the Reporting Indian Financial Institution:

- a) identifies U.S. Reportable Accounts and reports annually to the Indian Competent Authority the information required to be reported in subparagraph 2(a) of Article 2 of this Agreement in the time and manner described in Article 3 of this Agreement;

1. Treatment of Reporting Indian Financial Institutions

Each Reporting Indian Financial Institution shall be treated as complying with, and not subject to withholding under, section 1471 of the U.S. Internal Revenue Code if India complies with its obligations under Articles 2 and 3 of this Agreement with respect to such Reporting Indian Financial Institution, and the Reporting Indian Financial Institution:

- b) for each of 2015 and 2016, reports annually to the Indian Competent Authority the name of each Nonparticipating Financial Institution to which it has made payments and the aggregate amount of such payments;
- c) complies with the applicable registration requirements on the IRS FATCA registration website;

1. Treatment of Reporting Indian Financial Institutions

Each Reporting Indian Financial Institution shall be treated as complying with, and not subject to withholding under, section 1471 of the U.S. Internal Revenue Code if India complies with its obligations under Articles 2 and 3 of this Agreement with respect to such Reporting Indian Financial Institution, and the Reporting Indian Financial Institution:

- d) to the extent that a Reporting Indian Financial Institution is
 - I. acting as a qualified intermediary (for purposes of section 1441 of the U.S. Internal Revenue Code) that has elected to assume primary withholding responsibility under chapter 3 of subtitle A of the U.S. Internal Revenue Code,
 - II. a foreign partnership that has elected to act as a withholding foreign partnership (for purposes of both sections 1441 and 1471 of the U.S. Internal Revenue Code), or
 - III. a foreign trust that has elected to act as a withholding foreign trust (for purposes of both sections 1441 and 1471 of the U.S. Internal Revenue Code), withholds 30 percent of any U.S. Source Withholdable Payment to any Nonparticipating Financial Institution;

1. Treatment of Reporting Indian Financial Institutions

Each Reporting Indian Financial Institution shall be treated as complying with, and not subject to withholding under, section 1471 of the U.S. Internal Revenue Code if India complies with its obligations under Articles 2 and 3 of this Agreement with respect to such Reporting Indian Financial Institution, and the Reporting Indian Financial Institution:

- e) in the case of a Reporting Indian Financial Institution that is not described in subparagraph 1(d) of this Article and that makes a payment of, or acts as an intermediary with respect to, a U.S. Source Withholdable Payment to any Nonparticipating Financial Institution, the Reporting Indian Financial Institution provides to any immediate payor of such U.S. Source Withholdable Payment the information required for withholding and reporting to occur with respect to such payment.

2. Suspension of Rules Relating to Recalcitrant Accounts

The United States shall not require a Reporting Indian Financial Institution to withhold tax under section **1471 or 1472 of the U.S. Internal Revenue Code** with respect to an account held by a recalcitrant account holder (as defined in section 1471(d)(6) of the U.S. Internal Revenue Code), or to close such account, if the U.S. Competent Authority receives the information set forth in subparagraph 2(a) of Article 2 of this Agreement, subject to the provisions of Article 3 of this Agreement, with respect to such account.

3. Specific Treatment of Indian Retirement Plans

The United States shall treat as deemed-compliant FFIs or exempt beneficial owners, as appropriate, for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code, Indian retirement plans described in Annex II. For this purpose, an Indian retirement plan includes an Entity established or located in, and regulated by, India, or a predetermined contractual or legal arrangement, operated to provide pension or retirement benefits or earn income for providing such benefits under the laws of India and regulated with respect to contributions, distributions, reporting, sponsorship, and taxation.

4. Identification and Treatment of Other Deemed-Compliant FFIs and Exempt Beneficial Owner

The United States shall treat each Non-Reporting Indian Financial Institution as a deemed-compliant FFI or as an exempt beneficial owner, as appropriate, for purposes of **section 1471** of the U.S. Internal Revenue Code.

5. Special Rules Regarding Related Entities and Branches That Are Nonparticipating Financial Institutions.

If an Indian Financial Institution, has a Related Entity or branch that operates in a jurisdiction that prevents such Related Entity or branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code or has a Related Entity or branch that is treated as a Nonparticipating Financial Institution solely due to the expiration of the transitional rule for limited FFIs and limited branches under relevant U.S. Treasury Regulations, such Indian Financial Institution shall continue to be in compliance with the terms of this Agreement and shall continue to be treated as a deemed compliant FFI or exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code, provided that:

- a) the Indian Financial Institution treats each such Related Entity or branch as a separate Nonparticipating Financial Institution for purposes of all the reporting and withholding requirements of this Agreement and each such Related Entity or branch identifies itself to withholding agents as a Nonparticipating Financial Institution;
- b) each such Related Entity or branch identifies its U.S. accounts and reports the information with respect to those accounts as required under section 1471 of the U.S. Internal Revenue Code to the extent permitted under the relevant laws pertaining to the Related Entity or branch; and

5. Special Rules Regarding Related Entities and Branches That Are Nonparticipating Financial Institutions.

If an Indian Financial Institution, has a Related Entity or branch that operates in a jurisdiction that prevents such Related Entity or branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code or has a Related Entity or branch that is treated as a Nonparticipating Financial Institution solely due to the expiration of the transitional rule for limited FFIs and limited branches under relevant U.S. Treasury Regulations, such Indian Financial Institution shall continue to be in compliance with the terms of this Agreement and shall continue to be treated as a deemed compliant FFI or exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code, provided that:

- c) such Related Entity or branch does not specifically solicit U.S. accounts held by persons that are not resident in the jurisdiction where such Related Entity or branch is located or accounts held by Nonparticipating Financial Institutions that are not established in the jurisdiction where such Related Entity or branch is located, and such Related Entity or branch is not used by the Indian Financial Institution or any other Related Entity to circumvent the obligations under this Agreement or under section 1471 of the U.S. Internal Revenue Code, as appropriate.

6. Coordination of Timing

Notwithstanding paragraphs 3 and 5 of Article 3 of this Agreement:

India shall not be obligated to

obtain and exchange information with respect to a calendar year that is prior to the calendar year with respect to which similar information is required to be reported to the IRS by participating FFIs pursuant to relevant U.S. Treasury Regulations;

to begin exchanging information prior to the date by which participating FFIs are required to report similar information to the IRS under relevant U.S. Treasury Regulations

6. Coordination of Timing

Notwithstanding paragraphs 3 and 5 of Article 3 of this Agreement:

The US shall not be obligated to

obtain and exchange information with respect to a calendar year that is prior to the first calendar year with respect to which India is required to obtain and exchange information; and

begin exchanging information prior to the date by which India is required to begin exchanging information.

7. Coordination of Definitions with U.S. Treasury Regulations

Notwithstanding Article 1 of this Agreement and the definitions provided in the Annexes to this Agreement,
in implementing this Agreement,
India may use, and may permit Indian Financial Institutions to use, a definition in relevant U.S. Treasury Regulations in lieu of a corresponding definition in this Agreement,
Provided that such application would not frustrate the purposes of this Agreement.

**Collaboration on
*Compliance and
Enforcement*
(Article 5)**

1. Minor and Administrative Errors

- A Competent Authority shall notify the Competent Authority of the other Party when the first-mentioned Competent Authority has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting or resulted in other infringements of this Agreement. The Competent Authority of such other Party shall apply its domestic law (including applicable penalties) to obtain corrected and/or complete information or to resolve other infringements of this Agreement.

3. Reliance on Third Party Service Providers

- Each Party may allow Reporting Financial Institutions to use third party service providers to fulfill the obligations imposed on such Reporting Financial Institutions by a Party, as contemplated in this Agreement, but these obligations shall remain the responsibility of the Reporting Financial Institutions.

4. Prevention of Avoidance.

- The Parties shall implement as necessary requirements to prevent Financial Institutions from adopting practices intended to circumvent the reporting required under this Agreement.

2. Significant Non-Compliance

a) A Competent Authority shall notify the Competent Authority of the other Party when the first-mentioned Competent Authority has determined that there is significant non-compliance with the obligations under this Agreement with respect to a Reporting Financial Institution in the other jurisdiction. The Competent Authority of such other Party shall apply its domestic law (including applicable penalties) to address the significant non-compliance described in the notice.

b) If, in the case of a Reporting Indian Financial Institution, such enforcement actions do not resolve the non-compliance within a period of 18 months after notification of significant non-compliance is first provided, the United States shall treat the Reporting Indian Financial Institution as a Nonparticipating Financial Institution pursuant to this subparagraph 2(b).

**Mutual Commitment to
Continue to Enhance the
Effectiveness of *Information
Exchange and Transparency*
(Article 6)**

1. Reciprocity

- The Government of US acknowledges the need to achieve equivalent levels of reciprocal automatic information exchange with India. The Government of the US is committed to further improve transparency and enhance the exchange relationship with India by pursuing the adoption of regulations and advocating and supporting relevant legislation to achieve such equivalent levels of reciprocal automatic information exchange.

2. Treatment of Passthru Payments and Gross Proceeds.

- The Parties are committed to work together, along with Partner Jurisdictions, to develop a practical and effective alternative approach to achieve the policy objectives of foreign passthru payment and gross proceeds withholding that minimizes burden.

3. Development of Common Reporting and Exchange Model

- The Parties are committed to working with Partner Jurisdictions and the Organisation for Economic Cooperation and Development on adapting the terms of this Agreement and other agreements between the United States and Partner Jurisdictions to a common model for automatic exchange of information, including the development of reporting and due diligence standards for financial institutions.

4. Documentation of Accounts Maintained as of June 30, 2014.

With respect to Reportable Accounts maintained by a Reporting Financial Institution as of June 30, 2014:

The United States commits to establish, by January 1, 2017, for reporting with respect to 2017 and subsequent years, rules requiring Reporting U.S. Financial Institutions to obtain and report the Indian TIN of each Account Holder of an Indian Reportable Account as required pursuant to subparagraph 2(b)(1) of Article 2 of this Agreement; and

India commits to establish, by January 1, 2017, for reporting with respect to 2017 and subsequent years, rules requiring Reporting Indian Financial Institutions to obtain the U.S. TIN of each Specified U.S. Person as required pursuant to subparagraph 2(a)(1) of Article 2 of this Agreement.

Consistency in the Application of FATCA to Partner Jurisdictions - Article 7

1. India shall be granted the benefit of any more favorable terms under Article 4 or Annex I of this Agreement relating to the application of FATCA to Indian Financial Institutions afforded to another Partner Jurisdiction under a signed bilateral agreement pursuant to which the other Partner Jurisdiction commits to undertake the same obligations as India described in Articles 2 and 3 of this Agreement, and subject to the same terms and conditions as described therein and in Articles 5 through 9 of this Agreement.

2. The United States shall notify India of any such more favorable terms, and such more favorable terms shall apply automatically under this Agreement as if such terms were specified in this Agreement and effective as of the date of signing of the agreement incorporating the more favorable terms, unless India declines in writing the application thereof.

ISSUES

Costly and Burdensome due to complex regulations and reporting requirements.

- Specifically, the regulations were intentionally designed to appropriately balance the scope of entities and accounts subject to FATCA with due diligence requirements, while also phasing in the related obligations over several years. For example, the final regulations exempt all preexisting accounts held by individuals with \$50,000 or less from review. For similar accounts with less than \$1,000,000, an FFI is only required to search the account information that is electronically available. In many cases, FFIs are permitted to rely on information that they already must collect for local anti-money laundering and know-your-customer rules.
- **Hence, Treasury and the IRS have designed regulations in a way that minimizes administrative burdens and related costs.**

U.S. citizens living overseas will become outcasts in the international financial world

- Governments implementing FATCA through IGAs will require their financial institutions to identify and report on all non-resident account holders, not just U.S. account holders. Those governments agree with FATCA's policy objectives, and want to facilitate the collection of information about the offshore accounts of their own residents. For example, 19 countries have already announced a pilot project to exchange account information about each other's residents that will be collected by the governments in line with FATCA's due diligence and reporting procedures. FATCA is quickly becoming the global standard for automatic information exchange and we expect the number of jurisdictions that choose to implement the same reporting procedures for all offshore accounts to continue to grow.
- **Hence, FATCA withholding applies to the U.S. investments of FFIs whether or not they have U.S. account holders, so turning away known U.S. account holders will not enable an FFI to avoid FATCA**

Americans living abroad will give up their U.S. citizenship because of liabilities and burdens created by FATCA.

- FATCA's withholding obligations fall on institutions making payments to FFIs, and the due diligence and reporting requirements fall on the FFIs themselves. U.S. taxpayers, including U.S. citizens living abroad, are required to comply with U.S. tax laws. Individuals that have used offshore accounts to evade tax obligations may rightly fear that FATCA will identify their illicit activities. Yet a decision to renounce U.S. citizenship would not relieve these individuals of prior U.S. tax obligations, and might well create additional U.S. tax obligations for certain citizens and long-term residents who give up citizenship or residency.
- **Hence, FATCA provisions impose no new obligations on U.S. citizens living abroad.**

Countries are opposed to FATCA, in part because the legislation could force foreign banks to violate laws in their own countries.

- The two FATCA model IGAs incorporate a two-pronged approach: under the first model, FFIs report to their respective governments who then relay that information to the IRS; or, under the second model, they report directly to the IRS to the extent the account holder consents or such reporting is otherwise legally permitted, supplemented by government-to-government cooperation to facilitate reporting on non-consenting accounts. These model IGAs offer alternative frameworks for information sharing that abides by local laws. The success of this approach is evidenced by the international response to this legislation. To date, Treasury has signed many IGAs, including with Malta, Bermuda, and the Cayman Islands.
- **Hence, Treasury's decision to implement FATCA through IGAs that are respectful of the individual laws and customs of partner jurisdictions has contributed to the significant international interest in participating in FATCA compliance efforts.**

FATCA will generate a backlash from foreign governments who view this as overreach of U.S. law

- G-8 leaders acknowledged the central role of tax information exchange, stating in their June 2013 communiqué: “A critical tool in the fight against tax evasion is the exchange of information between jurisdictions,” and urging that “tax authorities across the world should automatically share information to fight the scourge of tax evasion.”
- **Hence, FATCA has received considerable international support because most foreign governments recognize how effective FATCA, and in particular intergovernmental approach, will be in detecting and combating tax evaders.**

FATCA aims to use foreign banks as an extension of the IRS

- This law only requires FFIs to share information about financial accounts held by U.S. taxpayers, similar to what is already required of U.S. financial institutions; it does not include an enforcement component for those FFIs.
- **Thus, The objective of FATCA is the reporting of foreign financial accounts held by U.S. persons or certain entities with U.S. owners.**

FATCA controls framework

1. Controls provide reasonable assurance that all legal entities are identified, assessed and classified for FATCA impact and approved by the appropriate personnel within the organization.
2. Controls provide reasonable assurance that legal entity assessments are communicated to all relevant parties.
3. Controls provide reasonable assurance that changes in legal entity listings and related classifications are appropriately updated in a timely manner and approved by the appropriate personnel.
4. Controls provide reasonable assurance that all FFI agreements are appropriately executed, tracked and protected.
5. Controls provide reasonable assurance that required data is obtained during the new individual account set up process.

FATCA controls framework

6. Controls provide reasonable assurance that pre-existing accounts subject to FATCA requirements are identified completely and accurately.
7. Controls provide reasonable assurance that changes to account information are captured and assessed for impact on classifications.
8. Controls provide reasonable assurance that due diligence is performed appropriately for all accounts (new accounts, pre-existing accounts, changes in accounts) and accounts are appropriately classified.
9. Controls provide reasonable assurance that policies and procedures related to account maintenance and classification is communicated throughout the organization and to third party service providers.
10. Controls provide reasonable assurance that tax withholding is performed completely and accurately for accounts impacted by FATCA requirements.

FATCA controls framework

11. Controls provide reasonable assurance that reporting to the Internal Revenue Service required by FATCA is complete and accurate and produced on a timely basis.
12. Controls provide reasonable assurance that FATCA processes and procedures are performed consistently across the organization to support applicable certifications to be made to the IRS and/or withholding agents.
13. Controls provide reasonable assurance that new developments and changes to existing systems are documented, tested, approved, and implemented by authorized personnel.
14. Controls provide reasonable assurance that access to FATCA data is appropriately restricted to authorized personnel.

Manual on Exchange of Information



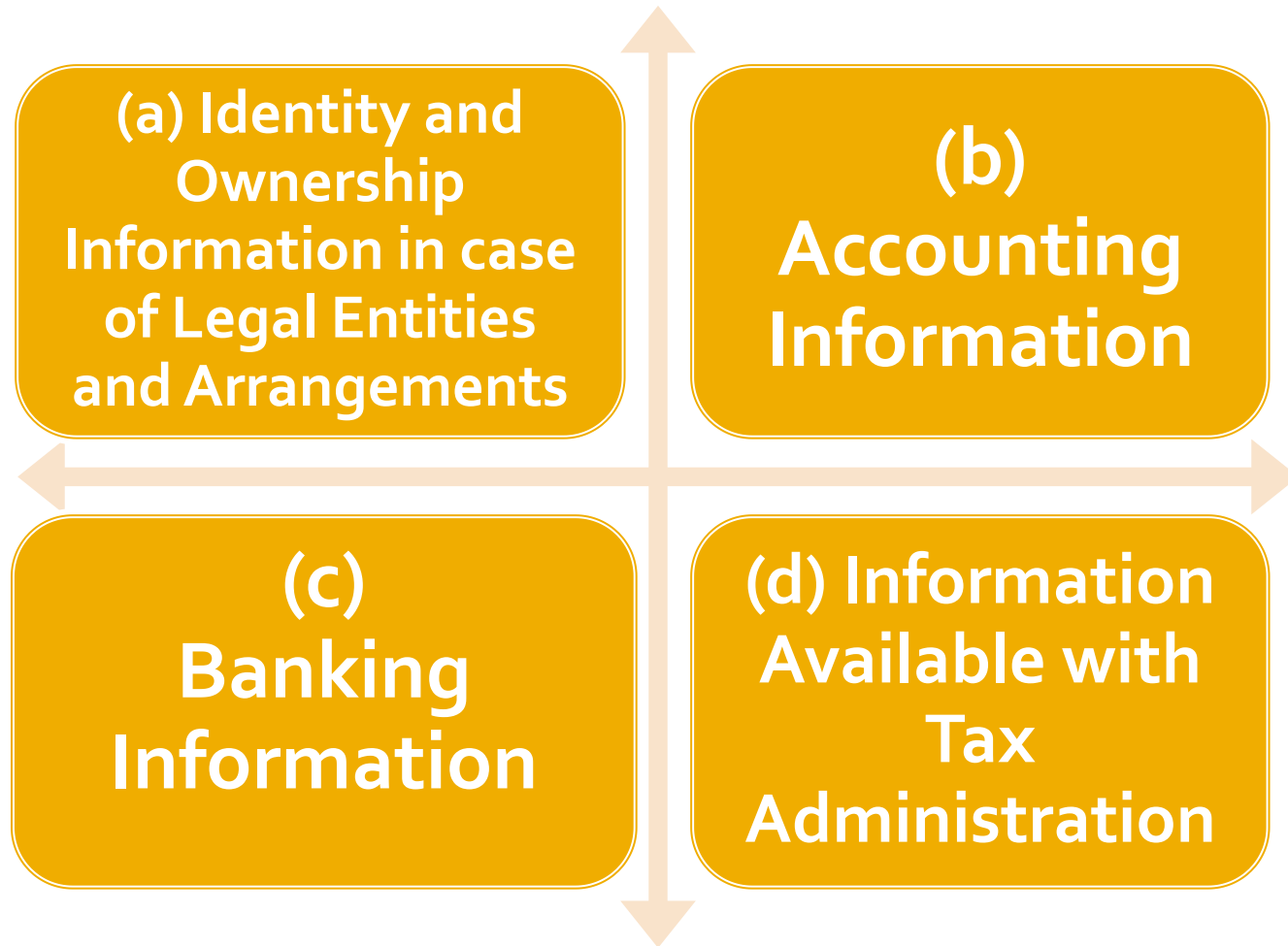
Introduction

- The CBDT had, in 2013, brought out a Manual to provide guidance to field officers on the scope and manner of exchange of tax-related information under the various tax treaties and agreements that India has entered into. Since then, there has been an increasing global consensus on the necessity of cooperation amongst countries to tackle the problem of offshore tax evasion and avoidance. Currently through our treaty network we have exchange of information relationship with more than 130 countries/jurisdictions, including well-known offshore financial centers. This extensive treaty reach, coupled with the existing international environment, presents a unique opportunity to our officers to seek and obtain information/evidence located outside India that may be necessary for tackling the problem of offshore tax evasion and avoidance as also unearthing of undisclosed money stashed abroad.

Introduction

- Tax Treaties, which include, Double Taxation Avoidance Agreements (DTAAs), Tax Information Exchange Agreements (TIEAs), Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) and SAARC Limited Multilateral Agreement (SAARC Agreement), are the legal instruments which provide a legal obligation on a reciprocal basis for providing various forms of administrative assistance, including Exchange of Information, Assistance in Collection of Taxes, Tax Examination Abroad, Joint Audit, Service of Documents etc. Through one or more of these tax treaties, India has exchange of information relationships with more than 130 countries/jurisdictions including well known offshore financial centres and these jurisdictions are legally committed to provide administrative assistance and are actually providing the same in cases where requests are made.

Nature and Type of Information Available in Countries



(a) Identity and Ownership Information in case of Legal Entities and Arrangements

- Name and address of the legal entities (such as companies and partnership) or arrangements (such as trusts) at the time of formation and all subsequent changes
- Documents demonstrating formation of the legal entity or arrangement and subsequent changes of shareholders/partners
- Documents identifying bearer shares
- Up to date information on legal and beneficial owners and other stakeholders
- In case of legal ownership, information about persons in the ownership chain to the extent that information is held by the jurisdiction's authorities or is within the possession or control of persons within the jurisdiction's territorial jurisdiction.
- If the legal owner acts on behalf of any other person as a nominee or under a similar agreement, information about that other person

(a) Identity and Ownership Information in case of Legal Entities and Arrangements

- Information about beneficial ownership as per FATF recommendations wherein the beneficial owner refers to the natural person(s) who ultimately owns or controls the legal entity or the legal arrangement and include the natural person on whose behalf a transaction is being conducted, including those persons who exercise ultimate effective control over the legal entity or arrangement.
- In the case of legal or beneficial owners, the risk assessment parameters utilized by the jurisdiction to identify the person
- In the case of trusts or other legal arrangements, information which identifies the settler, trustee and beneficiaries of express trusts
 - i. created under the laws of that jurisdiction
 - ii. administered in that jurisdiction, or
 - iii. in respect of which a trustee is resident in that jurisdiction

(b) Accounting Information

- Accounting records in case of an entity or arrangement including its balance sheet and profit and loss account.
- Underlying documents of the accounting records such as invoices, contracts etc. reflecting details of
 - (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place
 - (ii) all sales and purchases and other transactions and
 - (iii) the assets and liabilities of the relevant entity or arrangement
- Copies of contracts/agreements for sale/purchase
- Details of loans or gifts given by the taxpayer in that country/jurisdiction to an Indian taxpayer

(b) Accounting Information

- Details of commissions paid by the Indian taxpayer to the taxpayer in another country/jurisdiction
- Details of immovable properties including its ownership, registration documents, location, sale agreement, purchase price etc. if some information is provided by the requesting jurisdiction
- Price paid for acquiring a business asset in a foreign jurisdiction to determine whether the taxpayer has claimed the expenditure correctly, both on revenue account for claim of expenditure for the purposes of business or on capital account for claim of depreciation
- In case of supply of goods to an independent company in a foreign jurisdiction, information regarding what price was paid by the said independent company for the purposes of correct determination of arm's length price.

(c) Banking Information

- Name, address and other *details of the account holder* and the beneficiaries of the account
- In case the account is held by legal entities/arrangements, the details of *legal and beneficial owners* of the said entity/arrangement including Know Your Customer (KYC) details, risk assessments carried on by the bank to identify the said legal/beneficial owner
- Name, address and other details of persons authorized to open or operate the account including *attorney holders* and authorized signatories
- Name, address and other *details of the introducer* for opening the account
- All records pertaining to the accounts as well as to related financial and *transactional statements* with narration
- Information about *portfolio investment* done by the banks/financial institutions

(d) Information Available with Tax Administration

- Copies of *tax returns filed* containing details of income received in other countries, details of assets disclosed (to determine creditworthiness), deductions claimed etc.
- *Taxes paid* in that country/jurisdiction including details of refunds given, if any
- *Taxes withheld* in the country/jurisdiction as per their domestic laws and refunds given, if any

Double Taxation Avoidance Agreements (DTAAs)

Brief:

- The primary purpose of the DTAA is allocation of taxing rights between the treaty partners and the avoidance of double taxation. However, DTAA also have as an objective, the prevention of fiscal evasion and contain provisions for providing administrative assistance, including exchange of information for assistance in implementation of the DTAA and in administration or enforcement of domestic tax laws of the Contracting States. As on 1st May, 2015, India has DTAA with 94 countries. DTAA with seven more countries are being negotiated

Tax Information Exchange Agreements (TIEAs)

Brief:

- The TIEAs have provisions only for exchange of information and are usually entered into with those countries/jurisdictions (such as offshore financial centres) where it may not be feasible to expediently enter into a comprehensive DTAA. As on 1st May, 2015, India has entered into 16 TIEAs. One TIEA has been signed, but is yet to come into force, while negotiations for 29 TIEAs are going on.

Multilateral Convention on Mutual Administrative Assistance in Tax Matters

Brief:

- **Multilateral Convention is a multilateral instrument which provides for a wide range of administrative assistance including exchange of information, assistance in collection of taxes, tax examination abroad, etc. It has been in force in India since 1st June, 2012. As on 1st May, 2015, the Multilateral Convention has been signed by 85 countries/jurisdictions and 64 countries/jurisdictions have deposited the instrument of ratification.**

SAARC Limited

Multilateral: Agreement

Brief:

- **SAARC Agreement is a multilateral agreement amongst SAARC countries and has been in force since 1st April, 2011 and has provisions for a wide range of administrative assistance**

Principles contained in Article 26 of the OECD Model Tax Convention

OECD Principles

- a) The “competent authorities” of the Contracting States are obliged to exchange information. The term “Competent Authority” is defined in the tax treaties as the Minister of Finance/Ministry of Finance or a person authorized by it. In India, JS (FT&TR-I) performs the role of competent authority for countries in North America (including Caribbean) and Europe, while JS (FT&TR-II) performs the role of competent authority for the rest of the world
- b) The information requested should be “foreseeably relevant” for
 - (i) carrying out the provisions of the DTAA or
 - (ii) administration and enforcement of the domestic laws concerning taxes of every kind and description imposed by the Contracting State or their political sub-divisions and local authorities.

In some of the DTAAAs, in place of the words “foreseeably relevant”, the word “necessary” is used. However, it is internationally accepted that these two terms broadly convey the same meaning.

OECD Principles

- (c) Exchange of information is not restricted by Article 1 of the OECD Model Convention. Article 1 states that the DTAA is applicable to persons who are residents of one or both of the Contracting States. Thus, as per Article 26, information about residents of third countries can be exchanged. Further, other information related to tax administration and compliance improvements, for example, risk analysis techniques or tax avoidance or evasion schemes, can also be exchanged under the provisions of Article 26 of the DTAA.
- (d) Exchange of information is also not restricted by Article 2 concerning taxes covered. Thus, information about indirect taxes, taxes levied by State Governments etc. can also be exchanged under DTAA's, if so agreed to by the Contracting States.
- (e) Any information received under the provisions of tax treaties shall be treated as secret in the same manner as information obtained under the domestic laws of that State. In India, section 138, read with section 280 of the Income-tax Act, governs the disclosure of taxpayer information obtained under domestic law and the same principles would govern information received under treaties also.

OECD Principles

- (f) In addition, the information received under the tax treaties shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution or deciding appeals in relation to taxes or to the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
- (g) The information received by a Contracting State may be used for other (non-tax) purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes such use.

OECD Principles

- (h) The Contracting States are not obliged to carry out administrative measures at variance with laws and administrative practice of either contracting state, to supply information which is not obtainable under the laws or in the normal course of the administration of either contracting state or to supply information which discloses any commercial secret or which would be contrary to public policy.
- (i) If information is requested by a Contracting State, the other Contracting State is obliged to use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes.
- (j) The Contracting States are obliged to provide information held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity including ownership interests.

Assistance in Collection of Taxes under Tax Treaties

Assistance in Collection of Taxes

Tax authorities have enough powers to enforce the collection of taxes owed by a taxpayer.

However, due to jurisdictional limitation, these powers cannot be exercised when the taxpayer has left the jurisdiction without paying the tax dues or has no assets within the jurisdiction that may serve to recover the debts.

These provisions provide the legal basis for rendering assistance by one Contracting State in the collection of tax owed to the other Contracting State.

The provisions for Assistance in Collection of Taxes are present in 48 out of 94 DTAA's and in 3 out of 16 TIEAs which are in force in India (As per the list annexed).

The Multilateral Convention and the SAARC Agreement also have provisions for assistance in collection of taxes. However, in the Multilateral Convention, the signatories can place a reservation against providing such assistance and several countries have put in such reservation.

Main Principles Article 27 of the OECD Model Tax Convention

Article 27 of the OECD Model

- The Contracting States are obliged to render assistance in collection of “revenue claims” which are amounts owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities. Thus, the scope of cooperation is very wide.
- The assistance is extended to interest, administrative penalties and costs of collection or conservancy related to such amounts.
- The “revenue claim” shall be collected by the requested State in accordance with the provisions of its laws applicable to enforcement and collection of its own taxes as if the revenue claim is of its own. The “revenue claim” should be enforceable under the law of the requesting State and it should be owed by a person who, at that time, cannot, under the law of that state, prevent its collection

Article 27 of the OECD Model

- Conservancy measures in accordance with provisions of its own law should also be taken by the requested State if a request is made in this regard as if the revenue claim is its own even if the revenue claim is not enforceable in the requesting State or is owed by a person who has a right to prevent its collection. However, the amount of claim should be quantified and evidenced by a statutory order or notice.
- The assistance is not restricted by Articles 1 and 2 of the Model DTAA and thus extends to taxes owed by residents of third countries and also in respect of taxes not covered by the DTAA, i.e., indirect taxes and taxes levied by State Governments
- The assistance is provided only when the requesting State has taken reasonable measures of collection or conservancy, as the case maybe, under its own laws or administrative practice.

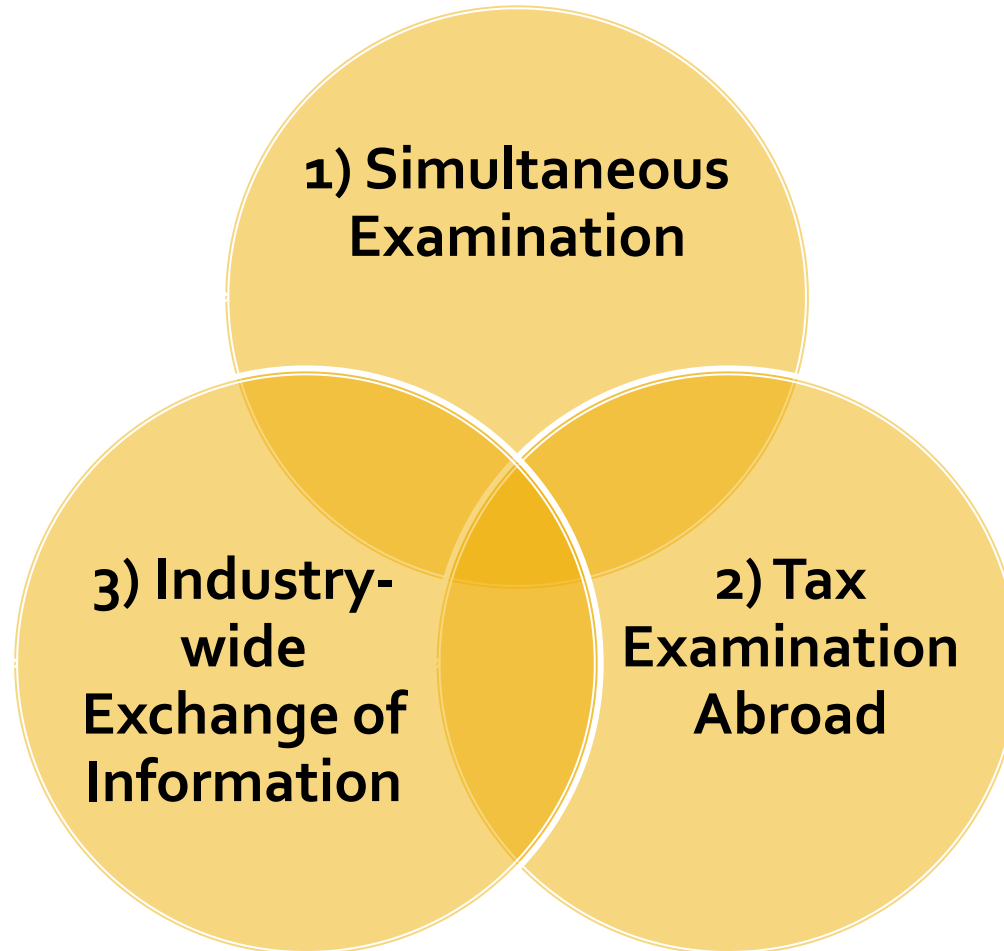
Spontaneous Exchange of Information

- Under the DTAAAs, information may also be exchanged on a spontaneous basis without making a specific request by the requesting country. This exchange may be made for example in cases where a Contracting State has acquired through certain investigations, information which it supposes to be of interest to the other State [*refer Para 9(c) of the Commentary to Article 26 of the OECD Model Tax Convention*].
- The OECD Commentary on the Model TIEA, however, states that the parties are not obliged to exchange information spontaneously and thus spontaneous exchange normally does not take place under TIEAs.

Multilateral Convention - "Spontaneous Exchange of Information" (Article 7)

Circumstances under which such information is exchanged:

- the first-mentioned Party has grounds for supposing that there may be a loss of tax in the other Party;
- a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Party which would give rise to an increase in tax or to liability to tax in the other Party;
- business dealings between a person liable to tax in a Party and a person liable to tax in another Party are conducted through one or more countries in such a way that a saving in tax may result in one or the other Party or in both;
- a Party has grounds for supposing that a saving of tax may result from artificial transfer of profits between entities belonging to the same groups of enterprises;
- information forwarded to the first-mentioned Party by the other Party has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Party.



Contd...

- **Simultaneous Examination** is an arrangement between two or more parties to examine simultaneously each in its own territory, the tax affairs of taxpayer(s) in which they have a common or related interest, with a view of exchanging any relevant information which they so obtain; Article 8 of the Multilateral Convention provides for simultaneous tax examinations
- **Industry-Wide Exchange of Information** is the exchange of tax information especially concerning a whole economic sector (e.g. the oil or pharmaceutical industry, the banking sector, etc.) and not taxpayers in particular.

Contd...

- **Tax Examination Abroad** in Article 9 of the Multilateral Convention allows for the possibility to obtain information through the presence of representatives of the competent authority of the requesting Contracting State. To the extent allowed by its domestic law, a Contracting State may permit authorised representatives of the other Contracting State to enter the first Contracting State to interview individuals or examine a person's books and records — or to be present at such interviews or examinations carried out by the tax authorities of the first Contracting State—in accordance with procedures mutually agreed upon by the competent authorities. Such a request might arise, for example, where the taxpayer in a Contracting State is permitted to keep records in the other Contracting State. This type of assistance is granted on a reciprocal basis. Countries' laws and practices differ as to the scope of rights granted to foreign tax officials. For instance, there are States where a foreign tax official will be prevented from any active participation in an investigation or examination on the territory of a country. There are also States where such participation is only possible with the taxpayer's consent.

Joint Audits

Joint Audits

- Under the provisions of tax treaties, Joint Audits are also possible which can be described as two or more countries joining to form a single audit team to examine an issues or transactions concerning one or more related taxable persons (legal entities or individuals) having cross-border business activities or cross-border transactions involving related affiliated companies in the participating countries, and in which the countries have a common or complementary interest. In such cases, the taxpayer makes joint presentations and shares information with the countries jointly, and the investigating team includes Competent Authority representatives from each country.
- The legal framework for conducting joint audits are the DTAAs and Multilateral Convention and the procedure for carrying out the same is described in the 2010 report on “Joint Audit” by the Forum on Tax Administration of the OECD.

Service of Documents

Service of Documents

- Under the Multilateral Convention and the SAARC Multilateral Agreement, the Contracting States/Parties have an obligation for “service of documents” including those relating to judicial decisions, which emanate from the applicant State and which relate to a tax covered by this Convention/Agreement. The aim of these provisions is to ensure, as far as possible, that documents such as notices of assessment or tax demand actually reach the taxpayer, in order to avoid enforcement steps being taken against a taxpayer who is genuinely unaware of the tax proceedings or claims against him.
- The Multilateral Convention, however, make it clear that notices of assessment, tax demands or other documents may, in the first instance, be sent to the taxpayer abroad by post or may be served on its representative in the jurisdiction. The administrative assistance for “service of documents” should be sought only in cases where a country regards the sending by post of official documents by another country to its residents as an infringement of its sovereignty or if there is genuine concern that the documents will not be delivered by post or could not be served on the authorized representative
- No specific provisions for service of documents under the DTAAAs and TIEAs.

Automatic Exchange of Information

AEOI

- Automatic Exchange of Information (AEOI) is the systematic and periodic collection and transmission of “bulk” taxpayer information by the source country to the country of residence of the taxpayer, without the latter country having to make a request for the same. The exchange of information by way of AEOI is permitted under the provisions of DTAAAs (unless specifically prohibited) and under the Multilateral Convention.

AEOI

- Many countries, including India, have been exchanging information automatically under the DTAAAs and Multilateral Convention with their treaty partners. However, as such exchange of information was not obligatory; there was no uniformity in the nature and type of information exchanged and further, there were no standards on the periodicity of exchange or on the technical solutions to be utilised for collection and transmission of information. Thus, the information exchanged automatically, was often of limited utility to the receiving country.

AEOI

- Single uniform and global standard, known as "Common Reporting Standard for Automatic Exchange of Information (CRS on AEOI)" has been developed by G20 and OECD countries. The CRS on AEOI has been endorsed by the G20 countries, including India, who have also given a call for its global implementation on a fully reciprocal basis by 2017 or 2018.
- The CRS on AEOI requires the financial institutions of the "source" jurisdiction to collect and provide information to their tax authorities about taxpayers "resident" in other jurisdictions, for transmission of the information on a bulk basis to the tax authorities of those resident jurisdictions.

Scope of CRS on AEOI

- (a) The financial information to be reported includes all types of investment income (including interest, dividends, income from certain insurance contracts and other similar types of income) and also includes account balances and sales proceeds from financial assets.
- (b) The financial institutions that are required to report under the CRS do not only include banks and custodians but also other financial institutions such as certain brokers, collective investment vehicles and insurance companies.
- (c) The accounts that need to be reported include accounts held by individuals and entities, including trusts and foundations, and the standard includes a requirement to look through passive entities, such as shell companies and trusts, to report on the individuals that ultimately control these entities

Scope of CRS on AEOI

- The tax authorities of the recipient country would be able to match the information so received with the information available in its databases, e.g., information submitted by taxpayers in their tax returns about the financial assets held abroad either in their own name or as beneficial owners and non-compliance will be identified
- The CRS on AEOI, when fully implemented on a global basis, would enable India to receive information from every country in the world, including from offshore financial centres and tax havens and would be the key to prevent international tax evasion and avoidance

**Country – Wise
Detail of DTAA
Regarding Exchange
of Information
(Article-26 in OECD/
UN / US Models)**

Sr	Country	Article No. in DTAA	Assistance In Collection Of Taxes	Date of Signing	Date of Notification	AY effective from
1	ALBANIA	27	YES	08.07.2013	04.12.2013	2014-15
2	ARMANIA	26	YES	31.10.2003	8.12.2004	2005-06
3	AUSTRALIA	XXVI	YES	25.07.1991	22.01.1992	1993-94
4	AUSTRIA (R)	26	NO	8.11.1999	20.09.2001	2002-03
5	BANGLADESH	XXVIII	YES	27.08.1991	08.09.1992	1993-94
6	BELARUS	27	YES	27.09.1997	17.07.1998	1999-00
7	BELGIUM (R)	26	YES	26.04.1993	19.01.2001	1999-00
8	BHUTAN	25	YES	04.03.2013	17.07.2014	2015-16
9	BOTSWANA	27	YES	08.12.2006	18.06.2008	2009-10
10	BRAZIL	26	NO	26.04.1998	31.03.1992	1994-95
11	BULGARIA	28	NO	26.05.1994	09.05.1996	1997-98
12	CANADA (R)	26	NO	11.01.1996	15.01.1998	1999-00
13	CHINA	26	NO	18.07.1994	05.04.1995	1996-97

Sr	Country	Article No. in DTAA	Assistance In Collection Of Taxes	Date of Signing	Date of Notification	AY effective from
14	COLOMBIA	26	YES	13.05.2011	07.07.2014	2015-16
15	CROATIA	26	YES	12.02.2014	06.02.2015	2015-16
16	CYPRUS	28	NO	13.06.1995	26.12.1995	1994-95
17	CZECH REPUBLIC (R)	27	YES	01.10.1998	13.12.1999	20001-02
18	DENMARK (R)	26	YES	08.03.1989	25.09.1989	1990-91
19	ETHIOPIA	26	NO	25.05.2011	15.10.2012	2013-14
20	ESTONIA	26	YES	19.09.2011	25.07.2012	2014-15
21	FINLAND (R)	25	YES	15.01.2010	19.04.2010	2011-12
22	FIJI	26	YES	30.01.2014	15.05.2014	2015-16
23	FRANCE	28	NO	29.09.1992	10.07.2000	2001-12
24	GEORGIA	27	YES	24.08.2011	06.01.2012	2013-14
25	GERMANY (R)	26	NO	26.07.1989	02.03.1990	1985-89

Sr	Country	Article No. in DTAA	Assistance In Collection Of Taxes	Date of Signing	Date of Notification	AY effective from
26	GREECE	XVIII	NO	11.02.1965	17.03.1967	1964-65
27	HUNGARY (R)	26	NO	03.11.2003	31.03.2005	2007-08
28	ICELAND	27	YES	23.11.2007	05.02.2008	2008-09
29	INDONESIA	26	NO	07.08.1987	04.02.1988	1989-90
30	IRELAND	26	NO	06.11.2000	20.02.2002	2003-04
31	ISRAEL	27	NO	29.01.1996	26.06.1996	1995-96
32	ITALY(R)	27	NO	19.02.1993	20.04.1996	1997-98
33	JAPAN (R)	26	NO	07.03.1989	01.03.1990	1991-92
34	JORDAN	26	YES	20.04.1999	08.12.1999	2001-02
35	KAZAKSTAN	27	YES	09.12.1996	31.10.1997	1999-00
36	KENYA	28	NO	12.04.1985	02.08.1985	1985-86
37	KOREA (SOUTH)	27	NO	19.07.1985	20.12.1990	1987-88
38	KUWAIT	26	YES	15.06.2006	27.11.2007	2008-09
39	KYRGYZ REPUBLIC	26	YES	13.04.1999	07.02.2001	2002-03

Sr	Country	Article No. in DTAA	Assistance In Collection Of Taxes	Date of Signing	Date of Notification	AY effective from
40	LATVIA	26	YES	18.09.2013	28.12.2013	2014-15
41	LIBYA	23	NO	02.03.1981	01.07.1982	1983-84
42	LUXEMBOURG	27	YES	02.06.2008	12.10.2009	2010-11
43	LITHUANIA	27	YES	26.07.2011	25.07.2012	2014-15
44	MACEDONIA		YES	17.12.2013	12.09.2014	2015-16
45	MALAYSIA (R)	26	NO	14.05.2001	12.10.2004	2005-06
46	MALTA	27	NO	28.09.1994	22.11.1995	1997-98
47	MAURITIUS	26	NO	24.08.1982	06.12.1983	1983-84
48	MEXICO	26	YES	10.09.2007	26.10.2010	2011-12
49	MONGOLIA	27	NO	22.02.1994	16.09.1996	1995-96
50	MONTENEGRO	28	NO	08.02.2006	07.01.2009	2010-11
51	MOROCCO	26	YES	30.10.1998	15.03.2000	2001-02
52	MOZAMBIQUE	26	YES	30.09.2010	31.05.2011	2012-13
53	MYANMAR	26	NO	02.04.2008	18.06.2009	2010-11
54	NAMIBIA	27	NO	15.02.1997	08.03.1999	2000-01

Sr	Country	Article No. in DTAA	Assistance In Collection Of Taxes	Date of Signing	Date of Notification	AY effective from
55	NEPAL (R)	26	YES	27.11.2011	12.06.2012	2014-15
56	NETHERLANDS (A)	26	NO	30.07.1988	30.08.1999	1997-98
57	NEW ZEALAND	26	NO	17.10.1986	27.03.1987	1988-89
58	NORWAY (R)	27	YES	02.02.2011	19.06.2012	2014-15
59	OMAN	27	NO	02.04.1997	23.09.1997	1999-00
60	PHILIPPINES	27	NO	12.02.1996	25.03.1996	1996-97
61	POLAND (R)	27	YES	21.06.1989	12.02.1990	1991-92
62	PORTUGUESE REPUBLIC	26	YES	11.09.1998	25.08.2000	2001-02
63	QATAR	26	YES	07.04.1999	08.02.2000	2001-02
64	ROMANIA	28	YES	10.03.1987	08.02.1988	1989-90
65	RUSSIAN FEDERATION	26	NO	25.03.1997	21.08.1998	2000-01
66	SAUDI ARABIA	25	NO	25.01.2006	17.10.2006	2007-08
67	SERBIA	28	NO	08.02.2006	07.01.2009	2010-11
68	SINGAPORE (R)	28	NO	24.01.1994	08.08.1994	1995-96

Sr	Country	Article No. in DTAA	Assistance In Collection Of Taxes	Date of Signing	Date of Notification	AY effective from
69	SLOVAK REPUBLIC	27	NO	27.01.1986	25.05.1987	1988-89
70	SLOVENIA	26	NO	13.01.2003	31.05.2005	2006-07
71	SOUTH AFRICA	25	YES	04.12.1996	21.04.1998	1999-00
72	SPAIN	28	NO	08.02.1993	21.04.1995	1997-98
73	SRI LANKA (R)	27	YES	27.01.1982	19.04.1983	1981-82
74	SUDAN	26	YES	26.10.2003	01.11.2004	2005-06
75	SWEDEN	27	YES	24.06.1997	17.12.1997	1999-00
76	Switzerland	26	NO	02.11.1994	21.04.1995	1996-97
77	SYRIA	26	NO	06.02.1984	25.06.1985	1983-84
78	TAIWAN	26	YES	12.07.2011	02.09.2011	2013-14
79	TANZANIA (NEW)	26	YES	27.05.2011	16.02.2012	2013-14
80	TAJIKISTAN	26	YES	20.11.2008	16.07.2009	2010-11
81	THAILAND	26	NO	22.03.1985	27.06.1986	1987-88
82	TRINIDAD AND TOBAGO	26	YES	08.02.1999	26.12.1999	2001-02

Sr	Country	Article No. in DTAA	Assistance In Collection Of Taxes	Date of Signing	Date of Notification	AY effective from
83	TURKEY	24	NO	31.01.1995	03.02.1997	1995-96
84	TURKMENISTAN	27	YES	25.02.1997	25.09.1997	1999-00
85	U.A.E	28	NO	20.04.1992	18.11.1993	1995-96
86	UAR (EGYPT)	XXVII	NO	20.02.1969	30.09.1969	1969-70
87	UNITED KINGDOM (R)	28A	YES	25.01.1993	11.02.1994	1995-96
88	UGANDA	26	YES	30.04.2004	12.10.2004	2005-06
89	UKRAINE	27	YES	07.04.1999	11.01.2002	2002-03
90	USA	28	NO	12.09.1989	20.12.1990	1992-93
91	URUGUAY	27	YES	08.09.2011	21.06.2013	2014-15
92	UZBEKISTAN	28	NO	29.07.1993	13.11.1996	1997-98
93	VIETNAM	27	NO	07.09.1994	28.04.1995	1997-98
94	ZAMBIA	27	NO	05.06.1981	18.01.1984	1979-80

Summary of Administrative Assistance under different Tax Treaties


Types of administrative assistance expressly mentioned or permitted under the treaties	DTAAs based on OECD/UN Model Tax Convention	OECD Model TIEA	Multilateral Convention	SAARC Multilateral Agreement
Exchange on Request	Yes	Yes	Yes	Yes
Assistance in Collection of Taxes	Yes	No	Yes	Yes
Spontaneous Exchange of Information	Yes	No	Yes	Yes
Simultaneous Examination	Yes	No	Yes	Yes
Tax Examination Abroad	Yes	Yes	Yes	Yes
Industry Wide Exchange of Information	Yes	No	Yes	Yes
Joint Audits	Yes	No	Yes	Yes
Service of Documents	No	No	Yes	Yes
Automatic Exchange of Information	Yes	No	Yes	Yes

**Agreement on the Swiss
banks' code of conduct with
regard to the exercise of due
diligence**

[CDB '08]

SwissBanking

Contracting Parties



Swiss Bankers
Association
("SBA")

Signatory
Banks

Objectives

To preserve the good name of the Swiss banking community, nationally and internationally,

To lay down rules ensuing business conduct that is beyond reproach when establishing business relationships and in the area of banking confidentiality, and

To make an effective contribution to combating money laundering and terrorist financing

SCOPE OF THE CODE

Signatory Banks

Securities Dealer

Branches domiciled in
Switzerland

Relationship with other regulations

- Agreement doesn't modify the obligation to observe banking confidentiality.
- It cannot depart from current legal practice in the field of international law
- It cannot modify provisions under civil law governing relations between banks and their contracting partners.
- Cannot incorporate into Swiss law the application of foreign legislation in currency, fiscal and economic matters, or declare such legislation to be applicable to Swiss banks

Verifying The Identity Of The Contracting Partner

The banks undertake to verify the identity of the contracting partner when establishing business relationships such as:

- a) opening of accounts or passbooks;
- b) opening securities accounts;
- c) entering into fiduciary transactions;
- d) renting of safe-deposit boxes;
- e) entering into management agreements for assets deposited with third parties;
- f) the execution of transactions involving trading in securities, currencies and precious metals as well as other commodities, where the amount concerned exceeds CHF 25,000;
- g) cash transactions exceeding the amount of CHF 25,000.

NOTE: IDENTIFICATION ONCE DONE NEED NOT BE REPEATED

When The Contracting Partner Is An Individual

- **Identification during a face-to-face meeting**

During a face-to-face meeting, the bank must identify the contracting partner by inspecting and photocopying an official identification document with a photograph.

- **Identification when a business relationship is established by correspondence**

Where a business relationship is established by correspondence or via the internet, the bank must verify the identity of the contracting partner by obtaining an authenticated copy of an identification document and checking the contracting partner's address.

- **Bodies authorised to provide authentication**

A copy of an identification document may be authenticated by

- a) a branch, representative office or group company of the bank,
- b) a correspondent bank or another financial intermediary recognized for this purpose by the bank establishing the business relationship,
- c) a notary or another public body that customarily issues such authentications.

When The Contracting Partner Are Legal Entities And Partnerships

Contd...

- Identification based on an entry in the Swiss Commercial Register or an equivalent foreign register
- Identification either by means of a written extract from a database maintained by the supervisory authority or a trustworthy private individual or from the articles of association
- In the case of legal entities and partnerships, the identity of the individuals establishing the business relationship must also be checked.
- When establishing a business relationship with legal entities, the bank must also take note of and document the contracting partner's power of attorney arrangements.
- Identification of ordinary partnerships, companies in the process of foundation and trustees

Contd...

- In the case of ordinary partnerships, the persons recognised as authorised signatories vis-à-vis the bank must be identified.
- In the case of companies that are in the process of foundation, the persons establishing the business relationship must be identified.
- In the case of trust relationships, the trustee must be identified. The trustee must also confirm in writing (e.g. by means of Form T), that he/she is authorized to establish a business relationship with the bank on behalf of the trust.
- *If the identity of a legal entity as contracting partner is publicly known, this fact may be documented. The identity is deemed to be publicly known especially if the contracting partner is a public company or is directly or indirectly associated with a public company.*

Contd...

- It is not necessary to formally verify the identity of a contracting partner when
 - an account, securities account or passbook is opened in the name of a **minor** by an adult third party, provided that the assets deposited at the outset do not exceed CHF 25,000; however, the identity of the adult opening the account must be verified
 - a rental surety account is opened for a rented property located in Switzerland.
- In exceptional cases where the identity of the contracting partner cannot be verified in the prescribed manner, for instance because an individual has no identification documents, the bank may verify the identity in another expedient manner by inspecting other credentials or obtaining corresponding attestations from public authorities or, in the case of a legal entity, obtaining the most recent certificate from a recognised firm of auditors.

Establishing The
Identity Of The
Beneficial Owner

Contd...

- The bank is entitled to assume that the contracting partner and the beneficial owner are one and the same. If the contracting partner is not the same as the beneficial owner, or if this is in doubt, the banks must require the contracting partner to complete Form A, thereby providing a written declaration of the identity of the beneficial owner.
- This applies to:
 - a) opening accounts or passbooks;
 - b) opening securities accounts;
 - c) entering into fiduciary transactions;
 - d) entering into management agreements for assets deposited with third parties;
 - e) the execution of transactions involving trading in securities, currencies and precious metals as well as other commodities, where the amount concerned exceeds CHF 25,000

Contd...

- In the case of cash transactions as defined in Art. 2 involving amounts in excess of CHF 25,000, the contracting partner must always be required to provide a declaration as to the identity of the beneficial owner. The banks must retain a written record of the contracting partner's declaration. The use of Form A is optional.
- If the beneficial owner of a business relationship is an ordinary partnership or association that is not entered in the commercial register, no declaration as to the identity of the beneficial owner need be obtained provided that the beneficial ownership of the ordinary partners or group is documented in writing and the credits booked under this relationship do not exceed CHF 25,000.

CLARIFICATION ABOUT BENEFICIAL OWNER

- The assumption that the contracting partner and the beneficial owner are one and the same will cease to apply if following unusual circumstances are observed:
 - a) where a power of attorney is granted to an individual or entity that does not recognisably have a sufficiently close link to the contracting partner; this does not include powers of attorney for the management of assets which merely allow for transactions within a business relationship and do not permit withdrawals of funds;
 - b) where the assets deposited or promised are disproportionate to the financial standing of the contracting partner, insofar as the bank is aware of their financial standing;
 - c) or where other unusual circumstances are observed during contact with the contracting partner.

Establishing a business relationship with an individual by correspondence

- If a business relationship is established with an individual by correspondence, a declaration on Form A must invariably be provided, except in the special cases discussed previously.

Information needs to be documented

If the contracting partner declares that the beneficial owner is a third party, the latter's following information must be documented using FORM-A:

- last name,
- first name,
- date of birth,
- nationality,
- address and country of domicile,
- the company name and address and country of domicile in the case of a legal entity.

FORM-A

Signing of Form-A

- Form A may be signed by the contracting partner or their designated signatory authorised by means of a written specific or general power of attorney. In the case of legal entities, Form A or the power of attorney must be signed by authorised signatories named in the company's documentation.
- If serious doubts persist concerning the accuracy of the contracting partner's declaration and these cannot be dispelled by further clarification, the bank must refuse to establish the business relationship or execute the transaction.
- The banks may use forms of their own which reflect their own particular requirements. The content of these forms must be equivalent to that of the model form as per the agreement.

Banks, other financial intermediaries as contracting partners

- Banks and securities dealers having their registered office in Switzerland or abroad are not normally required to provide a declaration of beneficial ownership. The definition of such entities is governed by the specific laws of their country of domicile. However, declarations of beneficial ownership are required when a bank or securities dealer that is not subject to appropriate supervision and regulation in respect of money laundering and terrorist financing holds sub-accounts on behalf of unnamed clients.

- Other financial intermediaries resident or having their registered office in Switzerland are not required to provide a declaration of beneficial ownership. The same applies to other financial intermediaries domiciled outside Switzerland that are subject to appropriate supervision and regulation in respect of combating money laundering and terrorist financing. The existence of appropriate supervision and regulation in respect of money laundering and terrorist financing may also be assumed if a foreign financial intermediary is part of a company subject to consolidated supervision where the parent company is domiciled in a country that exercises appropriate supervision and regulation in respect of combating money laundering and terrorist financing.

Duty to document procedures

- The bank must ensure that the process of identifying the beneficial owner is documented adequately and consistently.
- This duty also includes ensuring that receipt of the documents used to identify the beneficial owner by the bank, or their availability in the bank's system, is fully documented.

Individuals and entities that are bound by professional confidentiality

- Banks may waive the identification of beneficial owners of accounts or securities accounts held by lawyers or notaries licensed in Switzerland or firms of lawyers or notaries organised as a company on behalf of their clients provided they confirm to the bank in writing that
 - a) they are not themselves the beneficial owners of the assets deposited and
 - b) they are subject to the corresponding cantonal and federal legislation in their capacity as lawyers or notaries and
 - c) they are bound by professional confidentiality (Art. 321 of the Swiss Penal Code) in respect of the assets deposited and
 - d) the account/securities account is used solely for the purposes of their activity as lawyers or notaries.
- The declaration for the same is provided in FORM-R

Prohibition of active assistance in tax evasion and similar acts

Prohibition of active assistance in tax evasion and similar acts

Banks must not provide any assistance to their contracting partners in acts aimed at deceiving Swiss or foreign authorities, particularly tax authorities, by means of incomplete or otherwise misleading attestations.

- Banks may not provide incomplete or otherwise misleading attestations to the contracting partner itself or, at the latter's request, directly to authorities in Switzerland or abroad.
- Banks may not alter routinely issued records, such as account and securities account statements, credit and debit advices or statements concerning foreign exchange transactions, coupon and stock exchange transactions, for the purpose of deception.

Prohibition of active assistance in tax evasion and similar acts

An attestation is misleading if the facts are presented in an untruthful manner to deceive the authorities, for example

- a) by showing false dates, false amounts or fictitious rates/prices or by issuing credit and debit advices showing false information about the persons credited or debited;
- b) by attesting to fictitious claims or debts (regardless of whether or not the attestation corresponds to the bank's accounts)
- c) by allowing the contracting partner to use the bank's nostro accounts if this enables the contracting partner to reduce its tax liability.



information exchange

**THANK
YOU...!!**

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