

## The Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS)

The FATCA and CRS are global regulations or standards developed by Governments world over, to mandate Automatic Exchange of Information regarding individual's or entities' Financial Assets in different countries so as to avoid tax evasion and to improve global tax compliance.

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	What is FATCA	FATCA (The Foreign Account Tax Compliance Act) was introduced by the U.S. Department of Treasury and Internal Revenue Service in 2010 to encourage better tax compliance by preventing U.S. persons from using banks and other financial organizations to avoid taxation on their income and assets . FATCA promotes cross-border tax compliance by implementing an international standard for the automatic exchange of information related to US taxpayers. FATCA regulations require tax authorities to obtain detailed account information for US taxpayers on an annual basis. While the primary goal is to gain information about US persons, FATCA imposes tax withholding where the applicable documentation and reporting requirements are not met. FATCA would help USA to detect and prevent offshore tax evasion by U.S. persons by identifying them and collecting the appropriate tax on their holding financial assets outside the US.
	What is CRS	The Common Reporting Standard (CRS) is an information standard for the Automatic Exchange Of Information (AEOI) regarding bank accounts on a global level, between tax authorities, which the Organisation for Economic Co-operation and Development (OECD) developed in 2014. Its purpose is to combat tax evasion. The goal of CRS is to allow tax authorities to obtain a clearer understanding of financial assets held abroad by their residents, for tax purposes. More than 96 countries have agreed to share information on residents' assets and incomes in conformation with reporting standards. Under CRS, different countries Collect and report information about account held by residents in other countries to their tax authorities through Automatic Exchange of Information. Information relates to individuals, shell companies and trusts having beneficial ownership or interest in the "resident" countries.
	Whether India is bound , for reporting under FACTA and CRS ?	Yes. As India is a signatory in : <ol style="list-style-type: none"> <li>1. The Inter Governmental Agreement (IGA) signed between India and US on 9th July 2015.</li> <li>2. The Common Reporting Standard (CRS) on Automatic Exchange of Information (AEOI) Agreement signed by India with the G20 and OECD countries on June 3, 2015</li> </ol> In India necessary legislative changes have been made through Finance (No.2) Act, 2014, by amending section

		285BA of the Income Tax Act, 1961. Income Tax Rules, 1962 were amended by inserting Rules 114F to 114H and Form 61B to provide a legal basis for the Reporting Financial Institutions for maintaining and reporting information.
	Reportable Accounts	<p>FOR FATCA : One or more specified U.S. persons (U.S. person means an individual, being a citizen or resident of the USA, OR a partnership or corporation organized in the USA, OR a trust OR an estate of a decedent who was a citizen or resident of the USA)</p> <p>FOR CRS : One or more persons that is a resident of any country or territory outside India (except USA) under the tax laws of such country</p>
	What to report ?	<p>In case of an individual, the name, address, Taxpayer identification number and date and place of birth of each reportable person.</p> <p>In case of Non-individual account holders, the above mentioned information of the controlling persons will have to be submitted.</p>
	Whom to report ?	Information regarding Reportable persons is to be reported to Central Board of Direct Taxes (CBDT), every calendar year. Reporting Financial Institutions shall review their Financial Accounts, to identify Reportable Accounts, by applying due diligence rules and then report the relevant information in respect of identified Reportable Accounts in Form 61B
	Reportability under FATCA/CRS :	<p>FATCA legislation will affect both individual and non-individual customers who are treated as 'U.S.persons' for U.S. tax purposes. The FATCA legislation will also affect certain types of entities with beneficial owners/ controlling persons from U.S. An account having U.S. indicia like U.S place of birth, U.S. address etc. does not necessarily mean that the account would be reported.</p> <p>With respect to CRS, the coverage would extend to account holders/ beneficial owners or controlling persons of entities, being tax residents of any of the signatory countries.</p>
	Reportable Asset under Sec 295 of IT Act 1963, Rules 114G and 114 H	<ul style="list-style-type: none"> <li>• Financial account-any commercial, checking, savings, time or thrift account, CD, investment certification, certificate of indebtedness or other similar instruments held by a bank or insurance company.</li> <li>• Insurance contract.</li> <li>• Security viz. shares/ stock, bond, debenture or other evidence of indebtedness</li> </ul>
	The term United States person ,for the purpose of identification under FATCA (Other than US Citizens) means	<p>a . An individual, being a citizen / resident / Green Card Holder of the United States of America;</p> <p>b. Partnership or corporation organized in the United States of America or under the laws of the United States of America or any State thereof;</p> <p>c. A trust if: i. a court within the United States of America would have authority under applicable law to render orders or judgments concerning substantially all issues regarding</p>

		<p>administration of the trust; and ii. one or more U.S. persons have the authority to control all substantial decisions of the trust;</p> <p>d. An estate of a decedent who was a citizen or resident of the United States of America.</p>
	Tax Identification Number (TIN) OR Functional Equivalent of TIN	<ol style="list-style-type: none"> <li>1. TIN is the Tax Payer Identification Number issued by the US Tax authorities,</li> <li>2. Functional Equivalent of TIN includes the following: A social security/insurance number, citizen/personal identification/services code/national identification number, a resident / population registration number, Alien card number, etc, issued by any country other than the US.</li> </ol>
	What is a Controlling Person, in case of entities	<p>Controlling person means the natural person who exercises control over an entity and includes a beneficial owner as determined under sub-rule (3) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005.</p> <p>•In the case of a trust, it means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, the said expression means the person in equivalent or similar position;</p>
	If one or more of the 7 indicators for identifying a US person matches with my details, but I am not a US citizen, would the Bank still share my details with US?	No, before ascertaining your tax residency status, bank will not provide any information to US/any other country. This is why bank obtains Self Certification/Documents. If it is verified that that you are not tax resident of US or any other country, bank will not part with any information to anyone.
	No Indicator matches, but I am a US citizen, how the Bank will capture the details ?	Bank obtains the FATCA declaration (extended to CRS as well) on tax residency of account holders. This document is a legally valid declaration and bank will rely upon that information
	I am not a US Citizen while opening the account, but later on becomes. How the Bank will cover ?	At the time establishing an account relation , the Bank obtains a declaration stating that the customer is not a reportable person and the bank will rely upon the details submitted by you. Further, the customer needs to update the information regarding change of status if any. and if the customer has not offered/ submitted any updated information to bank about his/her tax residency/citizenship etc., onus of its implications will remain on the customer
	What is the responsibility of Banks on FATCA/CRS	The Inter Governmental Agreement signed on 9 July 2015 between USA and India made it mandatory for the banks to provide necessary information to the Indian Tax Authorities, which will then be transmitted to USA periodically. Banks are required to provide information about accounts held with them by USA persons or entities controlled by USA persons.
	Joint Account	FATCA/CRS will be enforced on US person/tax resident of

	between US Person and a Non US Person	country outside India only and not on any other person who is tax resident of India.
	Account Holder is a US Person, but the money in the account is not from US Origin	Under FATCA/CRS, banks to provide only information about accounts held with them by USA persons or entities controlled by USA persons. Banks are under no obligation to verify the source of funds in the account.
	Is there any exemption	Under extant Inter Governmental Agreement, certain categories of accounts are exempted from reporting. Accounts with balance below the threshold limit (US\$50,000) are subject to non reporting.
	Would the Bank deduct tax from my account and remit to US or other countries?	No, there is no such obligation has been imposed on banks in extant Inter Governmental Agreement.
	What if the Customer does not provide any details required under FATCA/CRS ?	Under provisions of section 114H (8), bank may close down the account. However, the details of such accounts will be informed to the CBDT under category of "Recalcitrant Accounts".
	Whether FATCA/CRS is applicable for all financial institutions ?	Yes. All Banks and other Financial Organizations will be covered under provisions of FATCA/CRS.ESAF Small Finance Bank is committed to be fully FATCA/CRS compliant while onboarding customers.

The applicant will have to mandatorily comply with the FATCA norms for onboarding.