

CURRENT ISSUES IN INDIA REGARDING UNDECLARED ASSETS

Voluntary Disclosures, Panama Papers, FATCA and CRS

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• 1997 Voluntary Disclosure of Income Scheme

- Only targeted undisclosed assets and income within India
- \$5B of assets disclosed – yielded \$1.5B in taxes (30% penalty rate)

India Voluntary Disclosure Schemes

Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

- Three-month compliance window from 1 July to 30 September 2015
- Required declarants pay 30% each for penalty (assets) and tax (income) on the disclosed amounts.
- Govt originally estimated \$45B of assets would be disclosed
- Only 638 declarants with average disclosure of under \$1M – Total \$632M disclosed
- No immunity from other laws – Anti-Money Laundering; Foreign Currency Controls

India Voluntary Disclosure Schemes



Panama Papers



Panama Papers



Panama Papers

Model 1 (Reciprocal) IGA

Signed July 2015

FFIs report U.S. accounts to ITO

Register with IRS for GIIN

<https://apps.irs.gov/app/fatcaFfiList/flu.jsf>

So far 1,005 Indian FFIs have registered
Banks; Mutual Funds; Brokerages; LICs
Many private trusts **but no HUFs**

FATCA in India

Early Adopter Group

Has signed the Multilateral Competent Authority Agreement and domestic legislation has been introduced

Start Compliance in 2016 and First Exchanges by 2017

2017 Tax Haven Jurisdictions

BVI; Cayman; Isle of Man; Mauritius

2017 Countries

Most European countries, primarily United Kingdom

2018 Countries

Australia; Canada; Hong Kong; Singapore; Switzerland

CRS in India

Unknown Accounts

Known but POA Accounts

Historic Transferred Accounts

HUF Accounts

FATCA/CRS in India – Specific Problems

Unknown Accounts

Huge percentage use Indian address and PAN

Known but POA Accounts

NRO/NRE easy to identify but not Resident accounts

FATCA/CRS in India – Specific Problems

FATCA Regulations on Historic Accounts

Any account in existence July 1, 2014 onwards over \$50,000

FATCA/CRS in India – Specific Problems
Historic Transferred Accounts

What is a HUF under Indian Law?

Usually for ancestral property such as a family home
But often have bank accounts and portfolio accounts

Created upon initial inheritance resulting from patriarch's death
Oldest Son is usually Kartha, although Daughters now eligible
Children, Grandchildren and Great-grandchildren are Co-Parcenors
Wives of Co-Parcenors are Members, but not Husbands
Only Co-Parcenors have partition, but not renunciation, rights

Separate taxable entity for Income Tax purposes

FATCA/CRS in India – Specific Problems

HUF Accounts

What is a HUF under FATCA?

Definition of FFI

- Accepts deposits in the ordinary course of a banking or similar business (e.g. a bank)
- Holds, as a substantial part of its business, financial assets for the account of others (e.g. a custodian)
- Is engaged, or holds itself out as being engaged, in the business of investing, reinvesting, or trading in financial instruments, including derivative contracts (e.g. mutual funds, hedge funds, private equity funds)
- An insurance company that issues annuities or cash value insurance policies
- **Under IGA – an NFFE with a managed account**

FATCA/CRS in India – Specific Problems

HUF Accounts

What is a HUF under CRS?

Definition of Reporting FI

- Depository Institutions
- Custodial Institutions
- Investment Entities
- Specified Insurance Companies

Relevant Category of Non-Reporting FI

- Trustee Documented Trust

FATCA/CRS in India – Specific Problems
HUF Accounts

What is a HUF under CRS?

CRS generally applies to trusts when:

- (1) A trust is itself a Reporting FI; or
- (2) Is a NFE which has a financial account with a Reporting FI.

A trust is generally classified as a Reporting FI if:

- (1) The trust's gross income is primarily attributable to investing, reinvesting, or trading in financial assets, and
- (2) The trust is managed by another entity which is a FI.

FATCA/CRS in India – Specific Problems
HUF Accounts

What is a HUF under 7701 Entity Classification Regs?

- Eligible Entity or Not
 - Corporation - possibly
 - Partnership – possibly
 - Default classification depends on creation date
- Trust
 - Business Trust?
 - Grantor – most likely not
 - Non-Grantor - probably

FATCA/CRS in India – Specific Problems
HUF Accounts

THANK YOU QUESTIONS?

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