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FATCA and CRS

Brokers perspective

February 09, 2016



Major tax issues and Budget expectations

Reduction of STT and clarify around stamp duty

Removal of anomaly created on taxation of commodity derivatives post merger of FMC with SEBI

Impact of ICDS on valuation of derivatives

Clarity on 'principal business' for treating share trading as speculative or normal profits/losses

Treatment of gains as business profits or capital gains

Continuing current concessional tax regime for capital gains

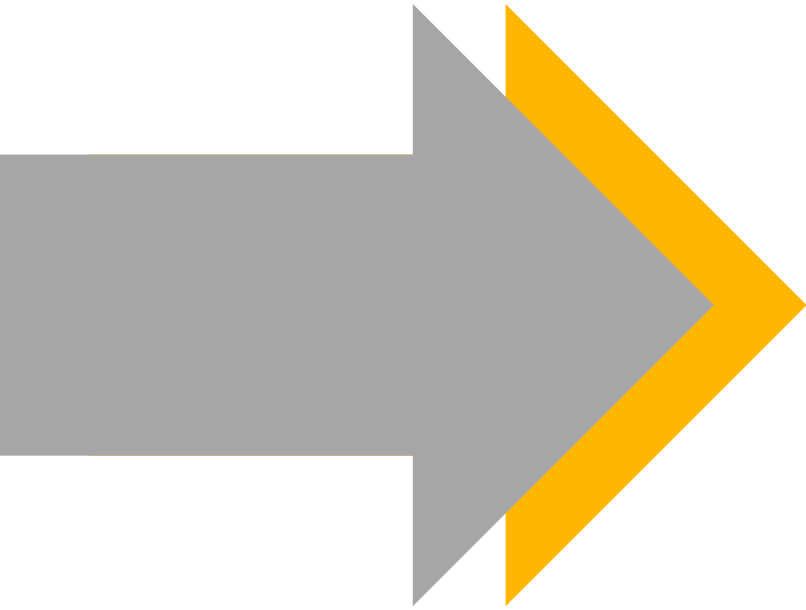
Clarity on Masala INR bonds, WHT, currency gains and overseas trading

Impact of Goods and services tax

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 - ✓ CRS – The New start!
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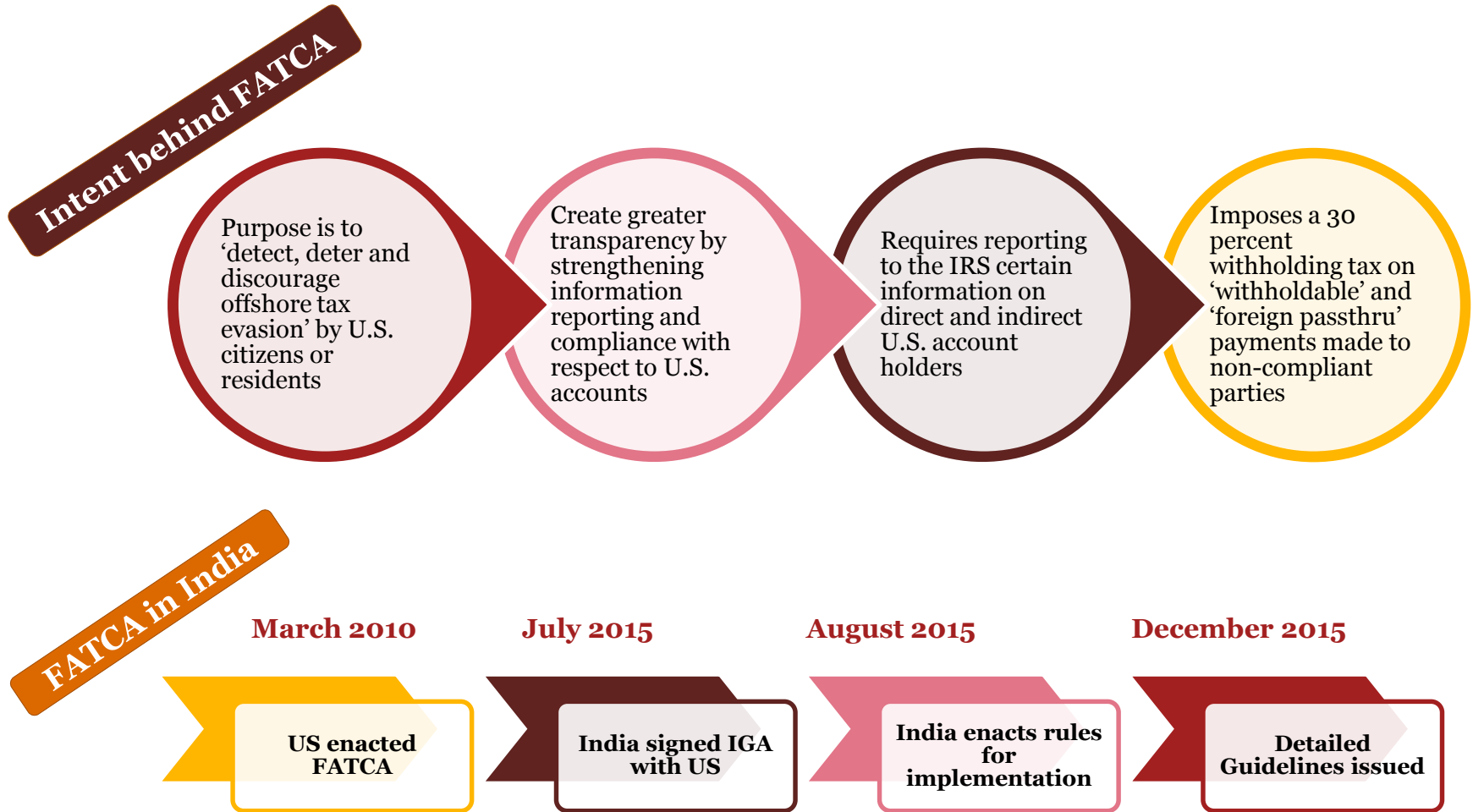




FATCA & CRS story in India



FATCA Indian Journey so far!



CRS – A New Start!



Impact of FATCA so far!

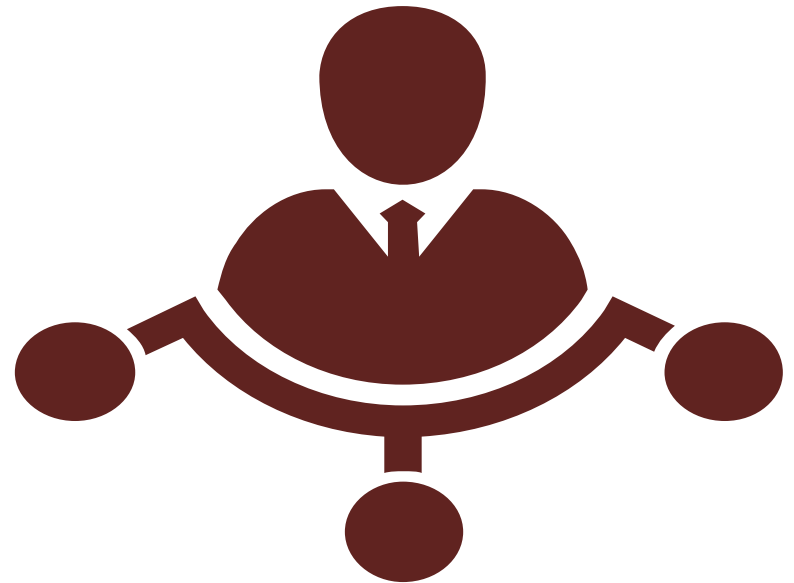
Record number renounce US citizenship, green cards over tax laws

Since passing of FATCA, U.S. has collected more than \$13.5 billion in taxes and penalties

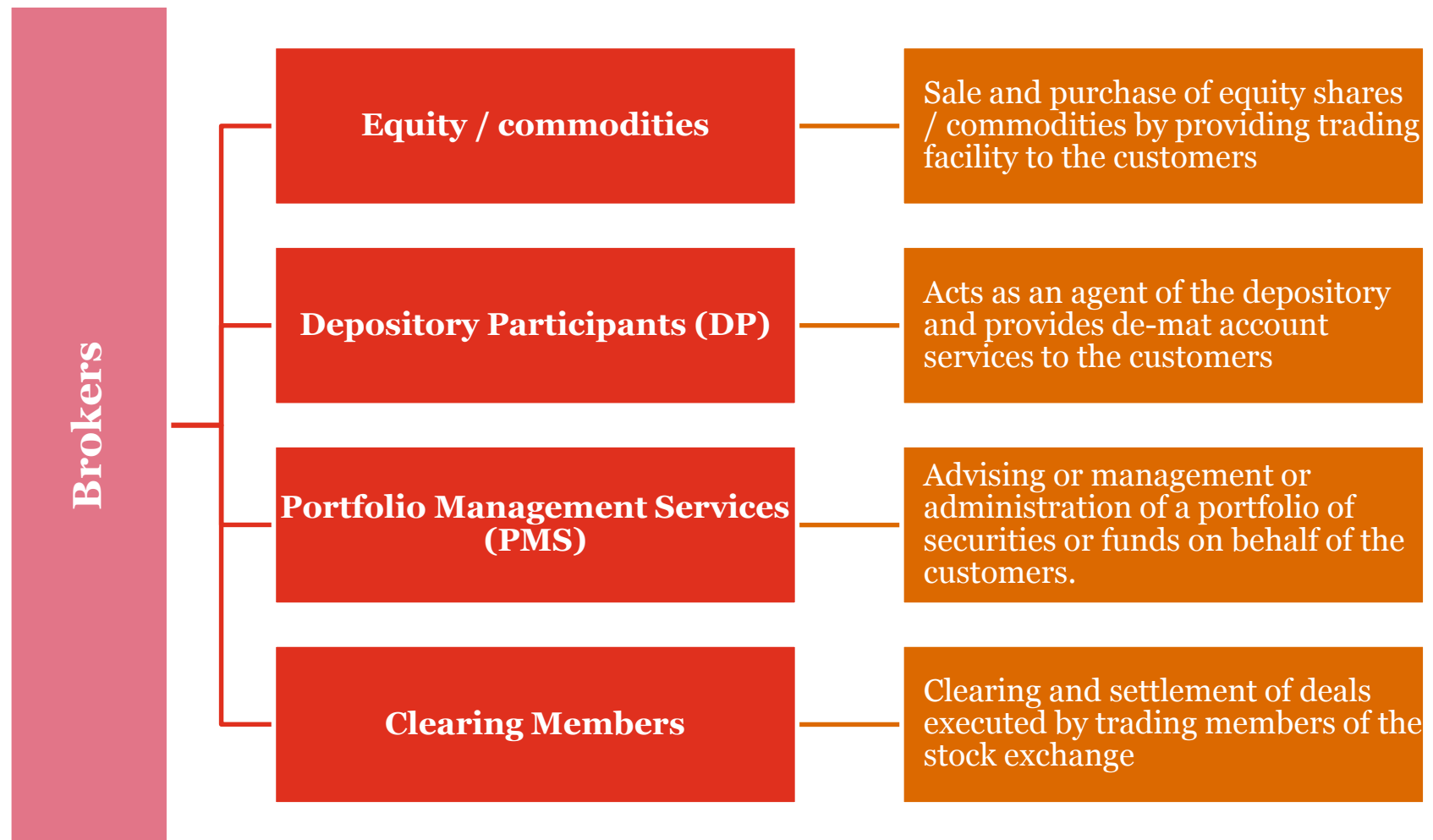
95 global institutions have been blacklisted by US IRS for nondisclosure



Overview of Broking Industry



Indian Broking Market and Segments

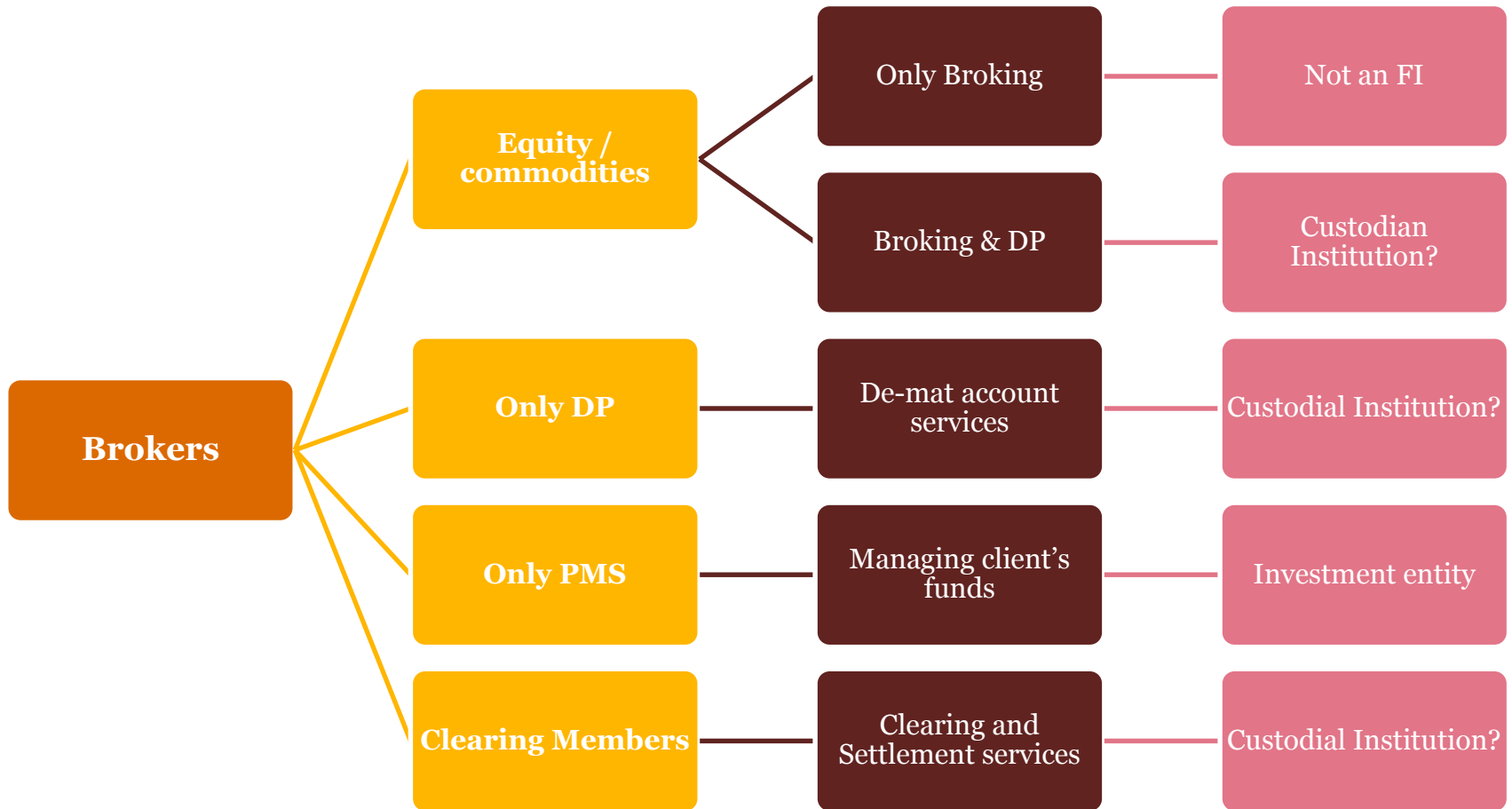




***FATCA & CRS
to Broking
Industry***



Entity classification



Specific clarification on applicability of exemption awaited!



Global Classification

Singapore



- Brokers are treated as custodial institutions where they hold legal title of the securities on behalf of the customer
- Executing brokers may be excluded where they are not holding legal title of the securities (exception securities held on account of failed trades not treated as financial account)

United Kingdom



- Execution only brokers that simply executes trading instructions and does not hold assets on behalf of others is not treated as custodial institution and investment entity
- Holding securities on account of failed trades or error trades does not impact the exemption

Preliminary analysis of global FATCA regulations provide a view that brokers may qualify as custodial institutions where they hold legal title of the securities

Compliance requirements

Registration

US IRS:

- RFIs having US reportable accounts to obtain a GIIN
- NRFI having local client base also need to obtain GIIN

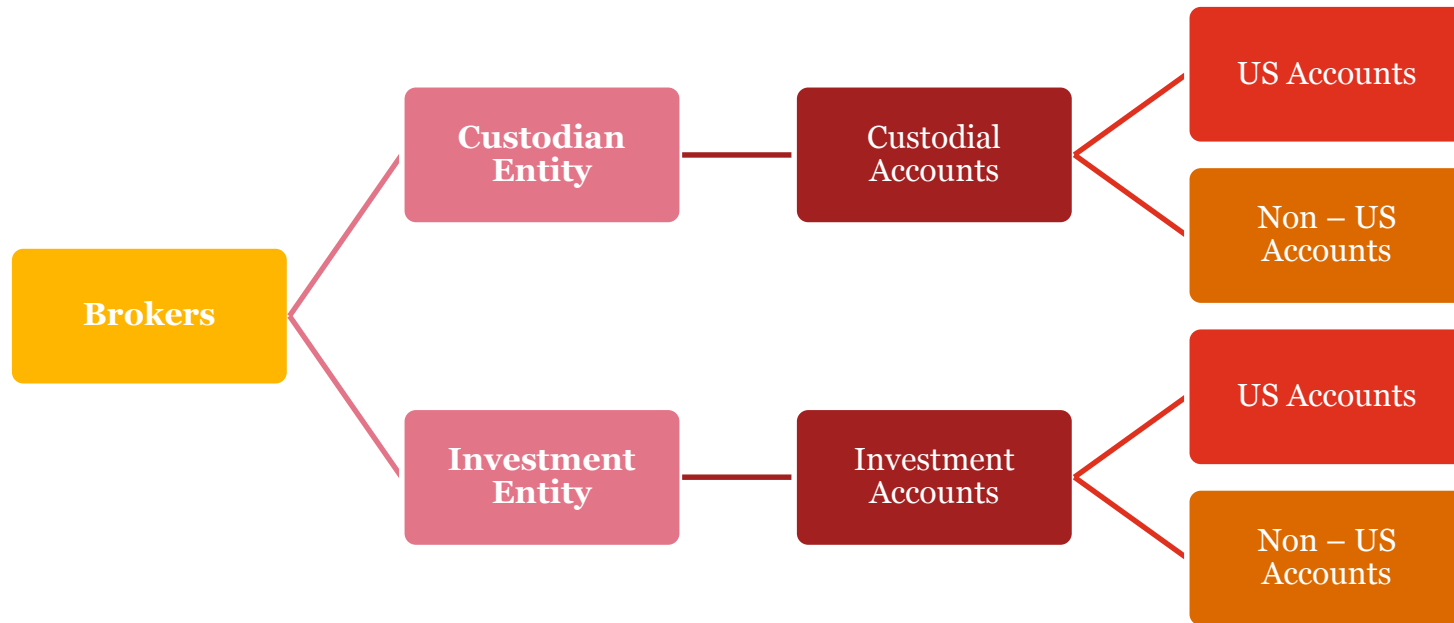
Indian tax authorities:

- Procedure for registration and reporting notified on August 25, 2015
 - Registration to be obtained with the Indian tax authorities vide online tax portal
 - Reporting financial institutions to submit information in Form 61B or NIL statement as the case may be

Reporting

- Information for every calendar year to be reported to the Indian Tax Authorities by the subsequent May 31
- Nil statement to be filed even if no account is identified as reportable

Compliance requirements



Penal consequences in case of failure to report



Classification of accounts

Pre-existing accounts	Account Type	Reportable Account	Value based classification
	U S Reportable Account as on 30 June 2014	<p><u>Individual:</u></p> <ul style="list-style-type: none"> Balance > USD 50,000 <p><u>Entity:</u></p> <ul style="list-style-type: none"> Aggregate Account Balance or value > USD 2,50,000 	<p><u>High Value Accounts</u></p> <p>Accounts with balance > USD 1 million</p>
Other Reportable Account as on 31 December 2015	<p><u>Individual:</u> All accounts</p> <p><u>Entity:</u> Aggregate Account Balance or value > USD 2,50,000</p>	<p><u>Low Value Accounts</u></p> <p>Accounts with balance between USD 50,000 to USD 1 million</p>	

New Accounts	Account Type	Reportable Account	Accounts opened on or after
	U S Reportable Account	<u>Entity & Individual:</u> All Accounts	From 01 July 2014
Other Reportable Account	<u>Entity & Individual:</u> All accounts	From 01 January 2016	

Key timelines

Pre-existing accounts



Account Type	Reportable Account	Threshold Limit	Account Opening Period	Due Diligence date	Form 61B Reporting date
U S Reportable Account	If > USD 50,000	High Value Accounts > USD 1 million	Upto 30/06/2014	31/12/2015	31/05/2016
		Low Value Accounts between USD 50,000 to USD 1 million		30/06/2016	31/05/2017
Other Reportable Account	All Accounts	High Value Accounts > USD 1 million	Upto 31/12/2015	30/06/2016	31/05/2017
		Low Value Accounts < USD 1 million		30/06/2017	31/05/2018



Account Type	Reportable Account / Threshold Limit	Period	Due Diligence date	Form 61B Reporting date
U S Reportable Account	Aggregate Account Balance or value > USD 2,50,000	Upto 30/06/2014	30/06/2016	31/05/2017
Other Reportable Account		Upto 31/12/2015		

Key timelines

New Accounts

Account Type	Reportable Account	Period	Due Diligence date	Form 61B Reporting date
U S Reportable Account	Entity: All Accounts	01/07/2014 to 31/12/2014	Account Opening (or) 90 days from end of calendar year	10/09/2015
		01/01/2015 to 31/08/2015		31/05/2016 Exception Alternate procedures
		01/09/2015 to 31/12/2015		
Other Reportable Account	Entity & Individual: All accounts	From 01/01/2016	Account opening	31/05/2017

Open Issues

Whether All stock brokers would qualify as a Non-Reporting Financial Institution?

Whether entities engaged in pure broking (trading services to customers) and non-depository services would qualify as a Custodial Institution?

Whether stock brokers can qualify as both custodial institution and Investment entity?

Impact of error trades or failed trades on brokers?

Notification of reporting software by the Indian authorities pending



Role of regulators



Role of Regulators

**Central Board of
Taxes (CBDT)**

**Securities Exchange
Board of India
(SEBI)**

**Reserve Bank of
India (RBI)**

- CBDT spearheading the implementation of FATCA & CRS regulation in India;
- Other regulators such as SEBI, RBI, IRDA has proactively issued instructions to financial institutions for compliance with the regulations;
- Brokers being regulated by SEBI and filing FATCA & CRS report to CBDT would be accountable to both SEBI & CBDT for compliance;
- Classification of Brokers as a FI, being an area of uncertainty requires appropriate representation and advocacy before SEBI and CBDT for exemption from applicability of the rules;

Representation on common issues!

Next steps

- Seek guidance on availability of exemption
- Voluntary registration by Financial Institution, if applicable
- Review of client on-boarding processes and KYC documentation
- Implement due diligence procedures
- Validation of information being reported

Upcoming deadline for reporting is 31 May 2016

Useful links

FATCA update dated 11 August 2015: CBDT notifies rules for FATCA reporting

<https://www.pwc.in/assets/pdfs/news-alert-tax/2015/pwc-news-alert-11-august-2015-india-government-notifies-rules-for-fatca-reporting.pdf>

FATCA & CRS update dated 07 January 2016: CBDT issues updated Guidance Note

<https://www.pwc.in/assets/pdfs/news-alert-tax/2016/pwc-news-alert-07-january-2016-cbdt-issues-note-for-implementation-of-fatca-crs.pdf>

PwC 365App: Get all the PwC updates at

<https://itunes.apple.com/IN/app/id1001450880>

PwC at Davos

<http://www.pwc.com/gx/en/ceo-agenda/pwc-at-davos.html>

PwC publication, Future of India – The Winning Leap:

http://www.pwc.in/en_in/in/assets/pdfs/future-of-india/future-of-india-the-winning-leap.pdf

Thank you

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Custodial Institution

Definition as per Indian Income Tax Rules

“custodial institution” means any entity that holds, as a substantial portion of its business, financial assets for the account of others and where its income attributable to the holding of financial assets and related financial services equals or exceeds twenty per cent of its gross income during the three financial years preceding the year in which determination is made or the period during which the entity has been in existence, whichever is less;



Penalty

US IRS:

- Failure to report information to IRS would lead to withholding of 30% on all US source income

Indian tax authorities:

- The Indian tax laws impose the following penalties for non-compliance:
 - Failure to furnish statement in Form 61B to attract penalty of Rs.100 per day of failure
 - Failure to furnish statement in Form 61B after a notice is served to attract penalty of Rs.500 per day of failure
 - Furnishing of inaccurate information to attract penalty of Rs.50,000/-

