

Preface

1. ***Author*** has felt when he ***qualified*** as Chartered Accountant (CA) in Year 1985 that ***legal provisions' interpretations*** are ***big challenge*** for legal professionals, govts' officials and public at large ***in India and outside India***.
2. ***Author*** has ***realized*** that ***something*** should ***be developed to resolve this challenge*** in India and outside India.
3. ***Author*** has ***started compiling*** Frequently Asked Questions (FAQs) on many subjects where his 100% ***answers are precisely based on Yes or No i.e. white or black nothing is grey***
4. ***Author*** has ***compiled approximately 150 +(plus) research papers / books with 25 thousand + (plus) pages*** on many prevailing subjects / acts in India and outside India.
5. ***Author's 1st paper book*** is now ***being published*** under head FAQs on Enforcement Directorate (ED) ***where 571 FAQs are replied*** based on Yes or No i.e. white or black nothing is grey
6. This ***book*** is also ***containing***
 - (i) Foreign Exchange Management Act (***FEMA***) 1999 and rules / regulations
 - (ii) Prevention of Money Laundering Act (***PMLA***) 2002 and rules / regulations
 - (iii) Fugitive Economic Offenders Act (***FEOA***) 2018 and rules / regulations
7. This ***book*** is ***published with Sai Kripa and dedicated*** to my father (late) ***Mr. M.R. Agarwal***, Mother ***Mrs. R.D. Agarwal***, wife ***Mrs. Snigdha Agarwal***, daughter ***Ms. Soumya Agarwal***, daughter ***Ms. Sanya Agarwal*** and dedicated team headed by ***Rajat Kumar***
- I trust that you will be ***enriched by reading this book***

With best wishes,
CA. Satish Agarwal
B. Com (Hons.) FCA

satishagarwal307@yahoo.com
+91-9811081957
www.femainindia.com

Author's Profile

Mr. Satish Agarwal (FCA) is heading M/s Satish S Agarwal & Co. Chartered Accountants since 1985 with a team of dynamic young professionals serving clients from various business sectors including public listed companies and government undertakings. Firm was also registered with PCAOB (USA) for undertaking audits and other work of US GAAP.

He is regularly advising on several matters to Institute of Chartered Accountant of India (ICAI) and also to Ministry of Commerce (MoC) for Foreign Trade Agreements (FTAs) and World Trade Organization (WTO) for securing India's best interests.

He is continuously advising on Foreign Investments (FIs) in India and also on Overseas Direct Investments (ODIs) outside India.

He is known for his expertise in incorporating companies in most of countries across the world.

He has written around 150 +(plus) Research papers / books containing 25 thousand +(plus) pages available "freely" on certain portals like:

https://taxguru.in/author/satishagarwal307_1957

Or

www.femainindia.com

Few out of abovementioned Research papers / books are as under:

- 1. Book on Enforcement Directorate (ED) in India- (Book with 617 pages)***
- 2. Director of Revenue Intelligence (DRI) in India***
- 3. Central Bureau of Investigation (CBI) in India***
- 4. National Investigation Agency (NIA) in India***
- 5. Serious Fraud Investigation Office (SFIO) in India***
- 6. Financial Intelligence Unit (FIU-IND) in India***
- 7. Central Vigilance Commission (CVC) in India***
- 8. Narcotics Control Bureau (NCB) in India***
- 9. Research & Analysis Wing (R&AW) in India***
- 10. Economic Offence Wing (EOW) in India***
- 11. Intelligence Bureau (IB) in India***
- 12. Director General of Income Tax Criminal Investigation (DGITCI) in India***
- 13. National Company Law Tribunal (NCLT) in India***
- 14. Security Exchange Board of India (SEBI) in India***
- 15. Prevention of Corruption (PC) Act, 1988 in India***

16. *Foreign Assets Investigation Unit (FAIU) in India*
17. *Book on International Financial Services Center (IFSC) in India (Book with 290 pages)*
18. *Replacement of Indian Penal Code (IPC) Criminal Procedure (CP) & Evidence Act (EA) in India*
19. *Undisclosed Foreign Income & Asset (UFIA)-Black Money Act, 2015*
20. *Statutory provisions for General Anti Avoidance Rule (GAAR) in India*
21. *Reserve Bank of India (RBI) Act, 1934*
22. *Foreign Exchange Management Act (FEMA) 1999 in India*
23. *Benami Transactions (Prohibition) Amendment Act, 2016 in India*
24. *Advance Pricing Agreements (APAs) in India*
25. *Annual Performance Report (APR) for Investments outside India*
26. *Foreign Trade Agreements (FTAs) executed by India*
27. *Statutory Obligations for Companies Operating in India*
28. *Significant Beneficial Owners (SBO) in India*
29. *Significant Economic Presence (SEP) in India*
30. *Place of Effective Management (POEM) in India*
31. *Liberalized Remittance Scheme (LRS) for residents of India*
32. *Foreign Liability and Asset (FLA) return in India*
33. *FATCA agreement with USA*
34. *Double Taxation Avoidance Agreement (DTAA) with USA*
35. *Foreign Tax Credit (FTC) in India*
36. *Corporate Frauds (CFs) in India*
37. *Export of Goods and Services under FEMA, 1999 in India*
38. *Imports of Goods and Services under FEMA, 1999 in India*
39. *External Commercial Borrowings (ECBs) in India*
40. *Overseas Direct Investments (ODIs) under FEMA, 1999 in India*
41. *Acquisition of Immovable Properties by Non-residents under FEMA, 1999 in India*
42. *Compounding of Contraventions under FEMA, 1999 in India*
43. *Foreign Branch Office (BO) + Liaison Office (LO) + Project Office (PO) under FEMA, 1999 in India*
44. *Annual Information Statement (AIS) in India*
45. *Investments by Non-Residents (NRIs) in India*
46. *Guidance for Doing Business in United States of America (USA)*
47. *Corporate Tax (CT) Law in UAE*
48. *Acquisition & Transfer for Immovable Properties by Non-Residents (NRs) in India*
49. *Foreign Company's Registration in India*
50. *Auditor Checks and Reporting for Indian Companies in India*
51. *Companies Auditor Report Order (CARO) 2020 in India*
52. *Tax Audit Report (TAR) + Accounting Standard (ASs) in India*
53. *World Trade Organisation (WTO) & Benefits for India*
54. *Deposits by Corporate in India*
55. *Expatriates + Foreign Citizens in India*
56. *Book on Foreign Investments (FIs) by Non-Residents of India (Non-RoI) (Book with 346 pages)*



16 FAQ's on FATCA Non-Tax Treaty (Agreement) between India and USA

INDEX		
S.NO	Topic	Page No.
	(A) Foreign Account Tax Compliance Act (FATCA) Non Tax Treaty	3
1.	Meaning of Non Tax Treaties between India and USA	3
2.	Meaning of disclosure of foreign assets (outside USA) by tax resident of USA	3
3.	Meaning of Tax resident of USA	3
4.	Meaning of reporting of global assets by Tax resident of USA to IRS of USA	3
5.	Meaning of FATCA Non-Tax Treaty (agreement) between India and USA	4
6.	Meaning of FATCA reporting by reporting entities in India	4 & 5
	(B) USA Tax Resident's investments in India under FATCA Non-Tax Treaty	6
7.	Investments in Fixed Deposits (FDs) in banks located in India	6
8.	Investments in Public Provident Fund (PPF) account located in India	6
9.	Investments in equity shares certificates + demat account (both) in India	6
10.	Investments in Mutual Funds like ETF + SICAV + etc. (all) located in India	7
11.	Interest incomes earned or received from banks located in India	7
12.	Dividend incomes received from companies located in India	7 & 8
13.	Capital gains incomes received from sale of capital assets located in India	8
14.	Rent incomes received on capital assets located in India	8
15.	Interest incomes on advance received for India's Property Development	8
16.	Receipt of contribution from Retirement Benefit Fund located in India	8
	Profile of Publisher on 16 FAQ's on FATCA Treaty between India and USA	9



16 FAQ's on FATCA Non-Tax Treaty (Agreement) between India and USA

(A) Foreign Account Tax Compliance Act (FATCA) Non Tax Treaty

1. Meaning of Non Tax Treaties between India and USA

- *India + USA already signed tax already signed several non tax treaties like:*
 - (i) *Double Taxation Avoidance Agreement (DTAA) tax treaty*
 - (ii) *Foreign Account Tax Compliance Act (FATCA) for disclosure of foreign assets located outside USA + also hold by tax resident of USA (both) non tax treaty*
 - (iii) *Foreign Pension Fund (FPF) non tax treaty*
 - (iv) *Passive Income (PI) non tax treaty*
- *Abovementioned treaties impacting tax laws in India + USA (both)*

2. Meaning of disclosure of foreign assets (outside USA) by tax resident of USA

- *Every tax resident of USA required to report in USA about 100% global assets Internal Revenue Service (IRS) of USA where threshold limit already crossed.*

3. Meaning of Tax resident of USA

- (i) *Citizen of USA*
- (ii) *Legal Permanent Resident (LPR) of USA*
- (iii) *Other person already qualified for Substantial Presence Test (SPT) of USA for tax purpose (only)*

4. Meaning of reporting of global assets by Tax resident of USA to IRS of USA

- *100% tax resident of USA required to report in USA about 100% global assets + 100% global bank accounts + 100% global incomes to IRS of USA + FinCEN (both) like FBAR + FATCA in form 8938 in USA.*

5. *Meaning of FATCA Non-Tax Treaty (agreement) between India and USA*

- (i) (a) *India and USA already entered into FATCA non tax treaty.*

(b) *Foreign Financial institutions (FFIs) + foreign banks (both) located in India required to report about information's of account holder of tax resident of USA to IRS of USA.*
- (ii) (a) *Reporting Indian banks required to send FATCA letters to customers located in India like ICICI + SBI + HDFC + Axis + etc. (all).*

(b) *Indian banks + foreign banks (both) located in India required to collect information's through sending letters to customers in India for knowing about assets + bank accounts + citizenship + residential status (all).*

(c) *Indian banks located in India required to report IRS of USA about compiled information's by them.*
- (iii) *Now IRS of USA aggressively handling foreign account compliances + foreign account non-compliances (both) against foreign accounts + reporting of foreign incomes (outside USA) + imposing of financial penalties + also exercising imprisonment provisions already existed in USA laws.*
- (iv) *FATCA + other international tax penalties may be reduced or waived through announcement of offshore tax amnesty scheme already declared in past + to be declared in future (both) in USA.*

6. *Meaning of FATCA reporting by reporting entities in India*

- (i) *IRS of USA permitted to take reports annually from Indian banks + foreign banks (both) located in India against bank accounts maintained by tax resident of USA like maximum outstanding balance in account in calendar year (December 31) in India*
- (ii) *List of banks located in India required to report IRS of USA like:*

- (a) Axis Bank*
- (b) Bank of Baroda (BOB)*
- (c) Bank of India (BOI)*
- (d) Canara Bank*
- (e) HDFC Bank*
- (f) ICICI Bank*
- (g) IDBI*
- (h) Punjab National Bank (PNB)*
- (i) State Bank of India (SBI)*
- (j) Union Bank*

(B) USA Tax Resident's investments in India under FATCA Non-Tax Treaty

7. Investments in Fixed Deposits (FDs) in banks located in India

- *Incomes on FDs in banks located in India be taxed in USA on mercantile (accrual) basis in hands of tax resident of USA besides incomes in India not actually paid before maturity period. Hence incomes on FDs in India be taxed + be reported (both) in USA as on December 31st every year.*

8. Investments in Public Provident Fund (PPF) account located in India

- *Incomes on PPF accounts located in India be taxed in USA on mercantile (accrual) basis in hands of tax resident of USA besides incomes in India not paid before maturity period. Hence incomes on PPF in India be taxed + be reported (both) in USA as on December 31st every year.*

9. Investments in equity shares certificates + demat account (both) in India

- Tax resident of USA required to report IRS of USA for 100% investments made in equity shares certificates in paper form + also shares held in demat format in India at Market Realizable Price (MRP) beside demat account already dormant + also no recent activity in demat account.*
- Tax resident of USA required to report IRS of USA through FBAR + FATCA in form 8938 in USA.*
- Tax resident of USA required to report IRS of USA in form 8938 of FATCA against equity shares certificates in paper form + also shares held in demat format in India. Hence not required to report IRS of USA through FBAR where investment in equity shares not in demat format.*
- Tax resident of USA required to deposit Income tax to IRS of USA against dividend incomes + capital gains on mercantile (accrual) basis in India. However tax deducted + tax paid (both) in India be permitted Foreign Tax Credit (FTC) in USA.*

10. Investments in Mutual Funds like ETF + SICAV + etc. (all) located in India

- (i) Tax resident of USA required to report IRS of USA against 100% investments in mutual funds in India through FBAR + FATCA (both) in form 8938.
- (ii) Mutual funds in India considered PFIC. Hence be reported through FBAR + FATCA in form 8621.
- (iii) Rules for PFIC comparatively more complex.
- (iv) (a) Tax resident of USA required for additional reporting + also to deposit additional income tax
- (b) Tax resident of USA not required for additional reporting + also to deposit additional income tax where he already qualified for exclusion + exception (any).

11. Interest incomes earned or received from banks located in India

- (i) Tax resident of USA required to report IRS of USA + also to deposit Income tax in USA (both) against bank interests on non FDs like interest on NRO account + NRE account + FCNR account (all) located in India.
- (ii) (a) Tax resident of USA required to report IRS of USA + also to deposit Income tax in USA (both) against bank interests on NRO account + NRE account + FCNR account (all) located in India.
- (b) Tax resident of USA not required to deposit Income tax in India against bank interests on NRE account + FCNR accounts (both) located in India.

12. Dividend incomes received from companies located in India

- (i) Tax resident of USA required to report to IRS of USA + also to deposit Income tax in USA (both) beside incomes under dividends already exempted in past under Income Tax Act, 1961 in India.
- (ii) (a) Now Tax resident of USA required to deposit Income tax in India against incomes under dividends.

(b) Tax resident of USA permitted for FTC in USA against tax paid on incomes under dividends in India.

13. Capital gains incomes received from sale of capital assets located in India

- (i) Tax resident of USA required to report in USA + also to deposit Income tax in USA (both) against capital gains in India.
- (ii) Tax resident of USA permitted to avail for exclusion against primary residence + other exception to reduce or avoid (both) to deposit Income tax in USA.
- (iii) Long-Term Capital Gains (LTCG) under Income Tax Act in USA not matching with Income Tax Act, 1961 in India

14. Rent incomes received on capital assets located in India

- Tax resident of USA required to report IRS of USA + also to deposit Income tax in USA (both) against incomes under rent in India through from 1040 of schedule E (annually) beside tax resident actually have losses in India like income on rent in India USD 10,000 – expenses + tax in India (both) USD 11,000 = loss USD 1,000

15. Interest incomes on advance received for India's Property Development

- (i) Tax resident of USA required to report IRS of USA + also to deposit Income tax in USA (both) against interests earned on money invested from money already received for India's future development of property.
- (ii) India's future development of property by tax resident of USA in actual practice.

16. Receipt of contribution from Retirement Benefit Fund located in India

- (i) India and USA have DTAA against contributions + non actual receipts of incomes (both) where tax resident of USA not required to deposit Income tax in USA until income actually distributed by retirement benefit funds in India.
- (ii) However some exceptions available beside income already distributed in India.

Published By



CA. Satish Agarwal

B.com (Hons) FCA

Practicing Chartered Accountant Since 1985

+919811081957

9/14 (First Floor) East Patel Nagar, New Delhi- 110008

Email: satishagarwal307@yahoo.com

Website: www.femainindia.com

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June-2023