



***My Dear Friend***

*I am presenting **Thursday Article on FATCA Treaty (Agreement) between India and USA***

- 1. Any kind of non-compliance is attracting **Financial Penalty + imprisonment (both)**.*
- 2. It's humbly suggested to stop non-compliance against furnishing of legal documents + correct informations (both).*
- 3. I trust that you will be enriched by reading this article*

*● **With best wishes from CA Satish Agarwal, New Delhi** ●*



## ***FATCA Treaty (Agreement) between India and USA***

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## ***FATCA Treaty (Agreement) between India and USA***

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

#### ***1. Introduction on Non DTAA Treaties between India and USA***

- *India and USA has tax + non tax (both) treaties like:*
  - (i) *Double Taxation Avoidance Agreement (DTAA) tax treaty*
  - (ii) *Foreign Account Tax Compliance Act (FATCA) for disclosure of assets as located outside USA + hold by person of USA (both)*
  - (iii) *Foreign Pension Fund (FPF) non tax treaty*
  - (iv) *Passive Income (PI) non tax treaty*
- *Abovementioned treaties are impacting the tax laws in India + USA (both)*

#### ***2. FATCA for disclosure of assets as located outside USA by person of USA***

- *Every person of USA is required to report in USA his global assets to government (govt.) of USA where threshold limit is crossed.*

#### ***3. Meaning of word person of USA includes***

- (i) *Citizen of USA*
- (ii) *Legal Permanent Resident (LPR) of USA*
- (iii) *Any other person has qualified the Substantial Presence Test (SPT) of USA for tax purpose*

#### ***4. Meaning of reporting of global assets by person to IRS of USA***

- *Every person (tax resident) of USA is required to report in USA his foreign assets + foreign bank accounts + foreign incomes to IRS of USA + FinCEN like FBAR + FATCA in form 8938 in USA.*



## 5. **Meaning of FATCA treaty (agreement) between India and USA**

- (i) (a) **India and USA have entered into FATCA treaty.**
- (b) **Foreign Financial institution (FFI) + foreign bank (both) in India are required to report in USA the information's of account holder of USA person in India to Internal Revenue Service (IRS) of USA.**
- (ii) (a) **Important Indian Banks like ICICI + SBI + HDFC + Axis + etc. (all) are sending the FATCA letters to customers in India.**
- (b) **Indian banks + foreign banks (both) located in India are required to collect information's through letters to customers in India for knowing about assets + bank account + citizenship + residential status (all). Therefore Indian banks as located in India are required to report in USA the compiled information's to IRS of USA.**
- (iii) **IRS of USA is aggressively handling foreign account compliance + foreign account non-compliance (both) against offshore account + reporting of income + imposing of financial penalty + implementing of imprisonment provisions in USA.**
- (iv) **FATCA + other international tax penalties (both) may be reduced or waived (both) through offshore tax amnesty scheme in USA.**

## 6. **Meaning of FATCA reporting in India**

- (i) **IRS of USA is required annual report from Indian banks + foreign banks (both) located in India against bank accounts as maintained in India by person of USA about maximum outstanding balance in account in calendar year in India**
- (ii) **Name of banks in India to report to IRS of USA includes:**
  - (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*



## **(A-1) Meaning of Investments in India under FATCA**

### **1. Fixed Deposit (FD) in bank in India**

- *Income on FD in India to be taxed in USA on mercantile (accrual) basis in hands of tax resident of USA besides income in India is not distributed before maturity period. Hence income on FD in India to be taxed + be reported (both) in USA as on December 31<sup>st</sup> every year.*

### **2. Public Provident Fund (PPF) account in India**

- *Income on PPF in India to be taxed in USA on mercantile (accrual) basis in hands of tax resident of USA besides income in India is not distributed before maturity period. Hence income on PPF in India to be taxed + be reported (both) in USA as on December 31<sup>st</sup> every year.*

### **3. Investment in equity shares certificates + balance in demat account in India**

- (i) *Tax resident of USA is required to report in USA to IRS of USA about actual investment in equity shares certificates + balance in demat account (both) in India at Market Realizable Price (MRP) beside demat account is dormant + no recent activity in demat account (both) in different format for certificate + demat (both).*
- (ii) *Tax resident of USA is required to report in USA to IRS of USA through FBAR + FATCA in form 8938 in USA.*
- (iii) *However tax resident of USA is required to report in USA to IRS of USA in form 8938 of FATCA against equity share certificate. Hence not required to report in USA to IRS of USA through FBAR where investment in equity shares is not in demat account.*
- (iv) *Tax resident of USA is required to pay Income tax to IRS of USA against dividend income + capital gains (both) earned in India. However tax deducted + tax paid (both) in India to be allowed as Foreign Tax Credit (FTC) in USA.*



#### **4. Investment in Mutual Funds in India like ETF + SICAV + etc. (all)**

- (i) Tax resident of USA is required to report in USA about investment in mutual funds in India through FBAR + FATCA in form 8938 in USA.*
- (ii) Generally mutual funds in India are considered as PFIC. Hence to be reported through FBAR + FATCA in form 8621 in USA.*
- (iii) However rules for PFIC are complex.*
- (iv) But tax resident of USA is required to additional report + to pay additional income tax except tax resident of USA is qualified for exclusion or exception.*

#### **5. Income under Bank Interest in India**

- (i) Tax resident of USA is required to report in USA + to pay Income tax in USA (both) against bank interest on non FD like interest on NRO account + NRE account + FCNR account (all).*
- (ii) Hence tax resident of USA is required to report in USA + to pay Income tax in USA (both) in USA against bank interest on NRO account + NRE account + FCNR account (all) in India. However bank interest against NRE account + FCNR accounts (both) not to be taxed in India.*

#### **6. Income under dividend in India**

- *Tax resident of USA was required to report in USA + to pay Income tax in USA (both) in USA beside income under dividend was exempted against Income tax in India. Presently dividend is not exempted against income tax in India.*

#### **7. Income under Capital gains in India**

- (i) Tax resident of USA is required to report in USA + to pay Income tax in USA (both) against capital gains in India.*
- (ii) Tax resident of USA is permitted for exclusion against primary residence + other exception to reduce or avoid (both) to pay Income tax in USA.*



(iii) *Long-Term Capital Gain (LTCG) Income tax provisions in USA are not same in India.*

## **8. Income under rent in India**

- *Tax resident of USA is required to report in USA + to pay Income tax in USA (both) against income under rent in India through form 1040 of schedule E (annually) beside tax resident has net loss in India like income on rent in India is USD 10,000 – expenses + tax in India (both) are USD 11,000 = loss USD 1,000*

## **9. Income under Interest as earned on Future Development of Property**

- (i) *Tax resident of USA is required to report in USA + to pay Income tax in USA (both) in USA against interest as earned on money invested from money as received for future development of property.*
- (ii) *Now future development of property is common in India by tax resident of USA*

## **10. Contribution under Retirement Benefit Fund in India**

- (i) *India and USA have DTAA against contribution + non actual receipt of income (both) where tax resident of USA is not required to pay Income tax in USA until income is distributed by retirement benefit fund in India.*
- (ii) *However some exceptions are available beside income is distributed in India.*





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