



My Dear Friend

*I am presenting **Thursday Publication for 16 FAQ's on FATCA Non-Tax Treaty (Agreement) between India and USA***

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- 2. Any kind of offence attracting **Penalty + imprisonment (both)**.*
- 3. It's humbly suggested to stop committing offence.*
- 4. I trust that you will be enriched by reading this article*

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



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

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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:*
 - Double Taxation Avoidance Agreement (DTAA) tax treaty*
 - 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*
 - Foreign Pension Fund (FPF) non tax treaty*
 - 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

- Citizen of USA*
- Legal Permanent Resident (LPR) of USA*
- 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

- (i) 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.*
- (ii) Tax resident of USA required *to report IRS of USA through FBAR + FATCA in form 8938 in USA.*
- (iii) 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.*
- (iv) 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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