

# Seminar On Recent Development Compliance Issues In Securities Market

WIRC Of ICAI



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## FATCA Compliances Applicable To Securities

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# Foreign Account Tax Compliance Act, (FATCA)

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- Rationale , Purpose and History of FATCA
- Indian Scenario - Origin of Reporting
- Salient Features of the agreement
- Indian Legal and Regulatory Framework
- Procedural aspects and registration



# Rationale And Purpose

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- A US IRS drive to investigate US Person's assets abroad with self declaration
- US Person's reporting to Financial Crimes Enforcement Network (FINCEN)
- US Person's – Non US Corporate account's Signatory
- Qualified Intermediary Programme and its response – UBS Story
- Various unconfirmed information reports of US\$ 100 Billion Loss



# FATCA – A Historical Step

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- FATCA Inter Government Agreement (IGA) is a Bilateral agreement requires consent of US Senate.
- Impact on US Persons residing abroad
- Foreign Relations
- Complexity of administration
- Foreign Investment in USA
- Cost benefit Exercise
- Legal Basis – IGA



# Indian Scenario – Origin of Reporting

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- Legal Framework - Section 90 read with Article 28 of DTAA (Exchange of Information)
- Types of agreements
- Salient features of the agreement
- Income Tax Act 1961 – Sec 285BA and 295
- Circular No. 62/2015 dated 07.08.2015 , Rule 114F, 114G and 114H
- Registration with US IRS
- E Filing Form 61B with CBDT
- Guidance note December 2015



# SALIENT FEATURES Of AGREEMENTS

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- Definitions
- Agreements – Two Types
- Exchange of Information with collaboration
- Objective to enhance the commitment
- Consistency with Partner Jurisdiction
- Consultation and amendments.
- Meaning defined in the Agreement are the final.



# Indian Regulatory Framework

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- Important Definitions
- Financial Institution
- Financial Account
- Reportable Account
- Reporting Financial Institution
- Non Reporting Financial Institution
- Active Non Financial Entity
- Passive Non Financial Entity
- Participating Financial Institution
- Non Participating Financial Institution



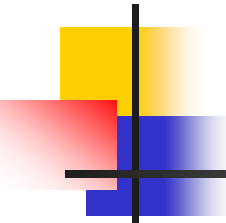
# Reporting Requirements

## Cut off Date for Reporting

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- Non reportable accounts – low threshold
  - Individual reportable accounts
  - Entity Reportable accounts
  - Low value accounts
  - High value accounts
  - Aggregation of accounts for reporting threshold
  - Excluded accounts
  - Reportable U.S. Persons only who are other than specified persons
  - Non reporting Financial Institution





# Due Diligence – Reportable Accounts

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- Identify whether you are an “Entity”
- Are you a financial institution in India
- Reporting Financial Institution
  1. Custodian
  2. Depository
  3. Investment Entity
  4. Specified Insurance Company
  5. A Non reporting FI ( Section 114 F(5) , item (a) to (m)
- Register with US IRS (probably process being completed)



# Due Diligence – Reportable Accounts – cont....

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- Is it registrable in more than one category with CBDT
- Is Individual accounts are reportable
  1. Depository Accounts
  2. Custodian Accounts
  3. Equity and Debt Interest in Investment Entities
  4. Cash Value Insurance Contracts
  5. Annuity Contracts
  6. Excluded Accounts  
(Rule 114 F(1) , expl. (4) item (i) to (vii))
- Is an entity having account with FI, Is PNFE reportable (CRS)
- Is controlling person reportable US Persons

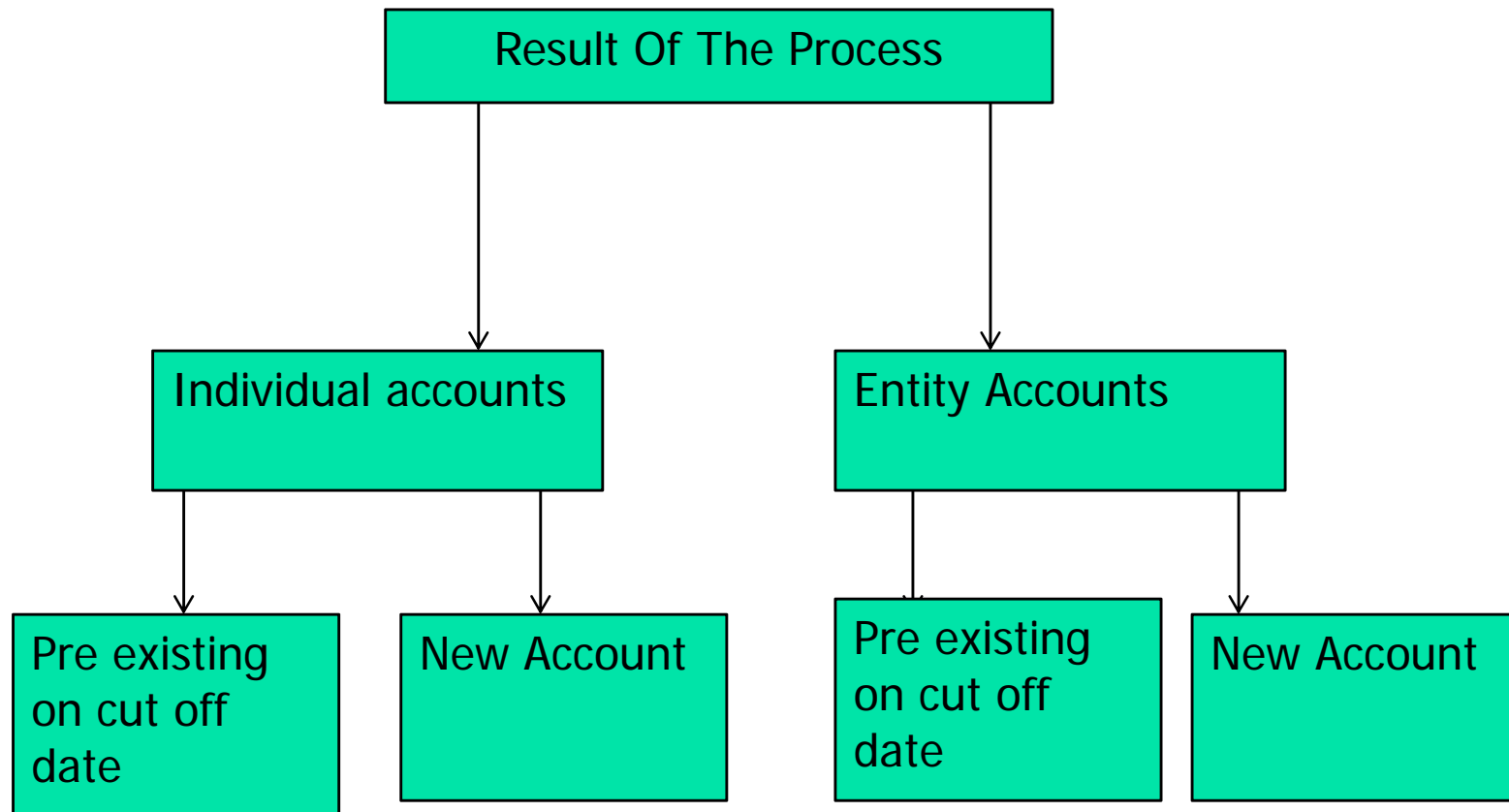


# Due Diligence for Identification – Electronic Search on Indicia

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- Tax Resident
- Place of Birth
- Contact Address
- Telephone Numbers
- Transfer / Payment Instruction
- Power of Attorney Holder
- Care off address

# Manner Of Maintenance Of Records





# Cut Off Dates

Classification of accounts	Status	Value	Due Diligence Threshold
Preexisting-US (as on 30.06.2014)	Individual	High Value Account	Account balance or value exceeds \$1,000,000
		Lower Value Account	Account balance or value exceeds \$50,000 but does not exceed \$1,000,000
	Entity	NA	Account balance or value exceeds \$250,000
New-US (opened after 30.06.2014)	Individual	NA	Account balance or value exceeds \$ 50,000
	Entity	NA	No threshold



# Cut Off Dates cont...

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Classification	Category	Balance or value
US Reportable	High Value	Balance exceeding USD 1,000,000 as on 30 <sup>th</sup> June, 2014 or 31 <sup>st</sup> December of any subsequent year
	Lower Value	Balance exceeding USD 50,000 but less than USD 1,000,000 as on 30 <sup>th</sup> June, 2014 or 31 <sup>st</sup> December of any subsequent year

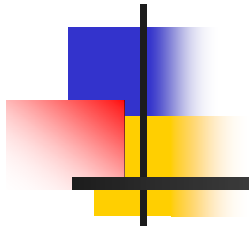


# Procedure

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- Registration with IRS – GIIN
- Registration with CBDT
- Multiple Registration
- Filling up Form 61B
- Uploading on the website
- Review the IRS record for complaint FII
- Penalties for defaults

# Questions and Answers



Thank You