FATCA, CRS, UBO REQUIREMENTS

Guide - Version 1.2 – 07-Nov-2015

This guidance note is specifically prepared for creating necessary awareness among all stakeholders associated with CAMS includes overall definitions applicable under FATCA, CRS, UBO requirements, FAQs on these areas, definitions of the terms used. Information in this guide is extracted from various other related documents and not intended for any investment advice to the investors or for arriving at any decisions. Readers of this guide should not solely rely on this guide and seek necessary clarifications wherever applicable as interpretations can be made in many ways and may not hold true as regulations / guidelines may change from time to time

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New Global Standards on Automatic Exchange of Information

To combat the problem of offshore tax evasion and avoidance and stashing of unaccounted money abroad requiring cooperation amongst tax authorities, the G20 and OECD countries working together developed a Common Reporting Standard (CRS) on Automatic Exchange of Information (AEOI). The CRS on AEOI was presented to G20 Leaders in Brisbane on 16th November, 2014. The Hon'ble Prime Minister of India speaking on the occasion supported the new global standard as it would be instrumental in getting information about unaccounted money hoarded abroad and in its eventual repatriation. The CRS on AEOI requires the financial institutions of the "source" jurisdiction to collect and report information to their tax authorities about account holders "resident" in other countries, such information having to be transmitted "automatically' on yearly basis. The information to be exchanged relates not only to individuals but also to shell companies and trusts having beneficial ownership or interest in the "resident" countries. Further, the reporting needs to be done for a wide range of financial products, by a wide variety of financial institutions, including banks, depository institutions, collective investment vehicles and insurance companies.

Enactment of FATCA and signing of IGA

Earlier, in 2010, the USA enacted a law known as FATCA with the objective of tackling tax evasion through obtaining information in respect of offshore financial accounts maintained by USA residents and citizens. The provisions of FATCA essentially provide for 30% withholding tax on US source payments made to Foreign Financial Institutions (FIs) unless they enter into an agreement with the Internal Revenue Service (IRS) to provide information about accounts held with them by USA persons or entities (firms/companies/trusts) controlled by USA persons. Since domestic laws of sovereign countries, (including India) may not permit sharing of client confidential information by FIs directly with USA, USA has entered into Inter-Governmental Agreement (IGA) with various countries. The IGA between India and USA was signed on 9th July, 2015, which provides that the Indian FIs will provide the necessary information to Indian tax authorities, which will then be transmitted to USA automatically. Under the IGA, USA will also provide substantial information about Indians having financial assets in USA although the exchange of information is not fully reciprocal as yet.

Commitment to Implement CRS on AEOI

In keeping with its leadership role in developing the new global standards, India is one of the early adopters of the CRS and has committed to exchange information automatically by 2017 onwards

The Government of India has also joined the Multilateral Competent Authority Agreement (MCAA) on 3rd June, 2015, for exchanging information as per the above timelines. By August, 2015, 93 jurisdictions have committed to exchange information as per the new global standards, 58 of them from 2017 and the balance 35 from 2018. 61 of the 93 jurisdictions have also joined the MCAA. Table in Annexure provides a list of the 93 jurisdictions and the time for exchanging information.

What is FATCA?

FATCA is an acronym for the **Foreign Account Tax Compliance Act**, a new set of US Tax Regulations brought in by the US govt. and enacted through the Internal Revenue Service (IRS), which is similar to Income Tax Department in India

Why was FATCA enacted?

It was enacted by US Government to combat tax evasion by US persons with accounts held outside the US and who do not declare their taxable income or gains for US tax purposes / to force foreign financial institutions to disclose U.S. account holders' information to the IRS in order to curb offshore tax evasion

What is the purpose of FATCA?

The primary goal of FATCA is to gain information (reporting) about U.S. persons. FATCA would help US IRS to:

a. detect and prevent offshore tax evasion by U.S. persons
b. identify and collect the appropriate tax from US persons holding financial assets outside the US
c. increase transparency for the IRS with respect to U.S. persons that may be investing & earning income through non-US financial institutions
d. imposes tax withholding where the requisite information and / or documentation and reporting requirements are not met

What is the impact of FATCA legislation?

FATCA is far reaching and can impact any U.S. person who is involved in making or receiving payments that fall within the scope of FATCA. While FATCA certainly affects U.S. withholding agents and U.S. multinational companies, the greatest impact will likely be to "Foreign Financial Institutions" (FFIs) which can be an 'entity' or a 'fund'. All financial institutions globally, including banks, investment funds, distributors, custodians, investment managers, financial advisors, insurance companies and other entities must consider whether they are subject to FATCA

To whom FATCA applies?

FATCA applies to every Foreign Financial Institution and require FFIs to implement procedures to identify account holders, perform due diligence and retain documentary evidence of their account status. The FFIs must identify US accounts and any non-FATCA compliant accounts, report details of such accounts (effective from July 01, 2014) to the local tax authority and apply withholding tax on these accounts from 2017

How would FATCA be administered?

FATCA will be administered through two regimes:

a. ***Intergovernmental Agreements (IGA):*** *Certain countries have entered into bilateral agreements with the US IRS to implement the objectives of FATCA. These agreements have been entered to overcome legal obstacles in complying with FATCA, simplify the reporting process and to bring about clarification of FATCA on a country by country basis. There are two IGA models -* ***IGA Model 1 & IGA Model 2***

b. ***The US FATCA Regulations****: The US FATCA Regulations will apply to FFIs globally that are resident in a country that has not entered into an IGA with the US*

Which of the above is applicable for India?

India has signed IGA Model 1

- Under an IGA Model 1 the partner country enacts its own tax laws and regulations to meet the aims of FATCA, as determined under an IGA with the US
- FFIs that are resident in the IGA partner country will be bound by the laws and regulations implemented by that country
- Under an IGA Model 1 the FFI will report to its local tax authority and will not have direct dealings with the IRS, except for registration

When does FATCA come into effect?

FATCA rules generally become effective to payments made on or after July 1, 2014. Full implementation will be phased-in over a multi-year period through 2017. In case of Mutual Funds, AMFI has issued guidelines stating that FATCA & CRS related information & declaration form has to be obtained mandatorily from 1st November 2015

What are the consequences of non-compliance to FATCA?

The details of any non-participating FFIs or recalcitrant investors will be reported to the local tax authority

- A Non-participating FFI is defined as a FFI (Foreign Financial Institution) which does not comply with FATCA.
- A recalcitrant investor is defined as an investor who does not respond to requests for information or fails to provide sufficient documentations. Such accounts are called recalcitrant accounts.

What is CRS – Common Reporting Standards?

The Organization of the Economic Development (OECD) along with G-20 Countries, on similar lines as FATCA IGA 1 Model, released a standard for automatic exchange of financial account information in tax matters, known as Common Reporting Standard (CRS). CRS sets out standard basis for automatic tax information exchange between member countries through respective bilateral tax treaties. Compliance with CRS becomes mandatory from 1st January 2016

What is the definition of a US Account and US Entities?

FATCA place a significant restriction on FFI to identify, document and report on US persons and comes into force for non-US institutions on 1st July 2014.

A US account can be defined as any financial account held by one or more specified US persons or US foreign entities, subject to certain exceptions.

What is a Foreign Financial Institution (FFI)?

An FFI is a foreign financial institution, which is any non-U.S. non-individual that:

- Accepts deposits in the ordinary course of a banking or similar business,
- As a substantial portion of its business, holds financial assets for the account of others, or
- Is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest in such securities, partnership interests, or commodities.

According to rule 114 F inserted in the Income-tax rules, 1962, financial institution" means an entity which falls within any of the following categories

- Custodial Institution
- Depository Institution
- Investment Entity
- Specified Insurance Company

What is a Reporting Foreign Financial Institution?

A Reporting Foreign Financial Institution is an institution that is resident in an IGA country. A Reporting Foreign Financial Institution will establish account due diligence procedures to identify account holders and report US accounts, recalcitrant accounts and non-participating FFIs. This reporting will be to the tax authority in India and directly to the IRS for FFIs in model 2 countries.

A financial institution (other than a non-reporting financial institution) which is resident in India, but excludes any branch of such institution, that is located outside India; and
Any branch, of a financial institution (other than a non-reporting financial institution) which is not resident in India, if that branch is located in India;

What is a Participating Foreign Financial Institution (PFFI)?

A Participating Foreign Financial Institution (PFFI) is defined as a FFI that has entered into an agreement with the US IRS. An institution that is resident in a country which has not entered an IGA falls under the US Regulations. A PFFI:

- Have registered with the IRS
- Will obtain sufficient documentation to identify and report US investors
- Will determine the FATCA status of any FFI investor
- Will report details of US Portfolios
- Will apply 30% WHT on US portion of payments made to non-participating FFIs and recalcitrant investors from 2017

Non-Reporting Financial Institution

Rule 114F(5) specifies a number of entities as non-reporting financial institutions and these entities are not required to maintain or report the information, except in case of "financial institution with a local client base" in certain specified situations. These non-reporting financial institutions are as under:

1) Governmental entity, International Organization or Central Bank;
2) Treaty Qualified Retirement Fund; a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; or a Pension Fund of a Governmental entity, International Organization or Central Bank;
3) Non-public fund of the armed forces, Employees' State Insurance Fund, a gratuity fund or a provident fund;
4) Entity that is an Indian financial institution only because it is an investment entity, provided that each direct holder of an equity interest in the entity is a financial institution referred to in sub-clauses (a) to (c);
5) Qualified credit card issuer;
6) Investment entity established in India that is a financial institution only because it (i) renders investment advice to, and acts on behalf of; or (ii) manages portfolios for, and acts on behalf of; or (iii) executes trades on behalf of, a customer for the purposes of investing, managing, or administering funds or securities deposited in the name of the customer with a financial institution other than a non-participating financial institution;
7) Exempt collective investment vehicle;
8) Trust established under any law for the time being in force to the extent that the trustee of the trust is a reporting financial institution and reports all information required to be reported under Rule 114G with respect to all reportable accounts of the trust;
9) Financial institution with a local client base;
10) Local bank;
11) Financial institution with only low-value accounts;
12) Sponsored investment entity and controlled foreign corporation, in case of any U.S. reportable account;
13) Sponsored closely held investment vehicle, in case of any U.S. reportable account

What is NFE – Non-Financial Entity?

Any entity which carries out an activity that is other than that of Financial Institution is regarded as Non-Financial Entity [NFE]

What is Active NFE?

Any Non-Financial Entity [NFE] which fulfils any of the following criteria will be termed as Active NFE

(i) less than fifty per cent of the entity's gross income for the preceding *financial year* is passive income and less than fifty per cent of the assets held by the entity during the preceding financial year are assets that produce or are held for the production of passive income; or

(ii) the stock of the entity is regularly traded on an established securities market or the non-financial entity is a related entity of an entity, the stock of which is regularly traded on an established securities market
(iii) the entity is a Governmental entity, an International Organization, a Central Bank, or an entity wholly owned by one or more of these entities or
(iv) substantially all of the activities of the entity consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a financial institution
(v) the entity is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a financial institution, provided that the entity shall not qualify for this exception after the date that is twenty four months after the date of the initial organisation of the entity; or
(vi) the entity was not a financial institution in the past five years, and is in the process of liquidating its assets or is reorganising with intent to continue or recommence operations in a business other than that of a financial institution; or
(vii) the entity primarily engages in financing and hedging transactions with, or for, related entities which are not financial institutions, and does not provide financing or hedging services to any entity which is not a related entity, provided that the group of any such related entities is primarily engaged in a business other than that of a financial institution; or
(viii) the entity fulfils all of the following requirements, namely:-

a. it is established and operated in India exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in India and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
b. it is exempt from income-tax in India;
c. it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
d. the applicable laws of the entity's country or territory of residence or the entity's formation documents do not permit any income or assets of the entity to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the entity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the entity has purchased; and
e. the applicable laws of the entity's country or territory of residence or the entity's formation documents require that, upon the entity's liquidation or dissolution, all of its assets must be distributed to a Governmental entity or other non-profit organization, or escheat to the Government of the entity's country or territory of residence or any political sub-division thereof.

What is Passive Income?

Passive income includes income by way of-

(i) dividends;
(ii) interest;
(iii) income equivalent to interest;
(iv) rents and royalties (other than rents and royalties derived in the active conduct of a business conducted, at least in part, by employees of the non-financial entity);
(v) annuities;
(vi) the excess of gains over losses from the sale or exchange of financial assets which gives rise to the passive income;
(vii) the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any financial assets;
(viii) the excess of foreign currency gains over foreign currency losses;
(ix) net income from swaps; or
(x) amounts received under cash value insurance contracts:

Provided that passive income will not include, in the case of a non-financial entity that regularly acts as a dealer in financial assets, any income from any transaction entered into in the ordinary course of such dealer's business as such a dealer.

What is Passive NFE?

- Any non-financial entity which is not an active non-financial entity; or
- A withholding foreign partnership or withholding foreign trust;

Excluded Accounts

"Excluded Accounts" have low risk of being used to evade tax and are thus excluded from needing to be reviewed or reported. These accounts have been enumerated in Explanation (h) to Rule 114F(1) as under

- Retirement or pension accounts satisfying certain conditions Explanation (h)(i) to Rule 114F(1)
- Non-retirement tax-favored accounts subject to regulations and satisfying certain conditions Explanation (h)(ii) to Rule 114F(1)
- Account established under the Senior Citizens Savings Scheme Rules Explanation (h)(iii) to Rule 114F(1)
- Term Life Insurance contracts satisfying certain conditions Explanation (h)(iv) to Rule 114F(1)
- Accounts held by Estates Explanation (h)(v) to Rule 114F(1)
- Escrow Accounts established in connection with court judgments etc. Explanation (h)(vi) to Rule 114F(1)
- Depository accounts due to non-returned overpayments in case of credit card and other accounts and satisfying certain conditions Explanation (h)(vii) to Rule 114F(1)

What is Reportable accounts?

A financial account which has been identified, pursuant to the due diligence provided in rule 114H, as held by,-

a) a reportable person; or
b) an entity, not based in United Sates of America, with one or more controlling persons that is a Specified U.S. person; or
c) a passive non-financial entity with one or more controlling persons having residency/tax residency outside India

What is Reportable persons?

A. One or more specified U.S. persons; or
B. One or more persons that is a resident of any country or territory outside India (except the United States of America) under the tax laws of such country or territory or an estate of a decedent who was a resident of any country or territory outside India (except the United States of America) under the tax laws of such country or territory but does not include the following:

    1. Listed Companies or related entities of the Listed Companies
    2. A Governmental entity;
    3. An International organisation;
    4. A Central bank; or
    5. A financial institution

What is U S persons?

1. An individual, being a citizen or resident of the United States of America
2. A partnership or corporation organized in the United States of America or under the laws of the United States of America or any State thereof;
3. A trust if,-

- a court within the United States of America would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust; and
- one or more U.S. persons have the authority to control all substantial decisions of the trust; or

4. An estate of a decedent who was a citizen or resident of the United States of America;

What are the key FATCA Timelines?

10-Sep-2015	Reporting on identified US accounts for Calendar Year 2014
31-Dec-2015	Pre-existing account as of 30th June 2014 – High value Individual Accounts i.e. > US$ One Million; High Value Entity accounts - i.e. > US$ 250,000; - Conduct enhanced due diligence, - Electronic search, Paper record search and RM clarification; If US indicia found, obtain customer declaration and documentary evidence
30 Jun 2016	Pre-existing account as of 30th June 2014 – Low value Accounts i.e. > US$ 50000 but <= US$ One Million; Low Value Entity accounts - i.e. <= US$ 250,000; - Conduct due diligence, - Electronic search only; If US indicia found, obtain customer declaration and documentary evidence

What are the key CRS Timelines?

Accounts opened on or after 1st January 2016	CRS declaration to be obtained at the time of account opening
30 Jun 2016	Balance value as on 31st December 2015 - High value Accounts i.e. > US$ One Million - Conduct enhanced due diligence, - Electronic search, Paper record search and RM clarification; If country of tax residency is outside India, obtain customer declaration and documentary evidence
30 Jun 2016	Balance value as on 31st December 2015 – Low value Accounts i.e. <= US$ One Million - Conduct due diligence, - Electronic search only; If country of tax residency is outside India, obtain customer declaration and documentary evidence

Does FATCA mean that mutual funds can accept US based investors?

FATCA is only a reporting mechanism and does not restrict acceptance of any business form US. Each fund house needs to determine its own policy on accepting business from US investors' basis other parameters

For onboarding, how do we identify US Investors?

US investors can be identified based on the following 7 US Indicia/parameters

1. Identification of the Account Holder as a U.S. citizen or resident
2. Unambiguous indication of a U.S. place of birth
3. Current U.S. mailing or residence address (including a U.S. post office box)
4. Current U.S. telephone number
5. Standing instructions to transfer funds to an account maintained in the United States
6. Currently effective power of attorney or signatory authority granted to a person with a U.S. address;
7. An "in-care-of" or "hold mail" address that is the sole address on file for the Account Holder.

What are the FATCA requirements for Pre-Existing investors/accounts?

Pre-Existing accounts are defined as accounts opened till 30th June 2014

De-minimis accounts	< or = to US$50K for an individual < or = to US250K for an non-individual
Lower value accounts	> US$50K < or = to US$1m for an individual > US$250k, < or = to US$1m) for an non-individual
High value accounts	> US$1m

Due diligence to be carried out on all pre-existing accounts opened prior to date of IRS agreement to identify US indicia. The due diligence process will start in 2014 and run to 2017.

The following are exempted from due diligence:

- Entity accounts with values up to $250k
- Individual accounts with values up to $50k (de minimus is optional)

Investors from countries that have entered into DTAA - Double Tax Avoidance Agreement with India / USA. Are they exempted from FATCA?

No, the fact that a country has entered into a double taxation relief treaty or an exchange of information treaty with the U.S. Government does not exempt individuals or entities located in that jurisdiction from having to comply with the FATCA provisions. Individuals or entities must be in compliance with the FATCA provisions for them or their clients to be entitled to treaty benefits.

What are the documents to be collected from a Passive Non-Foreign Financial Entity (NFFE) with Controlling Person/s?

In case of FATCA, if a Non-individual is a Passive NFFE and has indicated that it has Controlling Person/s then you should collect a specific Controlling Persons / UBO Declaration Form from the Controlling Person/s.

Is FATCA regulation applicable only to the first holder?

No, FATCA regulation is applicable to all the holders in the account. If the first holder has the U.S. indicia parameters and the second holder is a non-U.S. person or vice versa, we must collect additional documents from the person with U.S. indicia parameters and reporting would be applicable for all holders who are reportable.

What forms should we accept for a Minor through Guardian case where the minor's Nationality is US but resides in India with Indian natural guardians?

Minor details also should be checked for FATCA.

What are the details required from Individuals investors for Onboarding?

All financial institutions must obtain self-certification to gather Tax Residency and Tax ID from all individual investors.

What are the details required from Entity investors for Onboarding?

All Entity / Non-individual investors must submit IRS/industry agreed form while onboarding.

Do I need to submit FATCA details for all transactions?

No, Financial Institutions will seek FATCA details at a customer level and not at a transaction level. Unless investor reports change in static information, same data can be used.

Is HUF part of Individual category for FATCA?

No, HUF is part of Non-Individual category for FATCA and Karta would be taken as beneficial owner.

What is a TIN?

A Taxpayer Identification Number (TIN) is an identification number used by the Internal Revenue Service (IRS) in the administration of tax laws. It is issued either by the Social Security Administration (SSA) or by the IRS. A Social Security number (SSN) is issued by the SSA whereas all other TINs are issued by the IRS. Any of the following can be Taxpayer Identification Numbers:

- Social Security Number "SSN"
- Employer Identification Number "EIN"
- Individual Taxpayer Identification Number "ITIN"
- Taxpayer Identification Number for Pending U.S. Adoptions "ATIN"
- Preparer Taxpayer Identification Number "PTIN"

Further, note that:

- SSNs are used by individuals who have the right to work in the United States.
- ITINs are used by aliens who may or may not have the right to work in the US, such as aliens on temporary visas and non-resident aliens with US income. Often people need the identification number because they have been advised by a bank that no account will be opened without a number, even if the account is being opened by a non-profit organization.
- EINs are used by employers, sole proprietors, corporations, partnerships, non-profit associations, trusts, estates of decedents, government agencies, certain individuals, and other business entities

Can the TIN number for investors based out of Dubai and Bahrain be blank as they do not pay any taxes in these countries?

Yes. Tax ID can be blank for Dubai and Bahrain. Customer need to provide relevant identification number / functional equivalent for such cases

Who would report demat units of mutual funds?

Financial institutions which are responsible to report all other demat securities would also report MF Demat units. In case of Mutual Fund units, respective depositories will report

If the investor do not submit the required declaration / information / documentation. Whether account will be closed or frozen?

Yes, account will be frozen or closed. Under alternate procedures, IT rules talk about closure / freeze of accounts where investor response is not received. For SEBI registered intermediaries, account can be frozen for future transactions

Do financial institutions need to reject all new account applications from date of these rules becoming effective?

Yes, as per AMFI guidelines, FATCA, CRS and UBO Declaration is mandatory w.e.f. 1st November 2015

In 2017 do mutual funds need to include switches under gross redemptions

Yes, switches need to be included under gross redemptions.

Can FATCA/CRS related information not be stored at KRA level

Rules allows such kind of arrangements, regulator and industry player need to work out the operating guidelines among them and KRAs. However, CAMS has enabled such provision with the investor consent and consent from all servicing entities

Most of the Mutual Funds do not accept investments from USA/Canada investors? Still FATCA is applicable?

Yes, FATCA is applicable for all investors

Whether this is one time requirement or continuous requirements?

This is continuous requirement. Financial Institutions may decide to collect such information from time to time. However, customer must communicate the changes to the respective financial institution as and when such changes take place

What happens if customer holds an account with one holder being a US person?

Any account which has any one US person is treated as a US account and automatically become reportable account

One of the Director / Shareholder / Authorized Signatory of the Company is US based. Whether they will fall under reporting?

Yes, any account which has any one US person / controlling person of the entity is US based, is treated as a US account and automatically become reportable account

What information and/or documentation should be submitted for this purpose?

In general, customers should provide the requested documentation and information in the prescribed format – indicating place of birth, country of birth, country of residency for tax purpose, tax payer identification number, etc. In case of an entity, many other information including details of GIIN, Controlling persons to be submitted

What are withholdable payments?

Subject to certain exceptions, a withholdable payment is any:

- Gross proceeds from the sale or other disposition of any property of a type which can produce interest and dividends from U.S. sources; and
- Payment of interest, dividends, rents, wages, premiums, annuities, compensations, remunerations, emoluments, and other and fixed determinable annual and periodical ("F.D.A.P.") income from U.S. sources.

Note that the definition of withholdable payment requires that the payment be from U.S. sources. Whether an item of income is U.S. source is determined by specific rules under the I.R.C. and applicable Treasury regulations. For example, dividends and interest are, sourced according to the residence of the payor. Accordingly, dividends and interest paid by a U.S. corporation are U.S. source and dividends and interest paid by a foreign corporation are foreign source.

What are "passthru payments"?

A passthru payment is any withholdable payment or other payment to the extent that is attributable to a withholdable payment.

Whether Government Entities shall submit FATCA Declaration Form while investing?

Government entities are excluded from providing FATCA/CRS related information. However, they need to indicate so in the relevant section of the FATCA/CRS declaration form

FAQs on UBO

Who is UBO – Ultimate Beneficial Owner / Controlling Persons?

SEBI, vide above referred SEBI circular has mandated all registered intermediaries to seek necessary information from its clients about the beneficial owners, identify and verify the identity of persons who actually owns or control the investments. The beneficial owner has been defined in the circular as the natural person or persons, who ultimately own, control or influence a client and/or persons on whose behalf a transaction is being conducted, and includes a person who exercises ultimate effective control over a legal person or arrangement

How to identify UBO / Controlling Persons?

1) The identity of the natural person, who, whether acting alone or together, or through one or more juridical person, exercises control through ownership or who ultimately has a controlling ownership interest. Controlling ownership interest means ownership of/entitlement to:

   - more than 25% of shares or capital or profits of the juridical person, where the juridical person is a company;
   - more than 15% of the capital or profits of the juridical person, where the juridical person is a partnership;
   - more than 15% of the property or capital or profits of the juridical person, where the juridical person is an unincorporated association or body of individuals.

2) In cases where there exists doubt under clause (i) above as to whether the person with the controlling ownership interest is the beneficial owner or where no natural person exerts control through ownership interests, the identity of the natural person exercising control over the juridical person through other means like through voting rights, agreement, arrangements or in any other manner.

3) Where no natural person is identified under clauses (i) or (ii) above, the identity of the relevant natural person who holds the position of senior managing official.

Who is UBO in case of Trust?

The identity of the settler of the trust, the trustee, the protector, the beneficiaries with 15% or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

If no individual person qualifies as UBO, whether Nil declaration can be submitted?

No, if no beneficial owner or where no natural person exerts control through ownership interests could be ascertained based on ownership / shareholding pattern, the natural person who exercises control over the juridical person through other means like through voting rights, agreement, arrangements or in any other manner shall be treated as UBO.

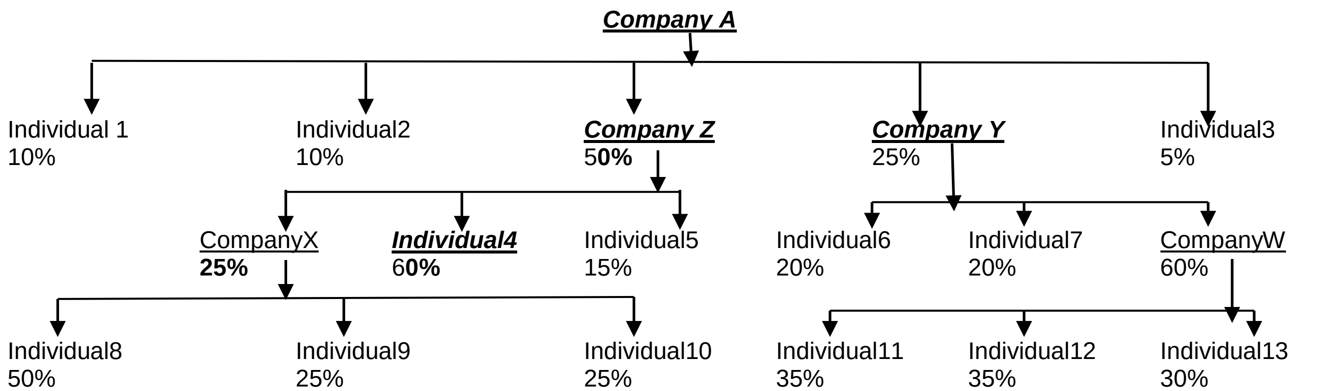
If UBO could not be identified based on the above process, then senior managing official who manages the operations of the organization shall be treated as UBO and hence UBO declaration form shall have atleast one UBO related information

Whether Nil declaration can be submitted by Listed Company?

Yes, Listed Company, their associates / controlled companies are exempt from UBO. However, they have to tick relevant option in UBO Declaration Form / in Account Opening Form

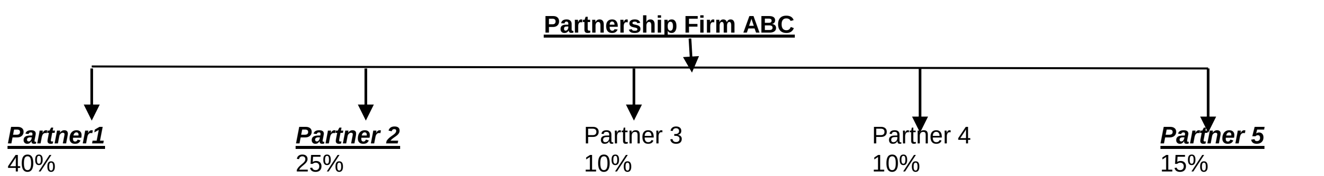
Sample Illustrations for ascertaining beneficial ownership:

Illustration No. 1 – Company A



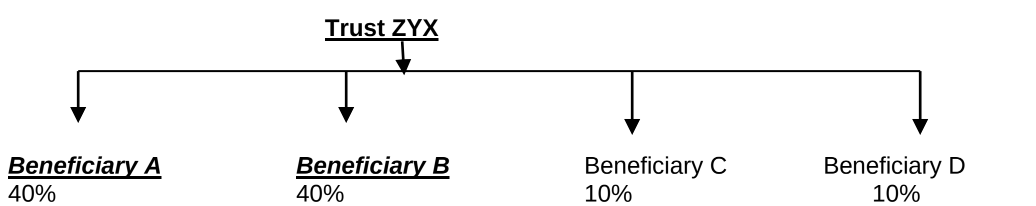
For Applicant A, Individual 4 is considered as UBO as it holds effective ownership of 30% in Company A. Hence details of Individual 4 has to be provided with KYC proof, Shareholding pattern of Company A, Z & Y to be provided along with details of persons of Company Y who are senior managing officials and those exercising control.

Illustration No. 2 – Partner ABC



For Partnership Firm ABC, Partners 1, 2 & 5 are considered as UBO as each of them holds >=15% of capital. KYC proof for these partners needs to be submitted including shareholding

Illustration No. 3 – Trustee ZYX



For Trust ZYX, Beneficiaries A & B are considered as UBO as they are entitled to get benefitted for >15% of funds used KYC proof for these beneficiaries needs to be submitted. Additionally, if they have nominated any person or group of persons as Settlor of Trust / Protector of Trust, relevant information to be provided along with the proof indicated.

FATCA & CRS Terms and Definitions

[This is only indicative in nature - please refer the relevant notifications / regulations and also consult your tax advisor for exact meaning of these terms]

Term	Description
FATCA	Foreign Account Tax Compliance Act
CRS	Common Reporting Standards
IRS	IRS is the acronym for U.S Internal Revenue Service – a government agency responsible for tax collection and tax law enforcement. Similar to Income Tax Dept in India
FFI	Foreign Financial Institution
GIIN	Global Intermediary Identification Number issued to an FFI
IGA	Intergovernmental agreement between the US and other countries
NFFE	Non-US entity that is not a financial institution [including a territory NFFE]. Following NFFEs are excluded from FATCA reporting – (a) Publicly traded corporation / listed companies; (b) Related Entity of a listed company; and (c) Active NFFE
Participating FFI	A Foreign Financial Institution (FFI) that has entered into an FFI agreement with the IRS
Non-Participating FFI (NPFFI)	an FFI other than participating FFI, a deemed-complaint FFI, or an exempt beneficial owner
Reporting FFI	Means any [FATCA Partner] Financial Institution that is not a Non-Reporting [FATCA Partner] Financial Institution
Sponsoring Entity	Entity that registers with the IRS to undertake the FATCA responsibilities on behalf of sponsored entities
TIN	Tax Identification Number in country of tax residence
US Person	a citizen or resident of the United States / a partnership / estate / trust / corporation established / formed / incorporated in the United States or under the law of the United States
Specified US Person	Any US Person other than i). A publicly traded corporation; ii). A corporation that is a member of the same expanded affiliate group; iii). A tax exempt organization; iv). an individual retirement plan; v). the United States or an agency or instrumentality of the United States; vi). Any state [including District of Columbia and United States possession] or State Authorities; vii). A bank, viii). A real estate investment trust; ix). A regulated investment company; x). an entity registered with the SEC under the Investment Company Act of 1940; xi). A common trust fund; xii). A tax exempt trust; xiii). A registered dealer; xiv). A registered broker
Passive Income	Portion of gross income that consists of dividends, interest, rents and loyalties (other than rents and loyalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the NFFE), income equivalent to interest / amount received from pool of insurance contracts, annuities, excess of gains over losses from the sale or exchange of property / from transactions (including futures, forwards or similar transactions) in any commodities but not including (i) any commodity hedging transaction, determined by treating the entity as a controlled foreign corporation or (ii) active business gains or losses from the sale of commodities but only if substantially all the foreign entity's commodities are property, excess of foreign currency gains over losses, net income from notional principal contracts, amounts received under cash value insurance contracts, amounts earned by insurance company in connection with its reserves for insurance and annuity contracts

Term	Description
Listed Company	A company is publicly traded if its stock are regularly traded on one or more *established securities markets (Established securities market means an exchange that is officially recognized and supervised by a governmental authority in which the securities market is located and that has a meaningful annual value of shares traded on the exchange)*
Related Entity	An entity is a "Related Entity" of another entity if one controls the other, or the two entities are under common control (where control means direct or indirect ownership of more than 50% of the vote or value in an entity)
Active NFFE	Any NFFE that Satisfies any one of the following – a. Less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and < 50% of the assets held by NFE are assets that produce or are held for the production of passive income b. The NFE is a Governmental Entity, an International Organization, a Central Bank, or an entity wholly owned by one or more of the foregoing c. Substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an entity shall not qualify for NFE status if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes; d. The NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFE; e. The NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution; f. The NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; g. Any NFE is a 'non for profit' organization which meets all of the following requirements: • It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labour organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare; • It is exempt from income tax in India; • It has no shareholders or members who have a proprietary or beneficial interest in its income or assets; • The applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and The applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof

Term	Description
Passive NFFE	any NFE that is not (i) an Active NFFE or listed / publicly traded entity or entity related to the listed / publicly traded entity, or (ii) a withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations or (iii) the gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, if the entity is managed by another entity that is a depository institution, a custodial institution, a specified insurance company, or an investment entity - *(Note: Foreign persons having controlling interest in a passive NFE are liable to be reported for tax information compliance purposes)*.
Controlling Persons	the natural persons who exercise control over an entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" shall be interpreted in a manner consistent with the Financial Action Task Force Recommendations.
Owner documented FFI	AN FFI meeting the following requirements – (a) FFI is an FFI solely because it is an investment entity; (b) FFI is not owned by or related to any FFI that is a depository institution, custodial institution, or specified insurance company; (c) FFI does not maintain a financial account for any non-participating FFI; (d) FFI provides the designated withholding agent with all of the documentation and agrees to notify the withholding agent if there is a change in the circumstances, and (e) The designated withholding agent agrees to report to the IRS (or, in case of a reporting Model 1 IGA, to the relevant foreign government or agency thereof) all of the information described in or (as appropriate) with respect to any US specified persons and (2) Notwithstanding the previous sentence, the designated withholding agent is not required to report information with respect to an indirect owner of the FFI that holds its interest through a participating FFI, a deemed-compliant FFI (other than an owner-documented FFI), an entity that is a US person, an exempt beneficial owner, or an exempted NFE
Undocumented investor	An investor that does not comply with reasonable requests for information necessary to determine whether that investor is a "US person" or not
Expanded affiliated group	One or more chains of members connected through ownership (50% or more, by vote or value) by a common parent entity if the common parent entity owns stock or other equity interests meeting the requirements in atleast one of the other members