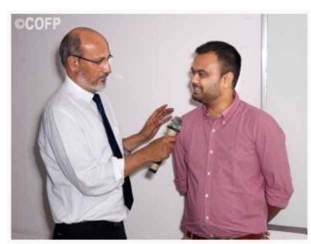
A Report Card On February 2015 Monthly Event "US FATCA Regulation, Tax implications for the investors from North Americas (US, Canada)"

The session started off with Narendra welcoming the audience for the day's program and motivate, encourage the members to participate in the monthly meetings. He asked the members that it should be 'give and take' experience to all. He also highlighted the responsibility of each member to share expertise and learn by participating actively in the monthly events.



Narendra welcomed the new joiners of the Council to the gathering. The new members introduced themselves and shared their backgrounds and interests. Narendra also presented the topic FATCA (Foreign-Account-Tax-Compliance-Act) and the speakers of the session namely,

1. Lovaii Navlakhi
2. Ravi Achar

3. Rajesh Rao
4. Sathish Padakanya

Then Lovaii took over and talked about why FATCA came into existence and how the purpose of it from tax evaders perspective. He briefly touched upon the background and the relevance of FATCA to India, to whom does it apply to, the obligations.

FATCA is relevant to financial planners because planners deal with clients who have income from US. It is essential to understand the nitty-gritty of this Act so that planners can handle the issues related to taxation better. The attention to FATC came in a way something different to what it was intended to. Planners are dealing with clients who have US tax status. There is a qualified investor system that IRS had introduced to address what FATCA had designed to address. If you are US taxpayer, global income is subject to tax. It does not matter where you earned, how you earned it, made before becoming US taxpayer; one needs to pay tax on the global income. It was left to the individual earlier to file and declare his global taxes.

People go to US after working in India for some time and continue to invest in India in the schemes they were investing while they were in India. US Treasury had figured out that very few make voluntary disclosures. They are losing vast amounts of money in the form of taxes, and there was no way for them to find if a person had any investments before he became a US taxpayer. What they then sort of did is trying to find a way how to control this than relying on the individuals. Therefore, US Treasury decided that they would go to institutions and get them registered and once they register they should declare the investments.

During Lovaii's talk participants raised many a questions that experienced very healthy discussions and conclusions.

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Over a period, the KYC norms have been strengthened across the globe after 9/11 attacks. Before 9/11, it was very easy for anyone to open a bank account in the US when traveling in the US. Financial authorities do not need to get into an agreement with IRS. Indian government has not signed the inter-governmental agreement, but they have agreed to sign. Foreign transactional institutions refer to the organizations not registered in US. The exchange of information between the international organizations can be neither reciprocal nor non-reciprocal. There are six to seven things reported under the US accounts; few are,

1. Name, address and the US tax identification number.
2. Gross receipts and gross payments on that account
3. Year-end account balance

Then he spoke of the penalties on the non-registered transactions under FATCA. At an institutional level, any non-registered transactions under FATCA would have to pay 30% of the value of the transaction as penalty that is a severe implication. FATCA is not applicable to individuals, but it shall apply to institutions. FATCA came into existence because individuals were untraceable, and, therefore, the authorities created this at an institutional level. India is in a white list because India agreed to sign FATCA in April 2014. All the provisions of FATCA have become applicable from Jan 1 2015.

Thus, Lovaii finished his talk introduced the next set of speakers and their topics of presentation.

Ravi Kumar spoke briefly on how FATCA and other acts affect individual taxpayers. He focused on the offshore investments of US individual taxpayers.

To make things simpler, he compared FATCA with Annual Commissions report for Indian institutions. Indian institutions report certain transactions. For example, if the aggregate transactions are more than Rs.2 Lakhs the credit card companies are supposed to report to Indian tax authorities, if someone has an FD of Rs.10 Lakhs, the banks have to report to tax authorities. If your investment from January to December exceeds $75,000 or $1,50,000 jointly, they have to report.

Rajesh spoke about Tax treatment in case of the person of Indian origin who is US Citizen residing in India and earning income from India & also from USA. He spoke on how to file returns in such a scenario.

In India, tax is levied on Residence rule. If his residential status is resident, his global income is taxed in India. Similarly, if he is US citizen, global income is taxed in US.

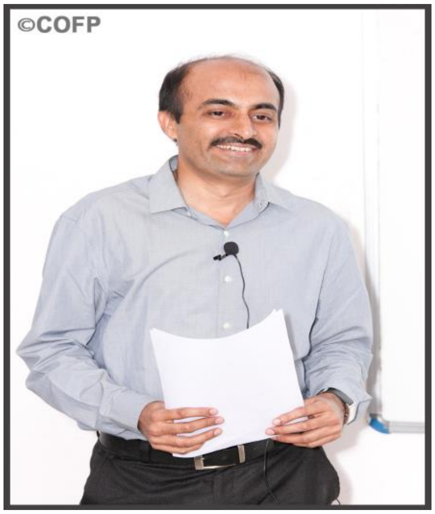
If an Individual who satisfies both the understated conditions of section 6 of the Income-tax Act, then he becomes a Non-Resident.

Condition	Status
1. The person is not in India for 182 days or more during the relevant previous year.	If yes, then the person is a non-resident. (Subject to condition "2".)
2. The person is not in India for 60 days or more during the previous year, and the person is not in India for 365 days or more during the 4 years prior to the previous year.	If yes, then the person is a non-resident. (Subject to exceptions mentioned below)

While filling income tax return in ITR 2, Income from India and USA should be combined, and the tax is computed. Withheld tax on US income or tax payable on such income in India whichever is less is claimed as relief u/s 90. After that, TDS needs to be shown on Indian Income. State tax paid in US cannot be claimed as relief. One more issue commonly seen is overlap of year. Since calendar year is followed in US, while filing return in India 3 months income of CY to be excluded & 3 months of CY to be included in India as we follow the financial year.

Then he spoke on Capital gains. Capital gain summary if any should be shown under Schedule D of 1040. In the Form 8949 complete description of investments bought and sold will be shown. If FATCA applies apart from above Form 8939 also should form part of the annual return. In India, while taking capital gain we prepare a statement on our own. While in US, we get certified copy from the financial institution in Form 1099B as reported to IRS. Sch to 1040 is filled based on this form. Few of forms are attached below for future reference.

Then he spoke on FBAR-Foreign Bank Account Report. It is similar to foreign asset details we give in ITR 2. Only difference is we give it along with the return, whereas in the US it is filed separately.
It is a simple form to collect basic information about US person of their overseas financial accounts in their names. US Persons must file this report online through FINCEN before 30th June of following year (No extension



allowed) if the total value of assets exceeds $10000 at any time during the calendar year. Then he spoke about the penalties applicable in case of tax evasion. If non-willful up to $10000; if willful $100000 or 50% of account balance at the time of the violation whichever is higher + criminal penalties.

Next, Sathish spoke on the implications, taxation and reporting aspects of US NRI's investing in India. All mutual funds in India can be termed as PFICs for US taxation.

Passive Foreign Investment Companies is enacted in 1986 to limit tax deferral by US investors in offshore funds. Previously foreign funds had an advantage over domestic funds. No tax was to be paid to distribution. Any foreign (i.e., non-U.S.) corporation meeting either the income test or the asset test is a PFIC with respect to each shareholder when the test is met.
The income test is met if 75% or more of the foreign corporation's gross income is passive income

The asset test is met if 50% or more of the foreign corporation's average assets (as defined in the IR Code) produce, or could produce passive income, or are assets (such as cash and bare land) that produce no income.
As far as filing requirements go, a U.S. person must file annually a separate Form 8621 for each PFIC for which the taxpayer was a shareholder during the taxable year.

There are three methods of calculating gains of PFIC investments:

1. Section 1291 Fund
2. Qualified Election Fund
3. Mark to Market election

1) Section 1291 Fund

This is the 'default' method where one does not pay tax until selling the mutual funds/PFICs or excess distribution

Under this regime, taxpayers are permitted to defer taxation of a PFIC's undistributed income until the PFIC makes an excess distribution. An excess distribution includes the following.

1. A gain realized on the sale of PFIC stock

Any actual distribution made by the PFIC, but only to the extent that the total actual distributions received for the year exceed 125% of the average actual distribution received in the preceding three taxable years (or, if shorter, the taxpayer's holding period before the current taxable year). The maximum marginal tax is applied. Also interest is computed as if there were underpayment of tax.

2) The Qualified Election Fund

Here the investors are allowed to elect to be taxed currently on their pro rata share of PFICs earnings and profits. The included income is treated as ordinary income to the extent of the taxpayer's pro rata share of the QEF's ordinary income, and capital gains to the extent of the taxpayer's pro rata share of the QEF's net capital gain. In simple terms, dividends received in the portfolio will be treated as ordinary income and gain arising out of sale of shares will be treated as capital gain.

Example: If a mutual fund portfolio has 30 stocks and during the calendar year some companies have distributed dividends, that dividends are treated as ordinary income of the investor for the year. Similarly if some stocks are sold during the year, the resulting capital gain, short term or long term, should be treated as capital gain for the year

3) Mark to Market election

An investor of a PFIC may also elect each year to recognize gain or loss on the investments as if she has sold the PFIC investments at fair market value.

Such election is available only for investments the market value of which is readily determinable (e.g., regularly traded shares).
Any loss also can be accounted but it should not exceed the previously claimed gain. Such income should be shown as ordinary income

Following members attending the event and participated in it wholeheartedly. COFP KM Team thanks them profusely:

Adyanthaya M R
Amit Kumar
B.Srinivasan
Bhavna Samtani
Dayanand Aski
Deepesh R Mehta
Dilshad Billimoria
Gokul S
Jitendra Kumar
Kannan Ramadas
Lovaii Navlakhi
Mahendra Nayak M
Manmohan Lakhotia
Mohammed Yusuf Gaffoor
Mohan M G
Narendra N Kondajji
Neeti Trivedi
Nilofer Amlani
P Srinivasan
Phani Kumar I S
Pradeep Hattangadi
Pramod Kanipakam
Prasad Achaiah
Rajeev Mehra
Rajesh P Rao
Raman Gupta A
Ravi Kumar Achar
Sathish Padakannaya

Saurabh Bansal
Shantala N Kumble
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Srinivasan Tiru Seshacharya
Sudarshan G H
Sudarshan M A
Suresh A
Uday Kumar Dhoot
Venkateshwarlu P N
Venkitesh S
Vikas Agrawal
Vinod Laxmikant Rao
Yuvaraja
Jyoti Prakash Nayak
Rishi Bajaj
Vikram Singvee
Abhinav Sethi

Thus came to an end yet another wonderful monthly meet. I should say the session became more of a discussion and debate than a presentation as planned due to the nature and complexity and nitty gritty of the topic FATCA. The meeting turned out to be very informative and interactive for all the members of the council. I am sanguine that this session had clarified clarifications of many which were complex in nature as the topic itself.

On behalf of the Knowledge Management (KM) committee, I thank the Management Committee (MC) for having faith in KM team and giving the opportunity to make the presentation.


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