

## KPMG AEOI Updates & Tracking Service CRS Alert

<b>Date:</b>	09 August 2023
<b>Alert Type:</b>	Document
<b>Country:</b>	India
<b>Regime:</b>	CRS
<b>Document Type</b>	Other Guidance

### India: Issued Clarification Regarding CRS Guidance

On 26 July 2023, the Income Tax Department of India issued a circular clarifying Rule 114F(5) of the Income Tax Rules to address reporting of accounts other than US reportable accounts.

The clarifications are as follows:

- **Treaty Qualified Retirement Fund:** A Treaty Qualified Retirement Fund in India is defined as a fund entitled to benefits under the India and US agreement on income derived from US sources. The fund operates primarily to provide pension or retirement benefits, and is considered a non-reporting Financial Institution (FI) under Rule 114F(5)(b). While it qualifies as an exempt beneficial owner under US internal Revenue Code (IRC) sections 1471 and 1472, it is not treated as a non-reporting FI under the CRS for accounts other than US reportable accounts. In light of this, a Treaty Qualified Retirement Fund will not be considered a non-reporting FI for the purpose of maintaining and reporting information for reportable accounts, except for US reportable accounts as defined in Rule 114F(11) of the Income Tax Rules.
- **Non-Public Fund of the Armed Forces:** A non-public fund of the armed forces established in India for the welfare of current and former members of the armed forces with tax-exempt income is considered a non-reporting FI under 114F(5)(c). While the fund qualifies as a non-reporting FI and an exempt beneficial owner under the FATCA IGA, it is not treated as an FI under CRS due to its classification as an active Non-Financial Entity (NFE). In light of this, a non-public fund of the armed forces will not be treated as an FI for any reportable account other than a US reportable account, as defined in Rule 114F(11) of the Income Tax Rules.

### India Contacts:



**Sowmya Anantharaman**  
Director

[sanantharaman@bsraffiliates.com](mailto:sanantharaman@bsraffiliates.com)

### Additional Contacts:



**Naresh Makhijani**  
Partner

[nareshmakhijani@kpmg.com](mailto:nareshmakhijani@kpmg.com)

- Gratuity Fund: A gratuity fund is defined as established under the payment of Gratuity Act of 1972, is a fund used to provide gratuity payments to certain types of employees of an Indian employer. It is considered a non-reporting FI under rule 114F, provided that it is also an FI under the same rule. While it qualifies as a non-reporting FI and an exempt beneficial owner under the FATCA IGA, it is not explicitly mentioned as a non-reporting FI under CRS. The circular clarified the following treatment for reporting under CRS for accounts other than US reportable accounts:
  - A gratuity fund managed solely by individual or entities that is not an FI cannot be classified as a managed Investment Entity under Rule 114F(3)(c)(B). Instead, they qualify as a passive NFE under Explanation clause (D)(i) to Rule 114F(6).
  - Per paragraph 2.3.3 of the FATCA and CRS guidance, an entity is considered managed by another entity if it has the discretionary authority to manage the entity's assets, either directly or through another service provider. If a gratuity falls under the category of managed investment entity as described in Rule 114F(3)(c)(B), it will be classified as an FI and a reporting FI for CRS reporting purposes.
  - Accounts held in gratuity funds are usually considered excluded accounts if they meet the criteria of retirement or pension accounts under Explanation clause h(i) to Rule 114F(1). However, this exclusion is subject to the account fulfilling all of the conditions in the clause, which includes monetary contribution limits to the funds.
  - Accounts held in gratuity funds may have withdrawals conditioned on specific criteria beyond death, disability, or retirement, like withdrawals upon resignation after a certain period of continuous service. If these criteria are met, such accounts can be considered excluded accounts under Explanation clause h(ii) to Rule 114F(1), subject to the account fulfilling all of the conditions outlined, including annual monetary contribution limits.
  - If a gratuity fund is a reporting FI, the relevant accounts that meet the conditions specified in Explanation clause (h)(i) or h(ii) to Rule 114F(1) will be treated as excluded accounts.



**Kanupriya Mundhra**

Technical Director

[kanupriyam@bsraffiliates.com](mailto:kanupriyam@bsraffiliates.com)

Reference: [Circular](#) [PDF 240KB]

For information on KPMG's global AEOI network professionals, please email [GO-FM AEOI Program Support](#).

For more information on KPMG AEOI Updates & Tracking Service, please see [here](#).

For additional summaries of the latest AEOI developments, please visit KPMG's TaxNewsFlash-FATCA/IGA/CRS Insights page, [here](#).

[kpmg.com/socialmedia](https://kpmg.com/socialmedia)



#### Contact us

**Cyrus Daftary**

Principal

+1 212 954 6096

[cdaftary@kpmg.com](mailto:cdaftary@kpmg.com)

**Laurie Hatten-Boyd**

Principal

+1 206 213 4001

[lhattenboyd@kpmg.com](mailto:lhattenboyd@kpmg.com)

[www.kpmg.com](https://www.kpmg.com)

© 2023 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. NDP144698-1A

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

In preparing this information, we consulted tax authorities' official releases that are subject to change, retroactively, prospectively, or both, and any such changes could affect the information stated herein. The advice or other information in this document was prepared for the sole benefit of KPMG's client and may not be relied upon by any other person or organization. KPMG accepts no responsibility or liability in respect of this document to any person or organization other than KPMG's client. The following information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.