F. No. 500/34/2019-FT&TR-III(Pt.)/1
Government of India
Ministry of Finance
Department of Revenue
(Foreign Tax & Tax Research Division)

Dated the 26th July, 2023

Subject: Clarification in respect of Rule 114F (5) of the Income Tax Rules, 1962 – reg.

India has signed the Multilateral Competent Authority Agreement (MCAA) for exchanging information automatically under the Common Reporting Standard (CRS) on 3rd June 2015.

2. The Central Board of Direct Taxes (CBDT) has issued guidance from time to time to provide clarifications, inter alia, in respect of information to be reported by Reporting Financial Institutions (RFIs) in respect of reportable accounts. A comprehensive Guidance Note was issued on 31.08.2015 to provide guidance to the RFIs, regulators and officers of the Income Tax Department. This was updated on 31.12.2015, 31.05.2016 and 30.11.2016.

3. In addition to the guidance and clarifications already issued in this regard, the CBDT, in exercise of its powers under section 119 of the Income-tax Act, 1961, hereby issues the following clarification as a partial modification to the Guidance Note dated 30.11.2016, for the removal of doubts with respect to reporting of accounts other than U.S. reportable accounts.

Treaty Qualified Retirement Fund

4. The definition of Treaty Qualified Retirement Fund has been provided in the clause D of the Explanation to clause (5) of Rule 114F of the Income-tax Rules, 1962("the Rules"), which reads as under:

"Treaty Qualified Retirement Fund" means a fund established in India, provided that the fund is entitled to benefits under an agreement between India and the United States of America on income that it derives from sources within the United States of America (or would be entitled to such benefits if it derived any such income) as a resident of India that satisfies any applicable limitation on benefits requirement, and is operated principally to administer or provide pension or retirement benefits;

5. A Treaty Qualified Retirement Fund is a non-reporting financial institution under sub-clause (b) of clause (5) of Rule 114F of the Rules.

6. As per paragraph II(A) of the Annex II of Inter-Governmental Agreement and Memorandum of Understanding between India and USA to improve International Tax compliance and to implement Foreign Tax Account Compliance Act of USA ("FATCA-IGA"), a Treaty-Qualified Retirement Fund qualifies as an Exempt beneficial owner for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code and is treated as a Non-Reporting Indian Financial Institution.

7. However, under the Common Reporting Standard (CRS) which involves exchange of information in respect of reportable accounts other than U.S reportable accounts, a Treaty Qualified Retirement Fund is not treated as a Non-Reporting Financial Institution.

8. In view of this, it is clarified that a Treaty Qualified Retirement Fund shall not be treated as a non-reporting financial institution for the purposes of maintaining and reporting information in respect of any reportable account other than a U.S. reportable account defined in clause (11) of Rule 114F of the Rules.

Non-public fund of the armed forces

9. A non-public fund of the armed forces is a non-reporting financial institution under sub-clause (c) of clause (5) of Rule 114F of the Rules. As per clause H of the Explanation to clause (5) of Rule 114F, "*a non-public fund of the armed forces means a fund established in India as a regimental fund or non-public fund by the armed forces of the Union of India for the welfare of the current and former members of the armed forces and whose income is exempt from tax under clause (23AA) of section 10 of the* Income-tax *Act* ,1961."

10. As per paragraph II(F) of Annex II of the FATCA-IGA, Regimental Fund or Non-public fund of the Armed Forces qualifies as a Non-Reporting Indian Financial Institution and as an exempt beneficial owner for the purposes of section 1471 and 1472 of the U.S. Internal Revenue Code.

11. However, under the CRS, a non-public fund of the armed forces is in the nature of an active non-financial entity (NFE) based on subparagraph VIII.B.2 and VIII.D.9.c of the CRS and therefore, is not treated as a financial institution.

12. In view of this, it is hereby clarified that a non-public fund of the armed forces shall not be treated as a financial institution in case of any reportable account other than a U.S. reportable account defined under clause (11) of Rule 114F of the Rules**.**

Gratuity Fund

13. A gratuity fund is a non-reporting financial institution under sub-clause (c) of clause (5) of Rule 114F of the Rules, provided that it is also a financial institution under Rule 114F of the Rules. As per Explanation J to clause (5) of Rule 114F of the Rules, gratuity fund means *"a fund established under the Payment of Gratuity Act, 1972 (39 of 1972), to provide for the payment of a gratuity to certain types of employees of an Indian employer specified in the Payment of Gratuity Act, 1972".*

14. As per paragraph II (H) of Annex II of the FATCA-IGA, a gratuity fund qualifies as a Non-Reporting Indian Financial Institution and as an exempt beneficial owner for the purposes of section 1471 and 1472 of the U.S. Internal Revenue Code. However, gratuity funds are not explicitly mentioned as Non-Reporting Financial Institution under the CRS.

15. In view of this, the following is clarified for the purpose of reporting under the CRS in respect of accounts other than U.S. reportable accounts:

a. Gratuity funds which are *only* managed by either individual(s) and/or entity(ies) that is not a financial institution, are not capable of being classified as a managed Investment Entity

under sub-clause (c) (B) of the Explanation to clause (3) of Rule 114F of the Rules. Hence, such gratuity funds will qualify as a passive non-financial entity as per clause (D) (i) of Explanation to clause 6 of Rule 114F of the Rules.

b. Reference is invited to Paragraph 2.3.3 of the Guidance Note on FATCA and CRS, where it has been stated that an Entity is "managed by" another Entity if it has discretionary authority to manage the Entity's assets (in whole or part), either directly or through another service provider. In cases where a gratuity fund is a managed investment entity under subclause (c) (B) of clause (3) of Rule 114F of the Rules, such gratuity fund will qualify as a Financial Institution and a Reporting Financial Institution for reporting purposes under the CRS.

c. Generally, accounts held in gratuity funds will be treated as excluded accounts if they qualify as retirement or pension accounts as per clause h(i) of Explanation to clause 1 of the Rule 114F, subject to satisfaction of all the conditions laid out in that clause including, inter alia, the monetary limits in respect of contributions to the said funds.

d. However, accounts held in gratuity funds may also involve withdrawals conditioned on meeting specific criteria in circumstances beyond death, disability or retirement (e.g., gratuity funds that permit withdrawals upon resignation after a certain period of continuous service). Such accounts can be treated as excluded accounts under clause h(ii) of Explanation to clause 1 of the Rule 114F subject to satisfaction of all the conditions laid out in that clause including, inter alia, annual monetary limits in respect to contributions to the said funds.

e. In view of the above, in the event that a gratuity fund is a reporting financial institution, relevant accounts held with such a gratuity fund fulfilling the conditions specified in clause (h)(i) or h(ii) of the Explanation to clause 1 of Rule 114F of the Rules, will be treated as excluded accounts.

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To,

All Reporting Financial Institutions (RFIs)