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Definitions.

238. For the purposes of this rule and rules 239 and 240,—

- (1) "financial account" means an account (other than an excluded account) maintained by a financial institution, and includes—
- (i) a depository account;
 - (ii) a custodial account;
 - (iii) in the case of an investment entity, any equity or debt interest in the financial institution.

Explanation.—For the purposes of this sub-clause "financial account" shall not include any equity interest or debt interest in an entity that is an investment entity solely because it,—

- (a) renders investment advice to, and acts on behalf of; or
- (b) manages portfolios for, and acts on behalf of,

a customer for the purpose of investing, managing, or administering financial assets deposited in the name of the customer with a financial institution that is not a non-participating financial institution other than such entity;

- (iv) in the case of a financial institution not described in sub-clause (iii), any equity or debt interest in the financial institution, if the class of interests was established with a purpose of avoiding reporting in accordance with rule 239 and, in case of a U.S. reportable account, if the value of the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to U.S. source withholdable payments; and
- (v) any cash value insurance contract and any annuity contract issued or maintained by a financial institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an excluded account.

Explanation.—For the purposes of this clause,—

- (a) "depository account" includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a financial institution in the ordinary course of a banking or similar business and also an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon but for an account other than a U.S. reportable account,—
 - (A) the provisions of this clause shall apply with the effect that the phrase "financial institution in the ordinary course of a banking or similar business" shall be substituted by the phrase "depository institution";
 - (B) a depository account shall also include,—
 - (i) an account or notional account that represents all specified electronic money products held for the benefit of a customer; and
 - (ii) an account that holds one or more central bank digital currencies for the benefit of a customer.

Explanation.— For the purposes of clause (a) of the *Explanation* to rule 238(1), "central bank digital currencies" shall have the same meaning as assigned in rule 241;

- (b) "custodial account" means an account (other than an insurance contract or annuity contract) for the benefit of another person that holds one or more financial assets;
- (c) "equity interest" in a financial institution, being—
 - (i) a partnership firm, means either a capital or profits interest in the partnership firm;
 - (ii) a trust, means any interest held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust;

Explanation.—A person will be treated as a beneficiary of a trust if he has the right to receive directly or indirectly a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.

- (d) "insurance contract" means a contract (other than an annuity contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk;
- (e) "annuity contract" means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals;
- (f) "cash value insurance contract" means an insurance contract (other than an indemnity reinsurance contract between two insurance companies) that has a cash value and in case of a U.S. reportable account such value is greater than an amount equivalent to fifty thousand U.S. dollars.

Explanation.—For the purposes of this clause, a single premium life insurance contract which does not permit an amount to be paid on surrender or termination of the contract and which does not allow amounts to be borrowed under or with regard to the contract, shall not constitute a cash value insurance contract;

- (g) "cash value" means the greater of—
 - (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan); and
 - (ii) the amount the policyholder can borrow under or with regard to the contract,

but does not include an amount payable under an insurance contract,—

- (A) solely by reason of the death of an individual insured under a life insurance contract including a refund of a previously paid premium provided such refund is a limited risk refund; or
- (B) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against; or
- (C) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an insurance contract (other than a life insurance contract or an annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract; or
- (D) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an insurance contract under which the only benefits payable are described in sub-clause (B); or
- (E) as a return of an advance premium or premium deposit for an insurance contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium which will be payable under the contract;

- (ga) for the purposes of clause (g) of *Explanation* to sub-rule (1), the provisions contained in sub-clause (A) and sub-clause (E) shall not apply in case of a U.S. reportable account;

- (h) "excluded account" means,—



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- (i) a retirement account or pension account that satisfies the following requirements: —
- (A) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
 - (B) the account is tax-favoured where contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross total income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate;
 - (C) information reporting is required to the income-tax authorities with respect to the account;
 - (D) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
 - (E) either annual contributions are limited to an amount equivalent to fifty thousand U.S. dollars or less, or there is maximum lifetime contribution limit to the account of an amount equivalent to one million U.S. dollars or less, in each case applying the rules specified in rule 240 for account aggregation and currency translation.
- Explanation.*—A financial account that otherwise satisfies the requirements of item (E) will not fail to satisfy such requirements solely because such financial account may receive assets or funds transferred from one or more financial accounts that meet the requirements of sub-clause (i) or (ii) or from one or more retirement or pension funds that meets with the requirements of clause (E), (F) or (G) of *Explanation* to clause (5);
- (ii) an account that satisfies the following requirements:—
- (A) the account is subject to regulation as a savings vehicle for purposes other than for retirement, or the account (other than U.S. reportable account) is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market;
 - (B) the account is tax-favoured where contributions to the account that will otherwise be subject to tax are deductible or excluded from the total income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate;
 - (C) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
 - (D) annual contributions are limited to an amount equivalent to fifty thousand U.S. dollars or less, applying the rules specified in rule 240 for account aggregation and currency translation.
- Explanation.*—A financial account that otherwise satisfies the requirements of item (D) will not fail to satisfy such requirements solely because such financial account may receive assets or funds transferred from one or more financial accounts that meet the requirements of sub-clause (i) or (ii) or from one or more retirement or pension funds that meets with the requirements of clause (E), (F) or (G) of *Explanation* to clause (5) of this rule;
- (iii) an account established under the Senior Citizens Savings Scheme Rules, 2004 made under the Government Savings Banks Act, 1873 (5 of 1873);
- (iv) a life insurance contract with a coverage period that will end before the insured individual attains age of ninety years, provided that the contract satisfies the following requirements: —
- (A) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age of ninety years, whichever is shorter;
 - (B) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
 - (C) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
 - (D) the contract is not held by a transferee for value;
- (v) an account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate;
- (vi) an account established in connection with any of the following:—
- (A) a court order or judgment;
 - (B) a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements: —
 - (a) the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
 - (b) the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
 - (c) the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
 - (d) the account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
 - (e) the account is not associated with a depository account referred to in sub-clause (vii);
 - (C) an obligation of a financial institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time;
 - (D) an obligation of a financial institution solely to facilitate the payment of taxes at a later time;
 - (E) a foundation or capital increase of a company provided that the account satisfies the following requirements: —
 - (i) the account is used exclusively to deposit capital that is to be used for the purpose of the foundation or capital increase of a company, as prescribed by law;
 - (ii) any amounts held in the account are blocked until the Reporting Financial Institution obtains an independent confirmation regarding the foundation or capital increase;
 - (iii) the account is closed or transformed into an account in the name of the company after the foundation or capital increase;



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- (iv) any repayments resulting from a failed foundation or capital increase, net of service provider and similar fees, are made solely to the persons who contributed the amounts;
 - (v) the account has not been established more than 12 months ago; and
 - (vi) the account is not a U.S. reportable account;
 - (vii) in the case of an account other than a U.S. reportable account, a depository account that satisfies the following requirements:—
 - (A) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
 - (B) beginning on or before the 31st December, 2015, the financial institution implements its policies and procedures either to prevent a customer from making an overpayment in excess of an amount equivalent to fifty thousand U.S. dollars, or to ensure that any customer overpayment in excess of an amount equivalent to fifty thousand U.S. dollars is refunded to the customer within sixty days, in each case applying the rules specified in rule 240 for account aggregation and currency translation and for this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but includes credit balances resulting from merchandise returns;
 - (viii) a depository account, other than U.S. reportable account, which represents all specified electronic money products held for the benefit of a customer, if the rolling average 90 day end-of-day aggregate account balance or value during any period of 90 consecutive days did not exceed USD 10,000 at any day during the calendar year or other appropriate reporting period;
- (2) "financial asset" includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), insurance contract or annuity contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, insurance contract, or annuity contract but "financial asset" shall not include a non-debt and direct interest in an immovable property and for an account other than a U.S. reportable account, "financial asset" shall also include any interest (including a futures or forward contract or option) in a relevant crypto-asset;
- (3) "financial institution" means a custodial institution, a depository institution, an investment entity, or a specified insurance company.

Explanation.—For the purposes of this clause,—

 - (a) "custodial institution" means any entity that holds, as a substantial portion of its business, financial assets for the account of others and where its income attributable to the holding of financial assets and related financial services equals or exceeds twenty per cent of its gross income during the three financial years preceding the year in which determination is made or the period during which the entity has been in existence, whichever is less;
 - (b) "depository institution" means any entity that accepts deposits in the ordinary course of a banking or similar business but for an account other than a U.S. reportable account, "depository institution" shall also include an entity that holds specified electronic money products or central bank digital currencies for the benefit of customers;
 - (c) "investment entity" means any entity,—
 - (A) that primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer: —
 - (i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading; or
 - (ii) individual and collective portfolio management; or
 - (iii) otherwise investing, administering, or managing financial assets or money on behalf of other persons but for an account other than U.S. reportable account, the provisions of this item,—
 - (a) shall apply with the effect that the phrase "financial assets" shall be substituted by the phrase "financial assets or relevant crypto-assets";
 - (b) shall not include the provision of services effectuating exchange transactions for or on behalf of customers.
 - (B) *Explanation.* —For the purposes of item (iii), the term "exchange transaction" shall have the same meaning as assigned in rule 241; 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 mentioned in sub-clause (A) of this clause.

Explanation 1.—An entity is treated as primarily conducting as a business one or more of the activities described in sub-clause (A) of this clause, or an entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets for purposes of sub-clause (B) of this clause, if the entity's gross income attributable to the relevant activities equals or exceeds fifty per cent of the gross income of the entity during the shorter of the three-year period ending on 31st March of the year preceding the year in which the determination is made or the period during which the entity has been in existence.

Explanation 2.—The term "investment entity" shall not include an entity that is an active non-financial entity merely because it meets any of the criteria provided in sub-clause (iv), (v), (vi) or (vii) of clause (A) of *Explanation* to clause (6) of this rule but for an account other than a U.S. reportable account, the provisions of sub-clause (B) and *Explanation 1* shall apply with the effect that the phrase "financial assets" shall be substituted by the phrase "financial assets or relevant crypto-assets";
 - (d) "specified insurance company" means any entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract;
- (4) "non-participating financial institution" means a financial institution defined in clause (r) of Article 1 of the agreement between the Government of the Republic of India and the Government of the United States of America to improve international tax compliance and to implement Foreign Account Tax Compliance Act of the United States of America (hereinafter referred to as the FATCA agreement), but does not include, —
 - (a) an Indian financial institution; or
 - (b) other jurisdiction, being a jurisdiction that has in effect an agreement with the United States of America to facilitate the implementation of Foreign Account Tax Compliance Act (hereinafter referred to as other partner jurisdiction), financial institution, other than a financial institution treated as a non-participating financial institution pursuant to sub-paragraph (b) of paragraph 2 of Article 5 of the FATCA agreement or the corresponding provision in an agreement between the United States of America and other partner jurisdiction;
- (5) "non-reporting financial institution" means any financial institution that is,—
 - (a) a Governmental entity, International Organisation or Central Bank, other than—
 - (i) with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution, or depository institution; or
 - (ii) with respect to the activity of maintaining central bank digital currencies for account holders which are not financial institutions, governmental entities, international organisations or central banks but the provisions of this item shall apply in respect of an account other than a U.S. reportable account;



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- (b) a 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;
- (c) a non-public fund of the armed forces, Employees' State Insurance Fund, a gratuity fund or a provident fund;
- (d) an 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), and each direct holder of a debt interest in such entity is either a depository institution (with respect to a loan made to such entity) or a financial institution referred to in sub-clauses (a) to (c);
- (e) a qualified credit card issuer;
- (f) an 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;
- (g) an exempt collective investment vehicle;
- (h) a 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 239 with respect to all reportable accounts of the trust;
- (i) a financial institution with a local client base, in case of any U.S. reportable account;
- (j) a local bank, in case of any U.S. reportable account;
- (k) a financial institution with only low value accounts, in case of any U.S. reportable account;
- (l) sponsored investment entity and controlled foreign corporation, in case of any U.S. reportable account; or
- (m) sponsored closely held investment vehicle, in case of any U.S. reportable account;
- (n) a qualified non-profit entity in respect of an account other than a U.S. reportable account.

Explanation.—For the purpose of this clause,—

- (A) "Governmental entity" means the Government of a country or territory, any political sub-division of a country or territory (including a State, province, county, or municipality), or any wholly owned agency or instrumentality or controlled entity of a country or territory or of any one or more of the foregoing (where each is also a "Governmental entity") and includes the integral parts, controlled entities, and political sub-divisions of such country or territory.

Explanation.—For the purpose of clause (A), —

- (i) Subject to provisions of clauses (iii) and (iv), an "integral part" of a country or territory means any person, organisation, agency, bureau, fund, instrumentality, or other body, by whatever name called, that constitutes a governing authority of a country or territory and the net earnings of the governing authority must be credited to its own account or to other accounts of the country or territory, with no portion inuring to the benefit of any private person but integral part does not include any individual, who is a sovereign, official, or administrator acting in a private or personal capacity;
 - (ii) Subject to the provisions of clauses (iii) and (iv), a controlled entity means an entity that is separate in form from the country or territory or that otherwise constitutes a separate juridical entity; so, however, that,—
 - (a) the entity is wholly owned and controlled by one or more Governmental entities directly or through one or more controlled entities;
 - (b) the entity's net earnings are credited to its own account or to the accounts of one or more Governmental entities, with no portion of its income inuring to the benefit of any private person; and
 - (c) the entity's assets vest in one or more Governmental entities upon dissolution;
 - (iii) the income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a Governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of a Department of Government;
 - (iv) income is considered to inure to the benefit of private persons if the income is derived from Governmental entity engaged in a commercial business, such as a commercial banking business, which provides financial services to private persons;
- (B) "International Organisation" means any international organization or wholly owned agency or instrumentality thereof including any inter-Governmental organisation,—
 - (a) that is comprised primarily of Governments;
 - (b) that has in effect a headquarters or substantially similar agreement with India; and
 - (c) the income of which does not inure to the benefit of private persons;
 - (C) "Central Bank" means a bank that is by law or Government sanction the principal authority, other than the Government of the country or territory itself, issuing instruments intended to circulate as currency including an instrumentality that is separate from the Government of the country or territory, whether or not owned in whole or in part by that country or territory;
 - (D) "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;
 - (E) "Broad Participation Retirement Fund" means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries who are current or former employees (or persons nominated by such employees) of one or more employers in consideration for services rendered but the fund,—
 - (i) does not have any beneficiary with a right to more than five per cent of the fund's assets;
 - (ii) is subject to Government regulation and provides information reporting to the income-tax authorities; and
 - (iii) satisfies at least one of the following requirements:—
 - (a) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
 - (b) the fund receives at least fifty per cent of its total contributions other than transfer of assets from other plans referred to in clauses (D) to (G) or from retirement and pension accounts referred to in sub-clause (i) of clause (h) of *Explanation* to clause (I) from the sponsoring employers;
 - (c) distributions or withdrawals from the fund are allowed only in the event of retirement, disability or death except rollover distributions to other retirement funds referred to in clauses (E) to (G), or retirement and pension accounts referred to in sub-clause (i) of clause (h) of *Explanation* to clause (I), or penalties which apply to distributions or withdrawals made before such events; or



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- (d) contributions (other than permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed an amount equivalent to fifty thousand U.S. dollars annually, applying the procedures set forth in rule 240 for account aggregation and currency translation;
- (F) "Narrow Participation Retirement Fund" means a fund established to provide retirement, disability, or death benefits to beneficiaries who are current or former employees (or persons nominated by such employees) of one or more employers in consideration for services rendered; so, however, that,—
- (i) the fund has less than fifty participants;
 - (ii) the fund is sponsored by one or more employers who are not investment entities or passive non-financial entities;
 - (iii) the employee and employer contributions to the fund other than transfer of assets from retirement and pension accounts referred to in sub-clause (i) of clause (h) of *Explanation* to clause (I) are limited by reference to earned income and compensation of the employee, respectively;
 - (iv) participants who are not residents in India are not entitled to more than twenty per cent of the fund's assets; and
 - (v) the fund is subject to Government regulation and provides information reporting to the income-tax authorities;
- (G) "Pension Fund of a Governmental entity, International Organisation or Central Bank" means a fund established by a Governmental entity, International Organisation or Central Bank to provide retirement, disability or death benefits to beneficiaries or participants who are current or former employees (or persons nominated by such employees), or who are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services rendered to the Governmental entity, International Organisation or Central Bank;
- (H) "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 Schedule VII(1) of the Act;
- (I) "Employees' State Insurance Fund" means the fund established as Employees' State Insurance Fund under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), to provide medical expenses of low-income factory workers in India;
- (J) "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;
- (K) "provident fund" means a fund established under the Provident Funds Act, 1925 (19 of 1925) or the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) to provide current and former employees of Indian employers retirement benefits in consideration for services rendered but that fund,—
- (i) does not have any beneficiary with a right to more than five per cent of the fund's assets;
 - (ii) is subject to Government regulation and provides annual information reporting about its beneficiaries to the income-tax authorities;
 - (iii) is generally exempt from tax on investment income due to its status as a provident fund; and
 - (iv) contributions (other than permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed an amount equivalent to fifty thousand U.S. dollars annually, applying the procedures set forth in rule 240 for account aggregation and currency translation;
- (L) "qualified credit card issuer" means a financial institution satisfying the following requirements:—
- (i) it is a financial institution only because it is an issuer of credit cards and accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
 - (ii) beginning on or before the 1st July, 2014, the financial institution implements policies and procedures either to prevent a customer from making an overpayment in excess of an amount equivalent to fifty thousand U.S. dollars or to ensure that any customer overpayment in excess of an amount equivalent to fifty thousand U.S. dollars is refunded to the customer within sixty days, in each case applying the rules set forth in rule 240 for account aggregation and currency translation.
- Explanation.*—For the purpose of this sub-clause, a customer overpayment does not refer to credit balances to the extent of disputed charges but includes credit balances resulting from merchandise returns;
- (M) "exempt collective investment vehicle" means an investment entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through persons other than,—
- (i) those referred to in sub-clauses (a) to (c) of clause (6); and
 - (ii) a non-participating financial institution.
- Explanation.*—An investment entity which is regulated as a collective investment vehicle does not fail to qualify under this clause as an exempt collective investment vehicle, only because it has issued physical shares in bearer form; so, however, that—
- (i) the collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after the 31st December, 2012;
 - (ii) the collective investment vehicle retires all such shares upon surrender;
 - (iii) the collective investment vehicle performs the due diligence procedures set forth in rule 240 and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
 - (iv) the collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed or immobilised as soon as possible, and in any event prior to the 1st January, 2017;
- (N) "financial institution with a local client base" means a financial institution satisfying the following requirements:—
- (i) it has been granted a licence and is regulated as a financial institution under any law for the time being in force;
 - (ii) the financial institution does not have a fixed place of business outside India.
- Explanation.*—For the purposes of this sub-clause, a fixed place of business does not include a location that is not advertised to the public and from which the financial institution performs only administrative support functions; and
- (iii) the financial institution does not solicit customers or account holders outside India.
- Explanation.*—For the purpose of this sub-clause, a financial institution shall not be considered to have solicited customers or account holders outside India merely because the financial institution,—
- (a) operates a website, provided that the website does not specifically indicate that the financial institution provides financial accounts or services to non-residents, and does not otherwise target or solicit customers or account holders who are resident of any country or territory outside India for tax purposes; or
 - (b) advertises in print media or on a radio or television station which is distributed or aired primarily within India but is also incidentally distributed or aired in other countries, provided that the advertisement does not specifically indicate that the financial institution provides financial accounts or services to non-residents, and does not otherwise target or solicit customers or account holders who are resident of any country or territory outside India for tax purposes;



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- (iv) the financial institution is required under any law for the time being in force to identify resident account holders for purposes of either information reporting or withholding of tax with respect to financial accounts held by residents or for purposes of satisfying the due diligence requirements under the Prevention of Money-laundering Act, 2002 (15 of 2003);
 - (v) at least ninety eight per cent of the financial accounts by value maintained by the financial institution are held by residents;
 - (vi) beginning on or before the 30th June, 2014, the policies and procedures of the financial institution are consistent with those set forth in rule 240, to prevent the financial institution from providing a financial account to any non-participating financial institution and to monitor whether the financial institution opens or maintains a financial account for any reportable person who is not a resident of India (including a non-resident who was a resident of India when the financial account was opened but subsequently ceases to be a resident of India) or any passive non-financial entity with controlling persons who are reportable persons;
 - (vii) such policies and procedures explicitly provide that if any financial account held by a reportable person who is not a resident of India or by a passive non-financial entity with controlling persons who are reportable persons who are not resident of India is identified, the financial institution shall report such financial account as would be required if the financial institution was a reporting financial institution or close such financial account;
 - (viii) with respect to a pre-existing account held by an individual who is not a resident of India or by an entity, the financial institution shall review those pre-existing accounts in accordance with the procedures set forth in rule 240 applicable to pre-existing accounts to identify any reportable account or financial account held by a non-participating financial institution, and shall report such financial account as would be required if the financial institution were a reporting financial institution or close such financial account;
 - (ix) each related entity of the financial institution that is a financial institution must be incorporated or organised in India and, with the exception of any related entity that is a retirement fund referred to in clauses (D) to (G) of this *Explanation*, satisfies the requirements set forth in this clause; and
 - (x) the financial institution must not have policies or practices which discriminate against opening or maintaining financial accounts for individuals who are specified U.S. persons and residents of India;
- (O) "local bank" means a financial institution satisfying the following requirements:—
- (i) the financial institution operates only as (and is licensed and regulated under any law for the time being in force) a bank, or a credit union or similar cooperative credit organisation which is operated without profit;
 - (ii) the business of the financial institution consists primarily of receiving deposits from and making loans to, with respect to a bank, unrelated retail customers and, with respect to a credit union or similar cooperative credit organisation, members, provided that no member has a greater than five per cent interest in such credit union or cooperative credit organisation;
 - (iii) the financial institution satisfies the requirements set forth in sub-clauses (ii) and (iii) of clause (N), provided that, in addition to the limitations on the website referred to in sub-clause (iii) of clause (N), the website does not permit the opening of a financial account;
 - (iv) the financial institution does not have more than an amount equivalent to one hundred seventy-five million U.S. dollars in assets on its balance sheet, and the financial institution and any related entity, taken together, does not have more than an amount equivalent to five hundred million U.S. dollars in total assets on its consolidated or combined balance sheets; and
 - (v) any related entity must be incorporated or organised in India, and any related entity that is a financial institution, with the exception of any related entity that is a retirement fund referred to in clauses (D) to (G) or a financial institution with only low-value accounts referred to in clause (P), must satisfy the requirements set forth in this clause.

Explanation.—Regional Rural Banks constituted under the Regional Rural Bank Act, 1976 (21 of 1976), Urban Cooperative Banks constituted under respective State Cooperative Societies Acts or Multi State Cooperative Societies Act, State Cooperative Banks or District Central Cooperative Banks constituted under respective State Cooperative Societies Act and Local Area Banks licensed under the Banking Regulations Act, 1949 (10 of 1949) and regulated and registered as public limited companies under the Companies Act, 1956 (1 of 1956) or Companies Act, 2013 (18 of 2013), that satisfy the requirement under sub-clause (iv) shall be treated as local bank for the purpose of this clause;

- (P) "financial institution with only low-value accounts" means a financial institution satisfying the following requirements:—
- (i) the financial institution is not an investment entity;
 - (ii) no financial account maintained by the financial institution or any related entity has a balance or value in excess of an amount equivalent to fifty thousand U.S. dollars, applying the procedures prescribed in rule 240 for account aggregation and currency translation; and
 - (iii) the financial institution does not have more than fifty million U.S. dollars in assets on its balance sheet, and the financial institution and any related entities, taken together, do not have more than fifty million U.S. dollars in total assets on their consolidated or combined balance sheets;
- (Q) "sponsored investment entity and controlled foreign corporation" means a financial institution described in the following sub-clauses:—
- (i) a financial institution is a sponsored investment entity if—
 - (a) it is an investment entity established in India that is not a qualified intermediary (being an intermediary that is a party to a withholding agreement with the United States of America), withholding foreign partnership, or withholding foreign trust; and
 - (b) an entity has agreed with the financial institution to act as a sponsoring entity for the financial institution;
 - (ii) a financial institution is a sponsored controlled foreign corporation if—
 - (a) the financial institution is a controlled foreign corporation established under any law for the time being in force in India that is not a qualified intermediary (being an intermediary which is a party to a withholding agreement with the United States of America), withholding foreign partnership, or withholding foreign trust;
 - (b) the financial institution is wholly owned, directly or indirectly, by a reporting U.S. financial institution referred to in Article 1 of the FATCA agreement that agrees to act, or requires an affiliate of the financial institution to act, as a sponsoring entity for the financial institution; and
 - (c) the financial institution shares a common electronic account system with the sponsoring entity that enables the sponsoring entity to identify all account holders and payees of the financial institution and to access all account and customer information maintained by the financial institution including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the account holder or payee, and that complies with the following requirements:—
- (I) the sponsoring entity is authorised to act on behalf of the financial institution (such as a fund manager, trustee, corporate director, or managing partner) to fulfil applicable registration requirements of the United States of America;
 - (II) the sponsoring entity has registered as a sponsoring entity with the United States of America;



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- (III) if the sponsoring entity identifies any U.S. reportable account with respect to the financial institution, the sponsoring entity registers the financial institution pursuant to applicable registration requirements of the United States of America on or before the 31st December, 2015 or the date that is ninety days after such U.S. reportable account is first identified, whichever is later;
- (IV) the sponsoring entity agrees to perform, on behalf of the financial institution, all due diligence, withholding, reporting, and other requirements that the financial institution would have been required to perform if it were a reporting financial institution;
- (V) the sponsoring entity identifies the financial institution and includes the identifying number of the financial institution (obtained by following applicable registration requirements of the United States of America) in all its reporting completed on the financial institution's behalf; and
- (VI) the sponsoring entity has not had its status as a sponsor revoked;
- (R) "sponsored, closely held investment vehicle" means a financial institution satisfying the following requirements:—
- (i) it is a financial institution only because it is an investment entity and is not a qualified intermediary (being an intermediary that is a party to a withholding agreement with the United States of America), withholding foreign partnership, or withholding foreign trust;
- (ii) the sponsoring entity is a reporting U.S. financial institution referred to in Article 1 of the FATCA agreement, reporting financial institution, or participating foreign financial institution defined in Annex II of the FATCA agreement, is authorised to act on behalf of the financial institution (such as a professional manager, trustee, or managing partner), and agrees to perform, on behalf of the financial institution, all due diligence, withholding, reporting, and other requirements which the financial institution would have been required to perform if it were a reporting financial institution;
- (iii) the financial institution does not act as an investment vehicle for unrelated parties;
- (iv) twenty or less than twenty individuals own all the debt interests and equity interests in the financial institution (other than debt interests owned by participating foreign financial institution defined in Annex II of the FATCA agreement and non-reporting financial institutions and equity interests owned by an entity if that entity owns hundred per cent of the equity interests in the financial institution and is itself a sponsored financial institution described in this clause); and
- (v) the sponsoring entity complies with the following requirements:—
- (a) it has been registered as a sponsoring entity in terms of the Foreign Account Tax Compliance Act of the United States of America;
- (b) the sponsoring entity agrees to perform, on behalf of the financial institution, all due diligence, withholding, reporting, and other requirements that the financial institution would have been required to perform if it were a reporting financial institution and retains documentation collected with respect to the financial institution for a period of six years;
- (c) the sponsoring entity identifies the financial institution in all its reporting completed on the financial institution's behalf; and
- (d) the sponsoring entity has not had its status as a sponsor revoked;
- (S) "Qualified Non-Profit Entity" means an entity resident in India that has obtained confirmation by the Income-tax Department or other governmental authority of India that such entity meets all of the following conditions:—
- (i) 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;
- (ii) it is exempt from income-tax in India;
- (iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- (iv) the applicable laws of India 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 a 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
- (v) the applicable laws of India or the entity's formation documents require that, upon the entity's liquidation or dissolution, all of its assets be distributed to a Governmental entity or other entity that meets the conditions set out in (i) to (v), or escheat to the Government of India or any political sub-division thereof;
- (6) "reportable account" means a financial account which has been identified, pursuant to the due diligence procedures provided in rule 240, as held by,—
- (a) a reportable person; or
- (b) an entity, not based in United States 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 that is a person described in sub-clause (b) of clause (8) of this rule.

Explanation.—For the purpose of this clause,—

- (A) "active non-financial entity" means any non-financial entity which fulfils any of the following criteria:—
- (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.
- Explanation.*—For the purpose of this sub-clause, an established securities market means an exchange that is recognised 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;
- (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 but an entity shall not qualify for this status if it functions 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; or
- (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



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- (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: —
 - (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.

Explanation.—For the purpose of this sub-clause, the following shall be treated as fulfilling the criteria provided in the said sub-clause:—

- (I) an Investor Protection Fund referred to in Schedule III(27) of the Act; and
- (II) an Investor Protection Fund referred to in Schedule III(28) of the Act;

- (B) "controlling person" means the natural person who exercises control over an entity and includes a beneficial owner as determined under sub-rule (3) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 under the Prevention of Money-Laundering Act, 2002 (15 of 2003).

Explanation 1.—In determining the beneficial owner, the procedure specified in the following circular as amended from time to time shall be applied:—

- (i) DBOD.AML.BC. No.71/14.01.001/2012-13, issued on the 18th January, 2013 by the Reserve Bank of India; or
- (ii) CIR/MIRSD/2/2013, issued on the 24th January, 2013 by the Securities and Exchange Board of India; or
- (iii) IRDA/SDD/GDL/CIR/019/02/2013, issued on the 4th February, 2013 by the Insurance Regulatory and Development Authority.

Explanation 2.—In the case of a trust, the controlling person 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, the said expression means the person in equivalent or similar position;

- (C) "non-financial entity" means any entity that is not a financial institution;

- (D) "passive non-financial entity" means,—

- (i) any non-financial entity which is not an active non-financial entity; or
- (ii) an investment entity described in sub-clause (B) of clause (c) of the *Explanation* to clause (3), which is not located in any of the jurisdictions specified by the Central Board of Direct Taxes in this behalf; or
- (iii) not a withholding foreign partnership or a withholding foreign trust;

- (E) an entity is a "related entity" of another entity if either entity controls the other entity, or the two entities are under common control.

Explanation.—For the purpose of this clause control includes direct or indirect ownership of more than fifty per cent of the votes and value in an entity;

- (F) Subject to the provisions of clause (G), "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;
- (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;

- (G) 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.

- (7) "relevant crypto-asset" shall have the same meaning as assigned in rule 241;

- (8) "reporting financial institution" means, —

- (a) 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
- (b) 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;

- (9) "reportable person" means, —

- (a) one or more specified U.S. persons; or
- (b) one or more persons other than, —
 - (i) an entity the stock of which is regularly traded on one or more established securities markets;
 - (ii) any entity that is a related entity of an entity mentioned in item (i);
 - (iii) a Governmental entity;
 - (iv) an international organisation;
 - (v) a Central bank; or



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(vi) a financial institution,

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;

(10) "Specified Electronic Money Product" means any product that satisfies following criteria: —

- (a) it is a digital representation of a single fiat currency;
- (b) it is issued on receipt of funds for the purpose of making payment transactions;
- (c) it is represented by a claim on the issuer denominated in the same fiat currency;
- (d) it is accepted in payment by a natural or legal person other than the issuer; and
- (e) it is, by virtue of regulatory requirements to which the issuer is subject, redeemable at any time and at par value for the same fiat currency upon request of the holder of the product.

Explanation.—For the purposes of this clause, —

- (i) "Specified Electronic Money Product" does not include a product created for the sole purpose of facilitating the transfer of funds from a customer to another person pursuant to instructions of the customer;
 - (ii) A product is not created for the sole purpose of facilitating the transfer of funds if, in the ordinary course of business of the transferring Entity, either the funds connected with such product are held longer than 60 days after receipt of instructions to facilitate the transfer, or, if no instructions are received, the funds connected with such product are held longer than 60 days after receipt of the funds;
 - (iii) "fiat currency" shall have the same meaning as assigned in rule 241.
- (11) "specified U.S. person" means a U.S. person, other than the persons referred to in sub-clauses (i) to (xiii) of clause (ff) of Article 1 of the FATCA agreement;
- (12) "U.S. person" means, —
- (a) an individual, being a citizen or resident of the United States of America;
 - (b) 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;
 - (c) a trust if, —
 - (i) 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
 - (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust; or
 - (d) an estate of a decedent who was a citizen or resident of the United States of America;
- (13) "U.S. reportable account" means a financial account maintained by a reporting financial institution and, pursuant to the due diligence procedures provided in rule 240, is identified to be held by one or more specified U.S. persons or by an entity not based in the United States of America with one or more controlling persons which is a specified U.S. Person;
- (14) "U.S. source withholdable payment" means any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States of America but a U.S. source withholdable payment shall not include any payment that is not treated as a withholdable payment in relevant Treasury Regulations of the United States of America;
- (15) "withholding foreign partnership" means a foreign partnership that has entered into a withholding agreement with the United States of America in which it agrees to assume primary withholding responsibility for all payments which are made to it for its partners, beneficiaries or owners;
- (16) "withholding foreign trust" means a foreign trust that has entered into a withholding agreement with the United States of America in which it agrees to assume primary withholding responsibility for all payments which are made to it for its partners, beneficiaries or owners.

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