Black Money (UNDISCLOSED FOREIGN INCOME AND ASSET) and Imposition of Act, 2015

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Introduction

1) Focus on undisclosed income and assets outside India.

2) Deal with the menace of black money stashed away abroad.

3) Provides opportunity to resident taxpayers to come clean before the Government initiates stringent steps against tax evaders.

4) Bringing tax evasion under the ambit of Prevention of Money Laundering Act, 2002.

5) Offers one-time compliance window for a limited period as an opportunity for taxpayers to come clean and voluntarily disclose overseas undisclosed assets relating to tax year prior to 2015-16.

Scope of Act

1) Black Money Act applies to all persons who are 'resident and ordinarily resident' in India.

2) Regular tax, interest, penalty, prosecution regime for undisclosed foreign income and assets of an ordinarily resident.

3) No 16 year time-limit to tax foreign income/assets escaping assessment.

4) Contains stringent provisions in the form of levy of tax @30% of the value of such assets and penalty equivalent to 3 times of such taxes, along with initiation of prosecution proceeding which can lead to rigorous imprisonment for a time frame ranging from 3-10 years.

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Who is liable to pay tax?

1) In case of an individual or HUF, who are resident and ordinarily resident shall be liable to pay tax ('Assessee').

2) Meaning of 'resident' and 'ordinarily resident' shall be as per provision of Section 6 of the Income-tax Act ('I-T Act').

3) Assessee shall include every person who is deemed to be an assesse - in-default under I-T Act.

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Computation Mechanism

1) No expenditure shall be allowed as deduction from undisclosed foreign income or assets.

2) No loss can be set-off against such an income or assets.

3) Any income which has been assessed to tax under Act shall be reduced from value of undisclosed foreign asset if asset is acquired from such income.

4) Proportionate income, which was assessed to tax, shall be reduced from FMV of foreign undisclosed asset being immovable property and remaining amount shall be taxable under the Bill.

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Assessment

- The Assessing Officer on receipt of information shall serve a notice requiring Assessee to produce such information and document as he may require.

- Assessment order shall be made within a period of 2 years from the end of the financial year in which notice was issued (except in a few circumstances, i.e., assessment pursuant to order of Tribunal, High Court, etc.).

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Penalty

Nature of default	Penalty	Prosecution
Non-disclosure of foreign income and asset [Clause 41]		
If tax has been computed in respect of undisclosed foreign income and asset	3 times of tax payable on undisclosed income	Nil
Failure to furnish return of income [Clause 42/43]		
Non disclosure of foreign asset or income in return or failure to furnish return under Act Note: No penalty shall be levied under Clause 42 or 43, if any foreign asset, being one or more bank accounts have an aggregate balance which does not exceed Rs. 5 Lakh at any time during the previous year.	Rs 10 lakhs (in addition to penalty levied under clause 41)	6 months to 7 years and fine if default is willful

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Penalty Continued…

Nature of default	Penalty	Prosecution
Willful attempt to evade tax [Clause 51]		
willful attempt to evade any tax, penalty or interest.	Nil	3 months- 10 years penalty or interest.
Default in payment of tax arrear [Clause 44]		
Continuing default by Assessee in making payment of tax Note: An Assessee shall not cease to be liable to any penalty merely by reason that before the levy of penalty he has paid the tax.	Amount of tax arrear	Nil

Penalty Continued…

Nature of default	Penalty	Prosecution
Failure to furnish documents before tax authority [Clause 45]		
a) Answer any question asked by tax authority b) Sign a statement which he is legally bound to do so c) Attend or to give evidence or produce books of account	Rs. 50,000 to Rs. 2,00,000	Nil
Furnishing of false statement in verification [Clause 52]		
If a person makes a false statement in verification or delivers false accounts or statement	Nil	6 months to 7 years and fine

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Penalty Continued…

Nature of default	Penalty	Prosecution
Punishment for abatement [Clause 53]		
Abetment to make and deliver false return, account, statement or declaration relating to tax payable	Nil	6 months to 7 years and fine
Punishment for second and subsequent offences [Clause 58]		
If a person, who has been convicted for an offence, is again convicted for an offence under this Bill	Rs. 5 lakhs to Rs. 1 Crore	3 years to 10 years

Black Money (Undisclosed Foreign Income And Assets) and Imposition of Tax Rules, 2015 (Rules)

- The Rules prescribe **valuation methods** for different assets located outside India effective from July 02, 2015.

- These Rules prescribes different methods on **determination of Fair Market Value [FMV]** of assets.

Valuation date for determining FMV in case of

One time Compliance Window → 1st July

Assessment under Act → 1 April of relevant previous year in which undisclosed asset comes to the notice of the tax authority

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Method of Valuation

S. No.	ASSET	METHOD FOR VALUATION
1.	Bullion, jewellery or precious stone	Higher of ➢ Cost of acquisition and; ➢ Price that asset would fetch if sold in open market on the date of valuation. Valuation to be supported by report from valuer recognized by the Government of a country or specified territory outside India or any of its agencies.
2.	Archaeological collections, drawings, paintings, sculptures or any work of Art	
3.	Immovable property	
4.	Quoted shares and securities on established securities market	Higher of ➢ Cost of acquisition and ➢ Average of lowest and highest price on valuation date (If there is no trading on valuation date, then average of lowest and highest price on date immediately preceding valuation date when such shares and securities were traded)
	Unquoted shares and securities	Higher of ➢ Cost of acquisition and ➢ Value determined by formula given as: $\frac{(A+B-L)*PV}{PE}$

Method of Valuation Continued…

S. No.	Asset	Method of Valuation
	Unquoted shares and securities other than equity shares in company	Higher of ➢ Cost of acquisition and ➢ Price that asset would fetch if sold in open market on the date of valuation (Valuation to be supported by report from valuer recognized by the Government of a country or specified territory outside India or any of its agencies)
5.	Bank account	Sum of all deposits (excluding deposits out of earlier withdrawals from the account) since date of opening of account. (Where declaration is made under one-time compliance window and tax and penalty is paid thereon, sum of all deposits since date of such declaration)

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Fair Market Value of Unquoted Equity Shares

$$= \frac{(A+B-L)}{PE} \times (PV)$$

where,

A = book value of all the assets (other than bullion, jewellery, precious stone, artistic work, shares, securities and immovable property) as reduced by :

i. any amount of income-tax paid, if any, less the amount of income- tax refund claimed, if any, and

ii. any amount shown as asset including the unamortized amount of expenditure which does not represent the value of any asset;

B = fair market value of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in this rule;

PE = Total amount of paid up equity share capital as shown in the balance sheet;

PV = The paid up value of such equity shares;

Fair Market Value of Unquoted Equity Shares continued…

L = book value of liabilities, but not including the following amounts, namely:-

I. the paid-up capital in respect of equity shares;

II. the amount set apart for payment of dividends on preference shares and equity shares;

III. reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

IV. any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

V. any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

VI. any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

Method of Valuation continued…

S.No.	Asset	Method of Valuation
6.	Interest of a person in a partnership firm or in an association of persons (AOP) or a limited liability partner ship (LLP) of which the person is a member	Sum total of a) Portion of Net asset of the firm/ AOP/ LLP to the extent represented by amount of capital to be apportioned amongst partner/member in capital ratio and b) Residue net assets to be apportioned in accordance with agreement for distribution in the event of dissolution and in absence of such agreement, in the profit sharing ratio Net asset of the firm = A+B-L in a manner provided in (4(b)) above in the context of unquoted equity shares
7.	Any Other Asset	Higher of ➢ Cost of acquisition or amount invested ➢ Price that asset would fetch if sold in open market on the date of valuation in an arm's length transaction

Method of Valuation continued…

S.No.	Asset	Method of Valuation
8.	Assets at 1-7 above excluding 5 (Bank account) sold before valuation date	Higher of ➢ Cost of acquisition and ➢ Sales consideration (However, in case of transfer without any or inadequate consideration, sales consideration to be considered as FMV on date of transfer)

Where a new asset has been acquired or made out of consideration received on account of transfer of an old asset or withdrawal from a bank account, then the fair market value of the old asset or the bank account, as the case may be, determined in accordance with these rules shall be reduced by the amount of the consideration invested in the new asset.

Valuation

FMV of an asset is to be first determined in one of the permitted currencies designated by Reserve Bank of India (RBI) under Foreign Exchange Management Regulations (FEMA) and same shall be converted into INR as per reference rate of RBI on valuation date.

Where FMV of an asset is determined in a currency other than the permitted currencies, value is to be first converted into USD on valuation date as per specified rate of Central Bank of the country or jurisdiction where asset is located (and in absence thereof at the specified rate of any other bank of that country or jurisdiction) and then the USD is to be converted into INR as per reference rate of RBI on valuation date.

For determining the market value as on valuation date, and for the purpose of conversion into Indian currency or foreign currency into United States Dollar and thereafter into Indian currency, the date shall be - in respect of asset declared under section 59 of the Act, the 1st day of July,2015; in any other case, the 1st day of April of the previous year.

Illustration:

A house property (H1) located outside India was bought in 1997 for twenty lakh rupees. It was sold in 2001 for twenty five lakh rupees which were deposited in a foreign bank account (BA). In 2002 another house property (H2) was bought for thirty lakh rupees. The investment in H2 was made through withdrawal from BA. H2 has not been transferred before the valuation date and its value on the valuation date is fifty lakh rupees. Assuming that the value of BA as computed under Rule 3(1)(e) is seventy lakh rupees, the fair market value (FMV) of the assets shall be as below:

- FMV of H1: (Higher of Rs. 20 lakh and 25 lakh) – Rs. 25 lakh (invested in BA) = Nil
- FMV of BA: Rs. 70 lakh – Rs. 30 lakh (invested in H2) = Rs. 40 lakh
- FMV of H2: (Higher of Rs. 30 lakh and 50 lakh) = Rs. 50 lakh

One-Time Compliance Window

A taxpayer who is a resident, other than not ordinarily resident, can declare undisclosed assets located outside India or acquired from income taxable under the Indian Tax Laws (ITL) for a tax year prior to 2015-16 where, he had *either*:

- failed to furnish a return under section 139 of the Income-tax Act,1961, *or*
- failed to disclose such income in a return furnished before the date of commencement of the Act, *or*
- such income had escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income- tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

Rate of Tax and Penalty

A special rate of tax and penalty would be applicable, if the tax payers chooses to come clean and discloses the assets located or acquired outside India :

1)Taxes would be leviable @ 30% of the value of such disclosed assets ;

2)In addition, penalty @ 100% of such taxes ;

3)No additional tax/penalty will be leviable under the ITL.

Such rates (tax and penalty) specified in the Compliance provisions will override any rate or rates specified under the provisions of the Act or the Annual Finance Acts.

Therefore, the declarant would be liable to pay a total of 60 % of the value of the undisclosed asset declared by him.

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Procedural Part

1) The Act has come into force on April 01 2016, however, One-time compliance window is effective from **July 01, 2015**

2) A declaration has to be made in **Form 6** before September 30 2015 before the designated Principal Commissioner or Commissioner of Income Tax (PCIT/CIT).

3) After such declaration has been furnished, the designated Principal CIT/ CIT will issue an intimation to the declarant by October 31 2015, whether any information in respect of the declared asset had been received by the Competent Authority on or before June 30 2015, under an agreement entered into by the Central Government section 90 or 90A of the Income-tax Act.

4) Further, December 31, 2015 will be the due date by when the taxpayer needs to pay the tax/ penalty in relation to declaration made by the taxpayer.

5) Where any such information had been received, the declarant shall file a ***revised declaration in Form 6*** excluding such asset ***within 15 days of receipt of intimation*** From the designated Principal Commissioner/ Commissioner.

6) However, in all cases, the declarant is required to pay the requisite tax and penalty on the assets eligible for declaration latest by 31.12.2015.

7) After the intimation of payment by the declarant, the Principal CIT/CIT will issue an ***acknowledgement in Form 7*** of the accepted declaration ***within 15 days*** of such intimation of payment by the declarant.

Benefit of Compliance Window

- The amount of undisclosed investment in the asset declared shall not be included in the total income of the declarant under the Income-tax Act for any assessment year;
- The contents of the declaration shall not be admissible in evidence against the declarant in any penalty or prosecution proceedings under the Income-tax Act, the Wealth Tax Act, the Foreign Exchange Management Act, the Companies Act or the Customs Act;
- The value of asset declared in the declaration shall not be chargeable to Wealth Tax for any assessment year or years.
- Declaration of undisclosed foreign asset will not affect the finality of completed assessments.

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Persons not entitled to avail of one time compliance window

Such persons are not eligible to claim benefit of such one-time compliance window –

a) A notice in relation to any undisclosed asset acquired from income chargeable to tax under ITL has been served, and the proceeding is pending before the tax authority on or before 30 June 2015.

b) A search/ survey has been conducted and period for notice of initiation of assessment has not expired.

c) Any information has been received by their competent authority under a tax treaty in respect of undisclosed asset before 30 June 2015.

d) Prosecution proceedings have been initiated against the taxpayer under Unlawful Activities (Prevention) Act or the Prevention of Corruption Act, etc.

FAQ - One Time Compliance

CBDT has released clarification in form of 32 FAQs, wherein various issues in relation to the scope of the One-Time Compliance Window Scheme (Scheme) has been discussed.

The clarification deals with issues, such as who qualifies for disclosure, which assets may get covered by the disclosure, basis and quantum of value of such disclosure, immunity available in respect of disclosed amount etc. The Circular also deals with concerns about the scope of immunity from prosecution under other laws, as also the impact of failure to make disclosures as part of regular income tax returns.

A. Qualifying Assets

Foreign assets acquired out of income chargeable to tax in India, not declared in the return of income

Foreign Assets partly acquired out of undisclosed income and partly out of disclosed income/ exempt income. In such a case, the value of assets shall be Fair Market Value of such asset less the amount computed in accordance with section 5 of the Black Money Taxation Act.

Undisclosed Assets inherited is required to be declared, in the capacity of legal representative, valued as FMV determined as per the Black Money Taxation Rules.

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FAQ - One Time Compliance

B. Non-Qualifying Assets

Foreign Assets acquired by non-resident taxpayer, out of income which was not chargeable to tax in India

Likewise, foreign assets which are acquired by a resident taxpayer out of Indian tax paid income are not considered as undisclosed assets under the Act. Mere non-reporting of foreign assets in the income tax return filed in India for past years will not alter this position.

However, non-disclosure of foreign assets in terms of reporting requirement in the income tax return filed for tax year 2015-16 onwards would invite penalty exposure of INR10 L under the Act

Foreign Assets acquired from money earned through corrupt means. However, if declaration is still made, it will amount to misrepresentation of facts and will stand void and the provisions of the Black Money Taxation Act shall apply in respect such asset.

No, disclosure can be made undisclosed foreign assets which have been assessed to tax, and the case is pending before an Appellate Authorities, however, voluntarily disclosure can be made for other undisclosed foreign assets which have been acquired or made from income not disclosed, and consequently not assessed under the Act.

FAQ - One Time Compliance

C. Consequences

Any undisclosed assets, not declared under the one time window, shall be deemed to have been acquired in the year in which they come to the notice of the tax officer, and the provisions of the Black Money Taxation Act shall apply accordingly.

D. Miscellaneous

Income earned outside India and subsequently deposited in foreign bank account, which is taxed in foreign country, but not declared in the return of income in India. In such case, no credit of foreign taxes paid shall be allowed.

Foreign bank account having undisclosed income deposited over several years, now having a balance of only $500, will be taxed as per fair market value (FMV) of the bank account determined as per the rules prescribed and not on the balance as on date.

No limitation period has been provided under the Act therefore, if an asset acquired flows under the provisions of the Act, it needs to be disclosed.

FAQ - One Time Compliance

In case of undisclosed assets acquired and thereafter sold, to assets needs to be disclosed i.e. house property and the back account at their FMV determined in accordance with the prescribed rules.

> The FMV of the house property shall be higher of cost price and the sale price of the property less amount deposited in the bank account. Tax and penalty shall be payable on this amount in respect of the undisclosed house property.
>
> The FMV of the bank account shall be determined as per Black Money Taxation Rules and tax and penalty shall be payable on this amount.

If an Assessee holds any undisclosed asset which is liable to be taxed under the Black Money Taxation Act, mere reporting in the income-tax return form does not mean that the source of investment in the asset has been explained.

E. Immunity

Immunity will be available in respect of undisclosed assets which are declared under the Scheme. While a taxpayer is expected to disclose all undisclosed assets, in case some of the assets remain undisclosed, immunity will be restricted with respect to the assets disclosed.

Where a declaration of an undisclosed asset has been duly made under the Scheme, the Prevention of Money Laundering Act will not apply in respect of scheduled offence of willful attempt to evade tax under the Act.

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FAQ - One Time Compliance

Apart from the above, a person declaring undisclosed assets under the Scheme is also entitled to immunity from prosecution under the specified acts viz., ITA, Wealth Tax Act, Foreign Exchange Management Act, Companies Act and Customs Act.

In case where declaration is made by the company under the Scheme, all the directors of the company would enjoy immunity.

Thank You

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