

Introductory presentation on

The Black Money (Undisclosed Foreign Income and Assets) and Imposition Tax Act, 2015

By

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Backdrop to the Act

- Long-standing debate on black money
- HSBC and Swiss Bank issues
- Debate on political front

MEASURES TO CURB BLACK MONEY

FOREIGN BLACK MONEY - *Black Money* (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

- **Bill for a comprehensive new law to deal with black money parked abroad to be introduced in the current session**
- **Evasion of tax in relation to foreign assets to have a punishment of rigorous imprisonment upto 10 years, be non-compoundable, have a penalty rate of 300% and the offender will not be permitted to approach the Settlement Commission**
- **Non-filing of return/filing of return with inadequate disclosures to have a punishment of rigorous imprisonment upto 7 years**
- **Undisclosed income from any foreign assets to be taxable at the maximum marginal rate**

MEASURES TO CURB BLACK MONEY

FOREIGN BLACK MONEY

- **Mandatory filing of return in respect of foreign asset**
- **Entities, banks, financial institutions including individuals all liable for prosecution and penalty**
- **Concealment of income/evasion of income in relation to a foreign asset to be made a predicate offence under Prevention of Money Laundering Act, 2002**
- **Prevention of Money Laundering Act, 2002 and Foreign Exchange Management Act 1999 to be amended to enable administration of new Act on black money**

FATCA (US law)

- **Comparison with
Black Money Act in India**
- **Disclosures in income Tax Return**

IMPACT on CERTAIN CLASSES OF HONEST ASSESSEES

- Professionals Going Abroad
- Indian Students Studying Abroad
- NRIs returning to India



Introduction

- New legislation imposing tax on income/asset located outside India
- Presidential assent on 26 May 2015
- Rules and Forms are prescribed on 2nd July, 2015
- ***Applicable from : 1st April 2016***
- for A.Y. commencing on or after 1-4-2016, i.e. from P.Y. 2015-16
- Act extends to Whole of India

It's a very short Act

- 88 sections
- About 7 sections are important; rest are procedural and administrative
- Shorter the law, more dangerous it can be
- It's a separate and specific Act to impose tax on defined income and assets located outside India
- Clarifications also given vide Circular no. 13/2015 dated 6th July, 2015

Framework of the Act

Chapter	Title	Sections
I	Preliminary	1,2 (15definitions)
II	Basis of Charge	3,4,5
III	Tax Management	6-40
IV	Penalties	41-47
V	Offences and Prosecutions	48-58
VI	Tax Compliance for Undisclosed Foreign Income & Assets	59-72
VII	General Provisions	73-88

Important Features

- Applies to all “persons”
- Only “residents” of India made liable
- Does not apply to non-residents and to NOR
- No double taxation with income-tax under IT Act
- It’s a combined tax on income and asset
- ***Gives one-time opportunity to come clean by paying 60%, otherwise stringent provisions for tax, penalty and prosecution***

Income-tax Act vs. Black Money Act

- For a 'resident', world income is taxable under I. T. Act, but:
 - i. Foreign income/asset declared/assessed under Black Money Act cannot be taxed again under I.T. Act (Sec. 4)
 - ii. Foreign income/asset disclosed under I.T. Act cannot be taxed under BM Act

No Option to Assessee to Choose Either I.T. Act Or BM Act

- Incomes defined under the two Acts are taxable separately under respective Act, as per respective definitions of income and scope of total income
- Under BM Act, only undisclosed foreign income/asset is taxable; not India sourced income

Year of Taxability

Foreign Asset:

- Taxable for the previous year in which it comes to the notice of the A.O.; not for the year in which such asset is acquired (unlike in I. T. Act)

Foreign Income:

- Taxable for the previous year to which the income relates

Rate Of Tax & Penalty On Foreign Income and Asset (Sec. 3)

- 30% of income/value of asset
- Penalty @ 3 times the tax, plus prosecution powers
- Total charge : 120% of income
(if disclosure opportunity is not availed; 60% if voluntary disclosure is made)

Section 2 – Definitions

(10) “resident” means a person who is resident in India within the meaning of section 6 of the Income-tax Act

-meanings of non-resident and NOR same as in I.T.Act

Important Concepts And Definitions

- Sec. 2(2) : “assessee” means a person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, by whom tax in respect of undisclosed foreign income and assets, or any other sum of money, is payable under this Act and includes every person who is deemed to be an assessee in default under this Act;

“Assessee” - analysed

- Includes any person who is a “resident”
- Does not include “not ordinarily resident”
- “non-resident” is thus, excluded
- Applies not only to ‘individual’ but also any person such as firm, HUF, company, trust

Poser: Effect on expatriates (foreigners working in India) on ceasing to be NOR – new Act can apply after 2 yrs. stay in India

Section 2 – Definitions

(11) “undisclosed asset located outside India” means an asset (including financial interest in any entity) located outside India, held by the assessee in his name or in respect of which he is a beneficial owner, and he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory.

“undisclosed asset located outside India” --- - -

- - definition dissected

means-

- an asset
- including financial interest in any entity
- located outside India
- held by the assessee in his name or
- in respect of which he is a beneficial owner,
- and he has no explanation about the
- source of investment in such asset
- or the explanation given by him is in the opinion of the assessing officer unsatisfactory.

Section 2 - Definitions

(12) “undisclosed foreign income and asset” means the total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India, referred to in section 4, and computed in the manner laid down in section 5

“undisclosed foreign income and asset” - - definition dissected

means-

- the total amount of undisclosed income of an assessee
- from a source located outside India and
- the value of an undisclosed asset located outside India,
- referred to in section 4, and computed in the manner laid down in section 5

Section 3 – Charge of Tax

- (1) There shall be charged on every assessee for every assessment year commencing on or after the 1st day of April, 2016, subject to the provisions of the Act, a tax in respect of his total undisclosed foreign income and asset of the previous year at the rate of thirty percent of such undisclosed income and asset:

Provided that an undisclosed asset located outside India shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing officer.

Section 3 – Charge of Tax – on value of asset, not on cost

(2) For the purposes of this section “value of an undisclosed asset” means the fair market value of an asset (including financial interest in any entity) determined in such manner as may be prescribed.

- *prescribed vide Rule 3*

What comprises of undisclosed foreign income?

- Income from foreign source not disclosed in return of income filed under IT Act,
- No return of income under IT Act filed in India of such income though required to be filed,
- Value of any undisclosed asset located outside India

Section 4 - Scope Of Total Undisclosed Foreign Income And Asset

(1) Subject to the provisions of this Act, the total undisclosed foreign income and asset of any previous year of an assessee shall be-

(a) the income from a source located outside India, which has not been disclosed in the return of income furnished within the time specified in *Explanation 2* to sub-section (1) or under sub-section (4) or sub-section (5) of section 139 of the Income-tax Act;

Section 4 - Scope Of Total Undisclosed Foreign Income And Asset

(b) the income, from a source located outside India, in respect of which a return is required to be furnished under section 139 of the Income-tax Act but no return of income has been furnished within the time specified in Explanation 2 to sub-section (1) or under sub-section (4) or sub-section (5) of section 139 of the said Act: and

(c) the value of undisclosed asset located outside India.

Section 4 - Scope Of Total Undisclosed Foreign Income And Asset

(2) Notwithstanding anything contained in sub-section (1), any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of section 29 to section 43C or section 57 to section 59 or section 92C of said Act, shall not be included in the total undisclosed foreign income

Section 4 - Scope Of Total Undisclosed Foreign Income And Asset

(3) The income included in the total undisclosed foreign income and asset under this Act shall not form part of the total income under the Income-tax Act.

Computation (Sec. 5) – example

- Format/Form of undisclosed foreign income yet to be prescribed
- Simple Illustration for computation:

Particulars		Amount	Amount
1.	Undisclosed income from a source located outside India		Rs. 20,00,000
2.	Value of undisclosed property/asset outside India	Rs. 40,00,000	
	Less: Amt. of income declared/assessable under I. T. Act and used to acquire foreign asset	Rs. <u>(10,00,000)</u>	
			<u>Rs.30,00,000</u>
	Total taxable under BM Act		<u>Rs. 50,00,000</u>

Illustration given in Sec. 5(2) in case of immovable property:

Particulars	Amount
Property acquired outside India P. Y. 2009-10 – cost	Rs. 50,00,000
Income taxed in India, used to buy the property upto P. Y. 2009-10 (evidence required) i.e. 40% of cost	Rs. 20,00,000
<u>Property noticed by A.O. in P. Y. 2017-18</u>	
Value of Property in P. Y. 2017-18	Rs. 1,00,00,000
Less: Reduction for income taxed (40% of income)	<u>Rs. (40,00,000)</u>
Value chargeable to tax under BM Act	<u>Rs. 60,00,000</u>

Section 5 – Computation Of Total Undisclosed Foreign Income And Asset

- (1) In computing the total undisclosed foreign income and asset of any previous year of an assessee –
- i. No deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee, whether or not it is allowable in accordance with the provisions of the Income-tax Act:

Section 5 – Computation Of Total Undisclosed Foreign Income And Asset

ii. Any income -

- a) which has been assessed to tax for any assessment year under the Income-tax Act prior to the assessment year to which this Act applies: or
- b) which is assessable or has been assessed to tax for any assessment year under this Act,

shall be reduced from the value of the undisclosed asset located outside India, if, the assessee furnishes evidence to the satisfaction of the Assessing Officer that the asset has been acquired from the income which has been assessed or is assessable, as the case may be, to tax

Section 5 – Computation Of Total Undisclosed Foreign Income And Asset

(2) The amount of deduction referred to in clause (ii) of sub-section (1) in case of an immovable property shall be the amount which bears to the value of the asset as on the first day of financial year in which it comes to the notice of the Assessing Officer, the same proportion as the assessable or assessed foreign income bears to the total cost of the asset.

Undisclosed Foreign Asset: Cost vs. Value (Sec. 3)

- Foreign Asset is taxable at its “fair market value” (and not at its cost/indexed cost etc.)
- Fair market value calculation is prescribed vide Rule 3 – can be a contentious issue (dealt with separately)

Computation of Undisclosed Foreign Income and Asset (Sec. 5)

- Gross total income/value of asset is taxable
- No deduction allowable for any expenditure, allowance or set off of losses against such foreign income
- Tax being on Value and not on Cost, incidence will be heavy

One – time Compliance And Declaration Opportunity – Sec. 59

- Declaration of foreign asset in prescribed form 6 [Rule 9(1)]
- Between 1-4-2016 and 30-09-2015
- Tax to be paid by 31-12-2015 (Notification no. 57/2015 dated 1-7-2015)

Tax Management under BM Act

- Tax Authorities – same as under I. T. Act
- Tax Jurisdiction – same as under I. T. Act
- Powers of Authorities – same as under I. T. Act

Assessment Procedure – Sec. 10

- A.O. can issue notice u/s 10(1) only upon receipt of information from any authority or on coming of any information to his notice
- Power to make further inquiries
- Power to require assessee to attend and produce evidence, documents
- Power to pass order/ make best judgement assessment
- Within 2 years from the end of the F. Y. in which notice u/s 10(1) issued
- There appears to be no time limit prescribed for issue of notice

Reassessment of undisclosed foreign income and asset

- “assessment” includes “reassessment”
- Sec. 10 on assessment procedure includes the word “reassessment”
- But no specific provisions for reassessment

Penalties

- On assessed income : 3 times the tax
- Failure to furnish the ROI under IT Act by any person having foreign income/asset, before the end of the relevant A. Y. : Rs. 10 lakh, but
 - - provided that no such penalty if aggr. bal. in foreign bank a/c doesn't exceed value of Rs. 5 lakh anytime during the relevant P. Y.

Liability for Interest payment (Sec. 40)

- Interest u/s 234A payable upon income from a source outside India not disclosed in the ROI filed u/s 139(1)
- Interest u/s 234B and 234C also chargeable on such income

Penalties

- Failure to show foreign income/asset in ROI u/s 139(1), (4) or (5) or filing of inaccurate particulars thereof -- Rs. 10 lakh
 - provided that no such penalty if aggr. bal. in foreign bank a/c doesn't exceed value of Rs. 5 lakh anytime during the relevant P. Y.

Penalties

- For default in payment of tax : penalty equal to amount of tax arrear
- Failure to answer questions, attend, produce records, to sign, etc. : penalty of at least Rs. 50,000 but up to Rs. 2 lakh

Penalties - procedure

- Notice can be issued during pendency of proceedings
- For failure to attend etc., notice can be issued up to 3 yrs. from the end of FY in which default occurred
- Order of penalty to be passed within 1 year from end of FY in which notice was issued

Penalties - limitation of order

- Order of penalty to be passed within 1 year from end of FY in which notice was issued

Prosecution provisions

- In addition to prosecution for offences under other any other law
- Applicable even if no order under this Act is made

Prosecution provisions

Failure to furnish returns u/s 139(1) before expiry of A.Y.	6 months to 7 yrs. and fine
Failure to furnish in ROI information on foreign assets	-- do--
Wilful attempt to evade tax by a resident	3 yrs to 10 yrs and fine.
Wilful attempt to evade tax by any other person	3 months to 3 yrs and fine
False statement in verification	6 months to 7 yrs. and fine
Punishment for abetment by any person	-- do --

Framework of Rules

Rule	Title
2	Definitions
3	Fair Market Value
4	Tax Authorities
5	Notice of demand
6, 7	Appeals
8	Form of tax arrears
9	Form of declaration
10,11,12	Other Rules

Forms Prescribed

Form	Particulars
1 (Rule 5)	Notice of demand
2 (Rule 6(1))	Form of appeal to Commissioner/Designation of the Commissioner (Appeals)
3 (Rule 7(1))	Form of appeal to the Appellate Tribunal
4 (Rule 7(2))	Form of memorandum of cross-objections to the Appellate Tribunal
5 (Rule 8)	Certificate u/s 31 or 33 of the B.M. Act, 2015
6 (Rule 9(1))	Form of declaration of undisclosed asset located outside India u/s 59 of B. M. Act, 2015
7 (Rule 9(2))	Acknowledgment of declaration of undisclosed foreign asset under Chapter VI of B. M. Act, 2015

Screen shot of Form 6

Form 6

Tax compliance for undisclosed foreign asset

[See rule 9(1)]

Form of declaration of undisclosed asset located outside India under section 59 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

To,
The Principal Commissioner/Commissioner

Sir/ Madam,

I hereby make a declaration under section 59 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. I give below the necessary particulars:-

1. Name of the declarant
2. Address: Office.....
.....
E-mail.....Telephone No.....
Residence.....
.....
E-mail.....Telephone No.....
3. Permanent Account Number (PAN)
(In case PAN is not held, please apply for PAN and quote here)
4. Original/Revised declaration
(If Revised provide date of filing original declaration)
5. Status of the declarant
(a) State whether individual, HUF, firm, company etc.
(b) State whether Resident/Non-Resident/Not ordinarily resident
6. Whether any Income-tax return has been filed? Yes/No. If Yes provide the following details
(a) Asst. Year for which last return filed
(b) Assessing Officer before whom filed, if above return filed in paper form
7. Statement of undisclosed asset located outside India (as per annexure)
8. Total amount of declaration of undisclosed asset located outside India Rs.....
9. Tax payable thereon (@ 30% of item 8) Rs.....
10. Penalty payable thereon (@ 30% of item 8) Rs.....

11. Tax paid, if any, on or before the date of declaration
(Attach proof of payment and provide details below)

Rs.....

Sl	BSR Code of Bank	Date of Deposit (DD/MM/YYYY)	Serial Number of Challan	Amount (Rs)
(1)	(2)	(3)	(4)	(5)
i				
ii				

12. Balance tax payable.....

VERIFICATION

I.....son/daughter/wife of Shri.....
(Full name in block letters) (name of father/husband)
solemnly declare that—

- (a) the information given in this declaration is correct and complete to the best of my knowledge and belief;
- (b) my own undisclosed foreign asset and also any undisclosed foreign asset of other persons in respect of which I am chargeable to tax and income accruing or arising from assets held by me through any other person, for which I had failed to furnish a return under section 139 of the Income-tax Act, 1961/which I had failed to disclose in a return of income furnished by me before the commencement of the Act/which has otherwise escaped assessment, has been disclosed in this declaration;
- (c) the provisions of section 71(a) in respect of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 are not applicable to me;
- (d) the provision of section 71(b) in respect of Indian penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988 are not applicable to me;
- (e) the undersigned has not been notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992;
- (f) the asset declared has not been acquired from income chargeable to tax under the Income-tax Act for any previous year relevant to assessment year,-
 - (i) where a notice under section 142 or sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act has been received in respect of such assessment year and the proceeding is pending before the Assessing Officer;
 - (ii) where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and a notice under subsection (2) of section 143 of the said Act for the assessment year relevant to such previous year or a notice under section 153A or under section 153C of the said Act for an assessment year relevant to any previous year prior to such previous year has not been received and the time for issuance of such notice has not expired.

I further declare that I am making this declaration in my capacity as.....
(designation)

and that I am competent to make this declaration and verify it.

.....
(Signature)

Place.....

Date.....

* Score out whichever is not applicable.

Statement of undisclosed assets located outside India

Description of assets declared (Use separate sheet in case of multiple assets in the same category)

1. Bank account

- (a) Name and address of Bank _____
- (b) Country of location _____
- (c) Account holder name(s) _____
- (d) Account Number _____
- (e) Account opening date _____
- (f) Sum of all credits in the account _____
- (g) Fair market Value as per Rule 3 _____
- (Provide separate computation if different from (f))

2. Immovable property (attach valuation report)

- (a) Nature of property (land/building/flat etc.) _____
- (b) Address of the property _____
- (c) Country of location _____
- (d) Name(s) under which held _____
- (e) Date of acquisition _____
- (f) Total acquisition cost _____
- (g) Value as estimated by the valuer on valuation date _____
- (h) Fair Market value as per Rule 3 _____
- (Provide separate computation if different from (f) or (g))

3. Jewellery (attach valuation report)

- (a) Gold
- (I) Purity _____, Weight _____, Value _____
- (II) Purity _____, Weight _____, Value _____
- (b) Diamond (1 carat or more)
- (I) Carat _____, Cut _____, Colour _____, Clarity _____, Value _____
- (II) Carat _____, Cut _____, Colour _____, Clarity _____, Value _____
- (c) Diamond (less than 1 carat) and other precious stones Value _____
- (d) Other precious metals Value _____

4. Artistic work (attach valuation report)

- (a) Nature of artistic work _____
- (b) Country of location _____
- (c) Name(s) under which held _____
- (d) Date of acquisition _____
- (e) Cost of acquisition _____

- (f) Value of artistic work as estimated by the valuer _____
(g) Fair Market value as per Rule 3 _____
(Provide separate computation if different from (e) or (f))

5. Shares and securities

- (a) Quoted shares and securities [Rule 3(1)(c)(I)]
- (i) Description of security/share
(A) Name of issuer _____
(B) Number of securities/shares _____
(C) Type of security/share _____
- (ii) Established securities market where quoted _____
(iii) Country where securities market located _____
(iv) Name(s) under which held _____
(v) Cost of acquisition _____
(vi) Date(s) of acquisition _____
(vii) Value as determined under Rule 3(1)(c)(I) _____
(viii) Date of valuation _____
(ix) Fair Market value as per Rule 3 _____
(Provide separate computation if different from (v) or (vii))
- (b) Unquoted equity share [Rule 3(1)(c)(II)] (attach valuation report)
- (i) Description of share
(A) Name of issuer _____
(B) Number of shares _____
(C) Type of share _____
- (ii) Country of location _____
(iii) Name(s) under which held _____
(iv) Cost of acquisition _____
(v) Date(s) of acquisition _____
(vi) Value as determined under Rule 3(1)(c)(II) _____
(vii) Date of valuation _____
(viii) Fair Market value as per Rule 3 _____
(Provide separate computation if different from (iv) or (vii))
- (c) Unquoted shares and securities other than equity shares in a company [Rule 3(1)(c)(III)]
(attach valuation report)
- (i) Description of share/security
(A) Name of issuer _____
(B) Number of securities/shares _____
(C) Type of security/share _____
- (ii) Country of location _____
(iii) Name(s) under which held _____

- (iv) Cost of acquisition _____
 (v) Date(s) of acquisition _____
 (vi) Value as determined under Rule 3(1)(c)(III) _____
 (vii) Date of valuation _____
 (viii) Fair Market value as per Rule 3 _____
 (Provide separate computation if different from (iv) or (vi))

(6) Any other asset

- (a) Description of asset _____
 (b) Country of location _____
 (c) Name(s) under which held _____
 (d) Value as determined under Rule 3(1) _____
 (e) Date of valuation _____
 (f) Fair Market value as per Rule 3 _____
 (Provide separate computation if different from (d))

(7) Total fair market value of all the assets declared _____

(8) Deduction as per section 5 of the Act _____
 (where part of asset acquired from income already assessed under the Income-tax Act) (to be provided in respect of each asset separately)

(9) Deduction on account of investment made in the asset during the previous year relevant to the assessment year for which a notice u/s 142/143(2)/148/153A/153C of the I.T. Act is issued _____

(10) Total fair market value of all the undisclosed assets declared (7-8-9) _____
 (to be taken to item 8 of the form)

.....
 (Signature)

.....
 (Name)

Place.....

Date.....

NOTES

1. If the total amount of tax payable is not paid before 31st December 2015, the declaration will be treated as void and shall be deemed never to have been made.
2. If the declaration is made by misrepresentation or suppression of facts it shall be void and shall be deemed never to have been made.

Rule 3 – FMV of asset located outside India

- Value of bullion, jewellery or precious stone shall be higher of:
 - its cost of acquisition and
 - open market price if sold on valuation date
- Assessee may obtain report from valuer recognized by the Govt. of foreign country/foreign territory under any regulation or law

Valuation of Shares & Securities

- FMV or quoted shares and securities shall be higher of cost of acquisition and market price to be determined as prescribed in Rule 3(1)(c).
- FMV of unquoted equity shares to be higher of its cost and value as per formula given in Rule 3(1)(c)(II).
- FMV of unquoted share and security other than shares in a company shall be higher of its cost and open market price for which recognized valuer's report can be obtained.

Valuation of Immovable Property

- FMV of immovable property shall be higher of its cost and open market price for which recognized valuer's report can be obtained – Rule 3(1)(d).

Value of a Bank account in Foreign Country

- The sum of all deposits made in the account since the date of opening of the account.
- If such bank account is voluntarily declared during compliance period on which tax and penalty are paid, the value shall be sum of deposits made after the date of such declaration.

Value of a interest in Firm/LLP/AOP

- To be derived from net assets of such entity and to be allocated in the ratio of capital/profits as prescribed in Rule 3(1)(g).

Value of an asset sold before the valuation date

- It shall be the higher of its cost of acquisition and the sale price.

Value of any other asset

- It shall be the higher of its cost of acquisition or the amount invested and the price that such asset would fetch if sold in the open market on the valuation date in a arms length transaction.

Value of new asset acquired or made out of an old asset or bank withdrawal – Illustration given in Rule 3(3)

- A. House property (H1) (located outside India)
 - Cost of acquisition - Year 1997 – Rs.20 lacs
 - Sale Price – Year 2001 - Rs. 25 lacs
(deposited in foreign bank account - BA)

- B. House property (H2)
 - Cost of acquisition - Year 2002 – Rs. 30 lacs
(investment made out of withdrawal from BA)
 - not transferred before the valuation date and its value on valuation date is Rs. 50 lacs

- Assuming that value of BA as computed under Rule 3(1)(e) = 70 lacs

Value of new asset acquired or made out of an old asset or bank withdrawal – Illustration given in Rule 3(3) – Contd.

Value = FMV of H1: (Higher of Rs. 20 lacs and 25 lacs)
– Rs. 25 lakh (invested in BA) = Rs. 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

Value of an asset – foreign currency conversion to rupees – Rule 3(5)

- As per reference rate of R.B.I. on valuation date – in case of designated currency under FEMA.
- Other permitted currencies – value to be first converted to US dollar as per rates of the Central Bank of foreign country and thereafter converted to Indian currency as per R.B.I. reference rate on valuation date.

Meaning of Valuation date

- For assets declared under compliance scheme
 - 1st July, 2015
- In other cases 1st day of April of the previous year

Posers

- Person becoming non-resident in F.Y. 15-16 or later but having foreign asset when he was resident of India

Posers

- A person is a resident now. However, he was non-resident earlier when he had acquired foreign assets (which he continues to hold now) out of the income which was not chargeable to tax in India.

Posers

- Where a person was non-resident when he acquired foreign assets from income which was accrued or received in India, and thus chargeable to tax in India, but not disclosed in the return of income, or he has not filed a return.

Posers

- A resident earned income outside India which has been deposited in his foreign bank account. The income was charged to tax in the foreign country when it was earned, but the same was not declared in the return of income in India, and consequently, was not taxed in India. *Will he get credit for foreign taxes paid?*

Posers

- Where a person voluntarily declares 2 out of 3 undisclosed foreign assets, will he get immunity from the Black Money Taxation Act in respect of 2 assets declared?

Posers

- Bank accounts/investments of Indian students studying abroad

Posers

- Sec. 4(2): Income increased under Sec. 29-43C, 57-59 & 92C of I.T. Act shall be taxed only under I.T. Act and not under B.M. Act.

Posers

- Foreign assets held in past, now not existing but noticed by Dept. in future - are they covered or required to be declared

Posers

- A person hold foreign assets which are fully explained and acquired out of tax-paid income. However, he has not reported these assets in the income-tax return in the past.

Posers

- Foreign assets held in past, now not existing but noticed by Dept. in future - are they covered

Posers

- Capital gains chargeability on declared asset which is later sold – FMV shall be treated as cost for computing CG - clarified by Board

Success of OTC

- 3,770 crore from 638 declarations till September 30
- Lack of trust in respect to keeping the information strictly confidential,
- onerous disclosures and valuation rules
- insufficient time given to taxpayers for declaration
- Insufficient time to pay tax

HSBC and Liechtenstein cases

- HSBC cases - assessment made in most cases on income of Rs. 6,500 crore and demands have been taken out, prosecutions going on.
- Liechtenstein cases - assessments are completed and prosecution is going on.

Some Practical situations

- Foreign assets, bank accounts, life policies, PF etc. left behind by returning Indians
- Credit card payments from foreign bank accounts continued by residents
- Foreigners (ex-pats) residing in India for over two years – are they meant to be covered too?
- Foreign assets inherited by residents, from non-resident relatives

Some Practical situations

- Swiss and other tax heaven assets
- Interest in foreign trusts held by residents
- Foreign entities/subsidiaries in which residents have holdings
- HSBC type episodes
- Abetment related issues

Some issues clarified by Board

- Declaration by Company - Directors would get immunity -
- Immunity from prosecution restricted to 5 specific Acts – not any other Act -
PMLA Act, 2002 – willful attempt to evade tax – immunity available on declared asset -
- Not eligible for declaration for the years for which notice u/s 142/143(2)/148/153A/153C is issued-

Answering Your Questions..



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Thank You!



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