Black Money Law

A concept note

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Introduction

Black Money, in simple terms refers to the money earned illegally or earnings not declared for tax purposes. Black money is both an economic and a social problem - with adverse sociological effects, like social inequalities, social deprivations. It is perceived as a parallel economy, which impacts economic policies of the government and has damaging effects on country's economy and nation's development.

Scope and Coverage

Based on the Budgetary promise, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ("the Act" or "this Act") was introduced to tax foreign undisclosed income and assets of tax residents of India. This Act received the assent of the President of India on 26th May 2015 and has been made effective from July 1st, 2015.

The Act extends to all the persons who are resident in India in accordance with the provisions of Section 6 of Income Tax Act, 1961. The assessee qualifying as Resident but not Ordinarily Resident (RNOR) in India are excluded from the ambit of this Act. This Act provides for separate taxation of undisclosed income in relation to foreign income and assets. Such income will henceforth not be taxed under the Income Tax Act, 1961, but under the provisions of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Any undisclosed foreign income and undisclosed foreign assets declared after June 30th, 2015 will be taxed under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and not under the Income Tax Act, 1961. Besides the stringent penalties and prosecution, the Act provides a onetime compliance opportunity to those who have undisclosed foreign assets. Where any disclosure is made under the one time compliance window, the declarant is required to pay the tax @ 30% and an additional 30% as penalty, and no other penalty or prosecution under the Income Tax Act, 1961 or this Act will be launched in such cases.

The government vide Notification No.58/2015 dated 2nd July 2015, has notified the rules for taxation of black money. The rules are called as Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015. These rules contain the timelines and procedures for disclosures in relation to the undisclosed foreign assets.

Key Highlights of the Rules

Who can Apply?

Any resident person (other than RNORs) who has undisclosed foreign assets acquired from income chargeable to tax under the Income Tax Act.

Timeline for Declaration and Payment?

- Declaration to be made on or before 30th September 2015 before Designated Principal Commissioner or Commissioner of Income Tax (PCIT/CIT).
- The taxes and penalties have to be paid on or before 31st December 2015.

Rate of Tax and Penalty?

Tax @ 30% of the value of undisclosed assets need to be paid. Additionally, 100% of such tax amount need to be paid as penalty by the declarant.

Cases where Declaration can be made?

Declaration to be made in Form 6, in respect of undisclosed foreign assets acquired from the income chargeable to tax under the Act for any assessment year prior to A.Y.2016-17 for which assessee has either:

- Failed to furnish the Return of Income under section 139 of the Income Tax Act, 1961,or
- Failed to disclose such income in a return furnished, or
- Such income has escaped assessment by reason of omission or failure to file return or failure to disclose fully and truly all material facts necessary for the assessment.

Cases where Declaration cannot be made?

No Declaration can be made by:

- Any person in respect of whom order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
- Person notified under Section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992

No Declaration can be made in respect of any undisclosed foreign asset acquired from income for the financial year chargeable to tax under the Act for which:

- A notice under section 142, 143(2), 148, 153A or 153C of the IT Act has been issued on or before 30th June 2015 and the proceedings are pending before the tax officer in relation to such notice.
- Search has been conducted under section 132 or requisition has been made under section 132A or Survey has been carried out under section 133A and the time for issuance of notice under section 143(2), 153A or 153C for the relevant year has not expired.
- The information in respect of undisclosed assets has been received by the Competent Authority on or before 30th June 2015, under Double Taxation Avoidance Agreement entered into by the Central Government under section 90 or 90A of the Income Tax Act, 1961.

No immunity in relation to Prosecution for any offence punishable under Chapter IX (offences relating to public servants) or Chapter XVII (offences against property) of the Indian Penal Code, or the Narcotic Drugs and Psychotropic Substances Act, 1985 or under the Unlawful Activities (Prevention) Act,1967 or under the Prevention of Corruption Act, 1988 are pending

After Declaration?

- The designated PCIT/CIT will issue intimation in the Performa by 31st October 2015 to inform whether any information in respect of the declared asset had been received by the Competent Authority on or before 30th June 2015.
- Declarant shall revise the declaration and exclude such assets, and file the revised declaration within 15 days of the receipt of the intimation from PCIT/ CIT.
- Declarant is required to pay the taxes and penalty on or before 31st December 2015, and intimate the payment to the PCIT/ CIT, who will then issue an acknowledgement in Form 7 within 15 days of receipt of intimation of such payment.

Cases where Declaration is considered to be invalid?

- Failure to pay taxes and penalty before 31st December 2015.
- Any misrepresentation or suppression of facts or information.

In these cases, the declaration shall be deemed to have not been made and all provisions of the Act, including penalty and prosecution shall apply. Further, there will be no refund of taxes and penalty paid.

Effects of Valid Declaration?

- Amount of undisclosed investment in the asset declared shall not be included in the total income of the declarant.
- Contents of the declaration shall not be used as evidence for any penalty or prosecution proceedings under the Income Tax, the Wealth Tax Act, the Foreign Exchange Management Act and the Companies Act or the Customs Act.
- Value of asset declared shall not be chargeable to wealth tax for any assessment years.
- Declarant will not be entitled to claim any reassessment of any earlier year or revision of any order or benefit or set-off or relief in any appeal.

Valuation of Undisclosed Assets

The foreign undisclosed assets (including the financial interest in any entity) shall be valued at its fair market value. The valuation will be done on 1st July 2015 (in case of one time compliance window) and 1st April of the relevant previous year. The detailed fair valuation methodology of undisclosed assets are:

1) Bullion, Jewellery or Precious Stones

Higher of -

- Cost of acquisition; and
- The price that the Bullion, Jewellery or Precious Stones shall ordinarily fetch, if sold in the open market on the valuation date.

2) Archaeological collections, drawings, paintings, sculptures or any work of art

Higher of -
- Cost of acquisition; and
- The price that the artistic work shall ordinarily fetch, if sold in the open market on the valuation date.

3) Immovable property

Higher of -
- Cost of acquisition; and
- The price that the Immovable Property shall ordinarily fetch, if sold in the open market on the valuation date.

4) Shares and securities quoted on the established securities market

Higher of –
- Cost of acquisition; and
- Price as determined in the following manner
- The average of the lowest and highest price of such shares and securities quoted on any established securities market on the valuation date
- Where there is no trading on the valuation date, the average of the lowest and highest price of such shares and securities on any established securities market on a date immediately preceding the valuation date where such shares and securities were traded on such securities market.

5) Unquoted shares and securities (Equity Shares)

Higher of –
- Cost of acquisition, and
- Fair market Value = $\frac{A + B - L}{(PE)} \times (PV)$

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

- any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any,
- any amount shown as asset including the unamortized amount of deferred expenditure which does not represent the value of any asset.

B = fair market value of bullion, jewellery, precious stones, artistic works, shares, securities and immovable property as determined in the manner provided in this rule.
L = book value of liabilities, but not including the following amounts, namely:-

- the paid-up capital in respect of equity shares;
- the amount set apart for payment of dividends on preference shares and equity shares
- reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

- 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
- any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares

PE = total amount of paid up equity share capital as shown in the balance sheet.
PV = the paid up value of such equity shares.

6) Unquoted shares and securities (other than Equity Shares)

Higher of –
- Cost of acquisition; and
- The price that the shares or securities shall ordinarily fetch, if sold in the open market on the valuation date.

7) Bank Account

Value of an account with a bank shall be -
- The sum of all the deposits made in the account with the bank since the date of opening of the account, or
- Where a declaration of such account has been made under Chapter VI, and the value of the account (as computed above) has been charged to tax and penalty under that Chapter, the sum of all the deposits made in the account with the bank since the date of such declaration.

However, where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account.

8) Interest of a person in a partnership firm or in an association of persons or a limited liability partnership of which he/ she is a member

Total of -
- The net asset of the firm, association of persons or limited liability partnership on the valuation date to the extent represented by amount of capital to be apportioned amongst the partner/member in the capital ratio, and
- Residue of the net asset to be apportioned in accordance with the agreement for distribution in the event of dissolution and in absence of such agreement, in the profit sharing ratio

Net asset = A + B - L in the manner provided under valuation of Equity Shares & securities

9) Any other asset

Higher of -
- Cost of acquisition; and
- The price that the asset would fetch if sold in the open market on the valuation date in an arm's length transaction.

10) Asset (other than a bank account) was transferred before valuation date

Higher of -
- Cost of acquisition; and
- Sale price

11) Asset was transferred without consideration or inadequate consideration before the valuation date

Higher of -
- Cost of acquisition; and
- Fair Value on the date of transfer

12) 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

The fair market value of the old asset or the bank account, as the case may be, determined asper the rules above, shall be reduced by the amount of the consideration invested in the new asset.

Illustration

A house property (H1) located outside India was bought in 1997 for Rs. 20 Lakhs. It was sold in 2001 for Rs. 25 Lakhs and the realized amount was deposited in a foreign bank account (BA). In 2002 another house property (H2) was bought for Rs. 30 Lakhs. 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 Rs. 50 Lakhs. Assuming that the value of BA as computed under Rules is Rs. 70 Lakhs, the fair market value (FMV) of the assets shall be computed as below:

Asset	Formulae	FMV
H1	Higher of – • Cost of Acquisition (Rs. 20 Lakhs) • Sale Price (Rs. 25 Lakhs) Reduced by amount deposited in BA (Rs. 25 Lakhs)	NIL
BA	Value of Bank Account as computed under Rules (Rs. 70 Lakhs) reduced by the amount invested in H2 (Rs. 30 Lakhs)	Rs. 40 Lakhs
H2	Higher of – • Cost of Acquisition (Rs. 30 Lakhs) • Fair Value on Valuation Date (Rs. 50 Lakhs)	Rs. 50 Lakhs

Conclusion

While every effort is made to simplify the rules, the valuation methodologies may be subjective. Different views may be adopted in arriving at the fair value of the undisclosed foreign asset. It is important that the assessee makes appropriate disclosure after exercising due diligence. Filing improper information may deem the declaration to be void and the assessee may be subject to penal consequences. It is also important to note that the taxes and penalty paid earlier would also not be refunded.

The department has also issued a clarification vide Circular No.13/2015 dated 6th July 2015 in question and answer format to address certain specific queries of the tax payers.

CHENNAI
48, Masilamani Road,
Balaji Nagar, Royapettah,
Chennai - 600014.
Phone: +91 - 044 - 28131 128/38/48
Fax: +91 - 28131 158

HYDERABAD
No 403&404, Golden
Green Apartments,
Erra Manzil Colony,
Hyderabad - 500082.
Phone: +91 - 040 - 23370 002/04
Fax: 23379 988

BENGALURU
Khivraj Mansions, 10/2 Kasturba Road,
Bangalore - 560001.
Phone: +91 - 080 - 22274 551/52
Fax: +91 – 22212437

GURGAON (New Delhi)
404, DLF City Court,
Sikandarpur, Mehrauli_Gurgaon Road
(MG Road), Gurgaon,
Haryana – 122002
Phone : +91 - 0124 - 4235 522

VISAKHAPATNAM
1-88-19, Plot No: 135/4,
Sector 4, MVP Colony,
Visakhapatnam 530 017
Phone: (0891) 2755821 & 2755848,
Fax: (0891) 2755848

VIJAYAWADA
No 33-25-33/3, Govinda
Rajulu Naidu Street,
Surya Rao Pet,
Vijayawada - 520010.
Phone: +91 - 866 - 2444 592/93/94

GUNTUR
10-3-21, 3rd Lane,
Sambasivapet, Guntur - 522001.
Phone: +91 - 863 - 2220347/2224924
Fax: +91 – 2220347

KAKINADA
3-16C-40/1, 8th Road, Santhi Nagar,
Kakinada - 5330003.
Phone: +91 - 884 - 2374 402/04
Fax: +91 - 2374 402, 2363 656

TANUKU
22-29/5 Gubbalavari Street,
Society Road, Tanuku - 534211.
Phone: +91 - 8819 - 221 234/224 911

ADONI
142/6, Sri Krishnadevaraya Colony,
Adoni - 518301.
Phone: +91 - 8512 - 253 447/222 377
Fax: +91 - 253 447

Brahmayya&co.

www.brahmayya.com