

Key aspects that everyone should know

The Black Money Act: Ignorance is not bliss!



Foreword



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Individuals and institutions globally are engaged in evading taxes and generating surplus which do not get accounted for in the formal economy. These funds are generated from activities which may be legal or illegal by nature. However the mere fact that taxes have not been paid on such incomes, as per the rules of the land, converts such funds to form a part of the parallel economy or Black Money generation.

The Government has been focused on the Black Money peril both within the confines of India and the sums of money parked abroad. To tackle the complex issue of Black Money abroad which has been in the headlines, a separate regime for taxation of The Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015('BMA') has been introduced.

ASSOCHAM along with Grant Thornton have come out with this knowledge paper on the key aspects of Black Money Act and its disclosure under one time compliance window. This report would attempt to provide an understanding of the nuances of the new legislation of the Black Money Act along with series of clarifications, rules, et al. I would like to express my sincere appreciation to ASSOCHAM- Grant Thornton team for sharing their thoughts, insights and experiences.



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It is difficult to truly appreciate the magnitude of the menace of Black Money which flows through the parallel economy. The problem of black money which gets routed and parked abroad is further aggravated due to round tripping of such money to India through complex cross- border structures and devious utilisation.

The Black Money Act - short for The Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015 - is another weapon in the Revenue authorities arsenal in addition to the extant Income-tax Act and may be viewed as a motivated reaction to pressure from the political dynamics, civil society and Apex Court's mandamus to tackle the complex issue of black money.

The Black Money Act's implementation and success may be fraught with difficulties. In India an atmosphere of considerable distrust and adversity is embedded in the the relationship between the tax payer and the revenue.

The Black Money Act is well intended to track and bring back Indian wealth hidden overseas without being subject to Indian tax, into Indian coffers. However, one does wonder whether the result could have been achieved with some changes to current legislation, and better implementation of the existing tax & other laws. Careful implementation to spare the honest tax payer by having a strict mechanism to curb harassment would go far in assuaging the sentiments of righteous Global Indians. Otherwise, 'Ease of Doing Business' in India will get even harder.

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1. Background

Black Money in normal parlance means income illegally obtained or not declared for tax purposes. The definition ascribed by the Indian Government in White Paper on Black Money¹ includes **money generated through illegal activities (terrorism, drug trade, corruption, etc.) or generated through unaccounted or undisclosed permissible economic activities** under the garb of Black Money.

Extracts from the same are reproduced hereunder:

There is no uniform definition of black money in the literature or economic theory. In fact, several terms with similar connotations have been in vogue, including 'unaccounted income', 'black income', 'dirty money', 'black wealth', 'underground wealth', 'black economy', 'parallel economy', 'shadow economy', and 'underground' or 'unofficial' economy. All these terms usually refer to any income on which the taxes imposed by government or public authorities have not been paid. Such wealth may consist of income generated from legitimate activities or activities which are illegitimate per se, like smuggling, illicit trade in banned substances, counterfeit currency, arms trafficking, terrorism, and corruption. For the purpose of this document, 'black money' can be defined as assets or resources that have neither been reported to the public authorities at the time of their generation nor disclosed at any point of time during their possession.

The subject or the peril of Black Money both inside the Indian territory and abroad has been in the spotlight in the past years that has caught public sentiment and political attention. Several estimates on the quantum of black money circulating and parked overseas are doing the rounds including speculation on how it could impact the GDP growth rate!

The Government of India, in its endeavor to reinforce its commitment towards tackling the peril of the parallel economy and the attempt to bring money of that nature back into India, brought out a legislation in the form of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015² (**BMA or Black Money Act**)

1. finmin.nic.in/reports/whitepaper_blackmoney2012.pdf

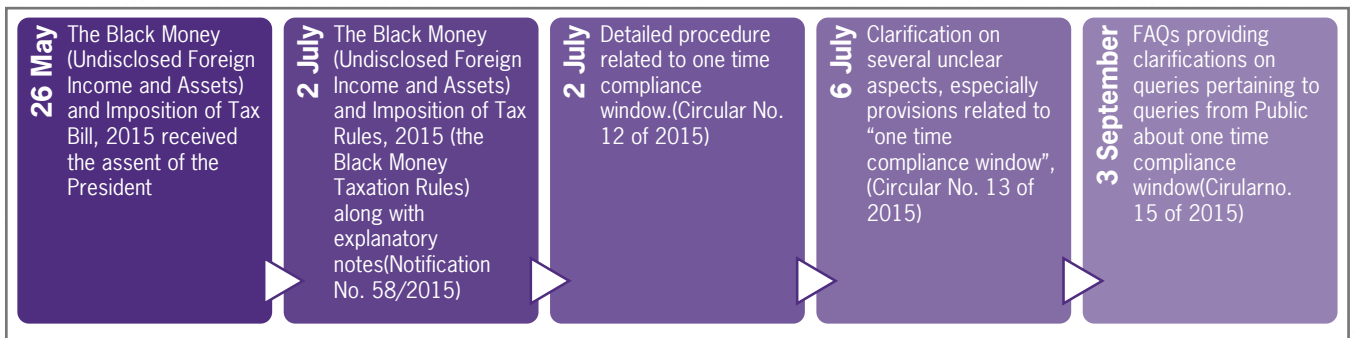
2. <http://www.egazette.nic.in/WriteReadData/2015/164107.pdf>

The probable chain of events that unfolded and eventually led to the passing of this legislation is depicted hereunder:



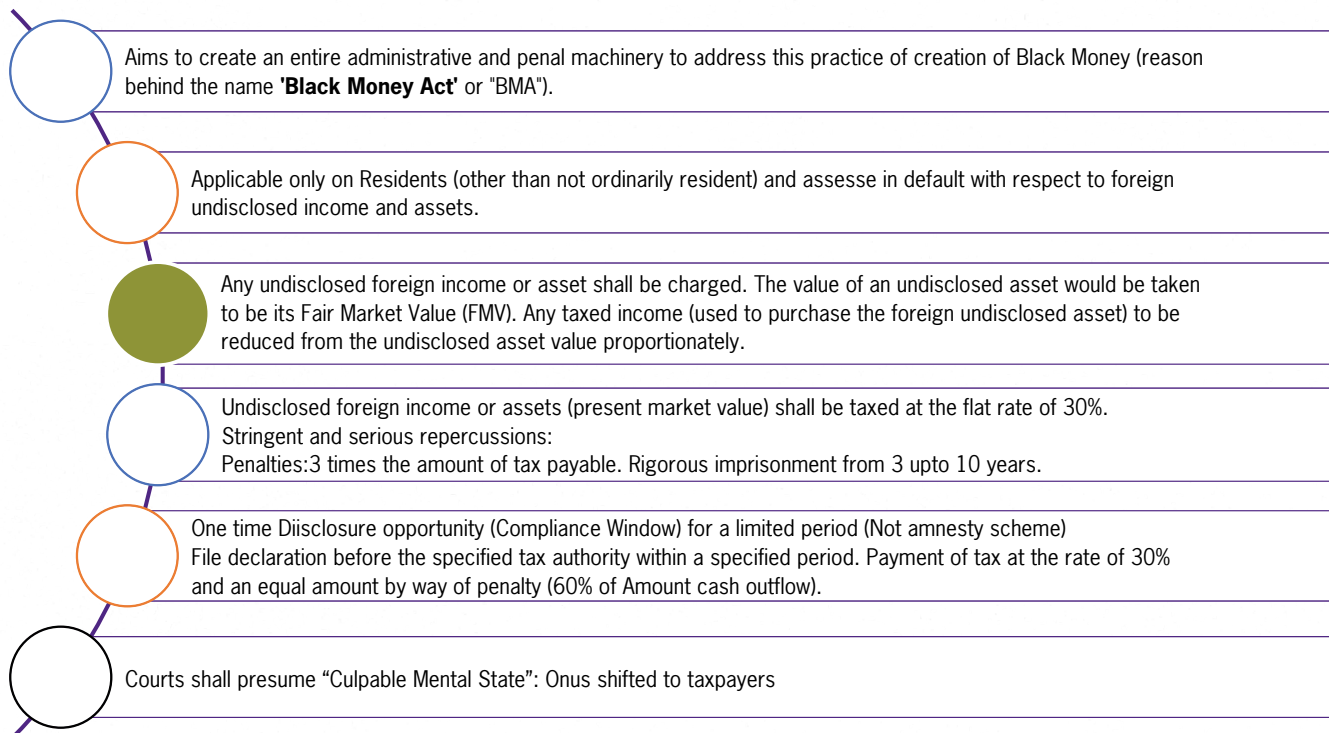
The Finance Minister in his budget speech spoke of tackling the Black Money menace as first and foremost pillar of his tax proposals in the budget.

Though BMA is a firm step in the right direction, there are certain areas which lack of clarity, particularly on the provision relating to the voluntary disclosure of undisclosed assets located overseas. This uncertainty was sought to be clarified through a “Frequently Asked Questions” (FAQ) circulars that perhaps navigated through a few issues but failed to make the sentiments positive. The process of clarification of the BMA also has a through it’s own chain of events that started on 26 May 2015:



2. The Black Money Act: Broad analysis

2.1 KEY ASPECTS: SYNOPSIS OVERVIEW



- Chargeability of the BMA is limited only on Residents (and "ordinarily" resident) and assessee in default with respect to foreign undisclosed income and assets
- The date of entering into force of the BMA is July 1, 2015 and shall be applicable from and including the financial year ending March 31, 2016
- Covers both, undisclosed foreign income and undisclosed foreign assets. Both to be taxed at a flat rate of 30%
- Assets to be valued at the present market value (methodology prescribed in the Rules)
- Stringent conditions for non-compliance stipulated: Penalties leviable upto 3 times the amount of tax. Rigorous imprisonment from 3 to 10 years also stipulated
- **One time compliance opportunity** of any undisclosed asset located outside India for a **limited period** by filing a declaration in the prescribed form before the specified tax authority within a specified period

- Tax applicable on such disclosed income and assets to be paid by December 31, 2015 at the rate of 30% and an equal amount by way of penalty

The BMA is outlined in the form of 7 chapters comprising of 88 sections, with a separate chapter outlining the facility of one-time disclosure under the One-time compliance/ disclosure window.

Chapter	Particulars	Sections
Chapter I	Preliminary	Section 1 – 2
Chapter II	Basis of Charge	Section 3 – 5
Chapter III	Tax Management	Section 6 - 40
Chapter IV	Penalties	Section 41 – 47
Chapter V	Offences and Prosecution	Section 48 – 58
Chapter VI	One-time disclosure window	Section 59 – 72
Chapter VII	General Provisions	Section 73 - 88

3. Applicability and scope of the Black Money Act

3.1 APPLICABILITY TO FOREIGN UNDISCLOSED INCOME AND ASSETS

Like the name of the Act suggests, the BMA applies only to Undisclosed Foreign Income and Assets (i. e, outside the territory of India) and thus is a separate mechanism to regulate the issue of foreign income and assets which have escaped the Indian tax net. In other words, the BMA does not intend to directly deal with the Black Money accumulated in Indian assets as these would continue to be dealt with by the Income tax Act, 1961 ('ITA' or 'Act') and some other allied legislations.

3.2 APPLICABILITY TO PERSONS RESIDENT IN INDIA

The BMA's applicability has been confined to taxpayers who are persons resident and ordinarily resident in India. This specific applicability emanates from the definition of assessee contained in the BMA which 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. The BMA further defines the term resident to mean person who is resident within the meaning of Section 6 of the ITA.

The extant residential status criteria for a "company" year on year is either that the company is incorporated in India or its "place of effective management (POEM)" in that year, is in India. Thus, foreign companies whose PoEM is determined to be in India may also come under the ambit of BMA. The residential status of Individuals contained in the Section 6(1) of the ITA which deems person to be ordinarily resident in India if his stay in India is 182 days (or more) or has been in India for period of 365 days(or more) within the last 4 previous years and in India for 60 days (or more) in the previous year.

3.3 UNDISCLOSED INCOME AND ASSETS

- The BMA's applicability is only with respect to **Undisclosed** Foreign Income and Assets.

The BMA defines the term "undisclosed foreign income and asset" to mean aggregate value of the undisclosed income of the assessee from source located outside India and the value of an undisclosed asset located outside India.

Thus for BMA to apply, the situs of the asset and the source of income has to be outside India.

3.3.1 Assets

The BMA further elucidates the meaning of the term "undisclosed foreign asset" to mean:

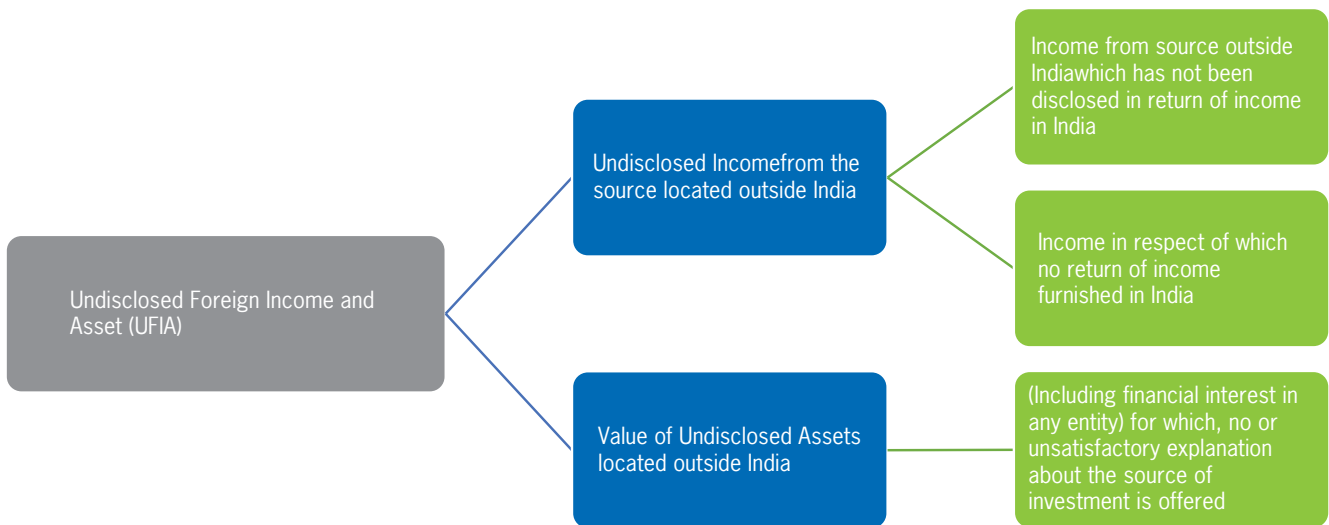
- an asset located outside India (including Financial Interest in an entity)
- directly held in his own name or of which he is a beneficial owner, and
 - _ has no explanation about the source of investment for the asset or
 - _ the explanation provided is unsatisfactory in the opinion of the tax authority

The BMA also doesn't provide any meaning to the term "Beneficial Owner". However, clarification in this regard was included in the FAQs issued (Ques 31: Circular 13) which drew attention to the meaning assigned to the term vide Explanation 4 to Section 139(1) of the ITA "beneficial owner" in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person. The explanation was inserted by Finance Act, 2015 to define the terms Beneficial Owner and Beneficiary.

3.3.2 Income

- Undisclosed foreign income under the BMA means income from a source located outside India which has not been disclosed in the return of income filed under the ITA or income, from a source located outside India, in respect of which no Income Tax return has been filed.

The above can be pictorially depicted as under:



As per the BMA, the Undisclosed Foreign Asset means an asset which is unaccounted/ the source of investment in such asset is not fully explainable. Since an asset reported in Schedule FA does not form part of COI in the ITR and consequently does not get taxed, **mere reporting of a foreign asset in Schedule FA of the return does not mean that the source of investment in the asset has been explained.** [FAQ 17: Cir 13].

If source of investment is explainable, assets are not undisclosed assets even if not reported in the ITR.

However, non-disclosure of Foreign Asset in tax return for AY 2016-17 onwards would attract penalty of Rs 10 Lacs u/s 43 of BM Act[FAQ 18: Cir 13].

Foreign Assets Disclosure Requirement:

The requirement for disclosure of assets or financial interest located outside India has been stipulated and subsumed in the tax returns since financial year 2013.



4. Chargeability under Black Money Act

The BMA bestows the charge of execution of the BMA with the Income Tax Authorities that have been granted to exercise powers and authorities under the BMA enabling them to bring to tax the undisclosed foreign income and asset.

Section 3 of the BMA provides for a tax charge @30% effective financial year ended March 2016

- on the total value of undisclosed income and asset
- charge on the “value” of an undisclosed asset located outside India shall be charged on its value in the previous year in which comes to notice of the Assessing Officer (‘AO’)

The BMA thus provides for a completely different mechanism for charging to tax the value of Undisclosed Assets located outside India, which shall be in any year when such asset comes to the notice of the AO. This coupled with the fact that the BMA is devoid of period of limitation for issuance of notice or charge, shall have far-reaching effect as the AO can invoke the BMA at any point in time upon the asset coming to his notice.

Even the ITA provides for a period of limitation of 16 years for issuance of notice with respect income sourced from foreign assets which has escaped assessment. (w. e. f 1 July 2012).

The Black Money Act ring-fences the assessee from double jeopardy by means of clarifying that the Undisclosed Foreign Income and Asset taxed under the BMA shall not be included in the income for the purposes of the ITA.

The BMA also provides that while computing the total value of the Undisclosed Foreign Income and Asset and resultant taxation on gross basis and thus allows for no deduction for any expenditure or allowance (irrespective of allowance under the ITA). However, the BMA provides for reducing the income which has already suffered tax under the ITA or the BMA upon furnishing of satisfactory evidence demonstrating that the asset was acquired through tax paid income. Such reduction shall be increased on a proportionate basis, i. e., in ratio of cost of asset to the FMV of the asset.

The Black Money Act also embodies an illustration to clarify such a calculation as under:

Particulars	Amount
Property acquired in FY 2009-10	50
Property noticed by AO in FY 2017-18, FMV (A)	100
Out of investment of INR 50 millions, INR 20 has been assessed to tax in FY 2009-10 or earlier years, therefore proportionate relief (B) = $100 * 20/50$	40
Amount chargeable to tax = (A) – (B) i. e. $100 - 40$	60

Computation of the Tax under the Black Money Act shall be done in the manner as depicted hereunder:

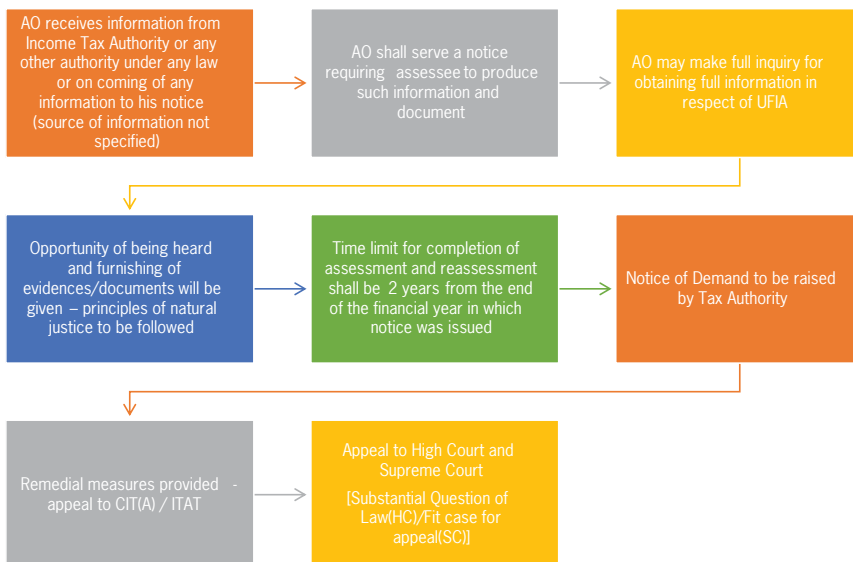
Computation of total UFIA	
Foreign income which has not been disclosed in IT Return	200
Foreign Income in respect of which no IT return has been filed	50
FMV of UFA (calculated as per Rule 3 of BM Rules)	100
Total	350
Less: Income which has been assessed to tax for any assessment year under the IT Act prior to AY to which BM Act applies	(40)
Less: Income which is assessable or has been assessed to tax for any assessment year under BM Act	(60)
Total value of UFIA	250
Tax @ 30%	75

The AO on receipt of information from income tax authority under the ITA or any other authority under any law or on coming of any information to his notice shall serve a notice requiring assessee to produce such information and document as he may require. The BMA however, fails to clarify on the aspect of source of such information and the validity and authenticity of the same for issuance of notice.

As highlighted above the BMA embodies no time limit for the issuance of the initial notice for requisitioning information or documents. The BMA however, does provide for time limit for completion of assessment and issuing the final reassessment/ reassessment order, which is two years from end of financial year of issuance of the first notice.

The BMA also provides for remedial measures, inter-alia, appeal to Commissioner Appeals / Tribunal / High Court and Supreme Court, rectification of mistakes, revision of orders, recovery of arrears like that contained in the ITA. However, the presumption of existence of culpable mental state shall lead to shift of onus onto the taxpayer.

Black Money Act process:



5. Valuation methodology

The BMA in Chapter II which governs the chargeability has stated that for the purpose of chargeability, the value of undisclosed asset shall be the Fair Market Value ('FMV') of the asset determined in accordance with the prescribed manner. The Central Board of Direct Taxes (CBDT) vide notification no. 58/2015(issued on 2 July, 2015) laid down the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 ('Black Money Rules') wherein Rule 3 of Black Money Rules outlines the prescribed methodology for arriving at the FMV of Undisclosed Assets.

FMV of quoted shares and securities	Higher of <ul style="list-style-type: none"> • Cost of acquisition • Average of highest and lowest price quoted on any established securities market on the valuation date (or preceding date, in case there is no trading on valuation date)
FMV of unquoted equity shares	Higher of <ul style="list-style-type: none"> • Cost of acquisition • Book-Value of all assets (with some exclusions) plus FMV of assets as provided by other Rules less book value of liabilities (with some exclusions) multiplied by ratio of paid up value of such equity shares and total paid up equity share capital $(A+B-L)/PE \times PV$
FMV of unquoted shares and securities other than equity shares	Higher of <ul style="list-style-type: none"> • Cost of acquisition • The value that may be fetched if sold in open market on the valuation date. Assessee may obtain report from registered valuer recognised by the Government of the country or any of its agency
FMV bank accounts	<ul style="list-style-type: none"> • Sum of all deposits made in the account with the bank since the Opening Date of the account (Sum of deposits shall not include deposits made from the proceeds of any withdrawal from the account).
FMV of bullion, jewellery, precious stone and artistic work	Higher of <ul style="list-style-type: none"> • Cost of acquisition • The value that asset may have fetched if sold in open market on the valuation date. (Valuation report from registered valuer recognised by the Government of the country or any of its agencies)
FMV of immovable property	
Interest in partnership firm, AOP, LLP	<ul style="list-style-type: none"> • Net assets to be valued at FMV (as per mechanism given for unquoted equity shares) • Net assets to the extent of capital to be allocated in capital contribution ratio and balance in the ratio agreed for dissolution
Other assets	Higher of : <ul style="list-style-type: none"> • Cost of Acquisition • Price it would fetch in open market on valuation date (arm's length market price/ arm's length transaction)

A=book value of all the assets (other than bullion, jewellery, precious stone, artistic work, 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, and any amount shown as asset including the unamortised amount of deferred 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.

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

1. the paid-up capital in respect of equity shares;
2. the amount set apart for payment of dividends on preference shares and equity shares;
3. reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
4. 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;
5. any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
6. 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

The CBDT by means of circulars 13(dated 6th July, 2015) and the circular 15(dated 3rd September 2015) has tried to clarify valuation and taxing methodologies by means of illustrations embodied in the FAQs.

[FAQ 22: Cir. 13] A person acquired a house property in a foreign country during the year 2000-01 from unexplained sources of income. The property was sold in 2007-08 and the proceeds were deposited in a foreign bank account. Does he need to declare both the assets under one time compliance scheme and pay tax on both the assets?

The declaration may be made in respect of both the house property and the bank account at their FMV. The fair market value of the house property shall be higher of its cost and the sale price, less amount deposited in bank account.

[FAQ 07: Cir. 15] A person has a foreign bank account made out of undisclosed income chargeable to tax in India. Over the past several years, the person invested in securities which were funded from such account. Some of the securities were sold and the proceeds were deposited into the same account. Some expenditure has also been made from the bank account. What would be the declaration in such case under Chapter VI of the Act?

In this case, the valuation of bank account and securities is to be made separately and it is to be computed as per rule aforesaid valuation Rules.

6. Once time disclosure window

The BMA offers a one-time declaration window for a limited period as an opportunity for resident taxpayers to come clean and voluntarily disclose overseas undisclosed assets acquired out of income chargeable to tax in India. CBDT has issued two clarifications in an attempt to clarify some questions and concerns on disclosure under the one time disclosure window.

SCOPE

A declaration can be made by resident (other than not ordinary resident) in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under ITA :

- for which he has failed to furnish return under the ITA
- which he has failed to disclose in a return of income furnished by him under ITA before date of commencement of BMA
- which has escaped assessment by reason of omission of failure on part of person responsible for making return under ITA or to disclose fully and truly all material facts necessary for assessment

However, FAQ No. 23 Cir. 13 and FAQ No. 19 Cir 15 are at variance from this ambit as it states that the declaration may be made by any person even Non-residents (who were residents at the time of earning such income). Non-residents are otherwise outside the scope of the BMA.

It may be noted that any declaration made cannot be revised or modified subsequently.

Rate of Tax & Penalty:

Person declaring any undisclosed foreign asset within specified time frame, shall be liable to pay tax **at the rate of 30% on the value of such undisclosed asset**. Also BMA provides for liability to pay a **penalty at rate of 100% of the amount of tax paid** in respect of undisclosed asset. Thus the resultant cash outflow would be 60% on the value of asset so disclosed.

Time limits for declaration & payment

The one time compliance window has been effective from 1 July 2015 vide Circular 12 (dated 2 July 2015). The declaration can be made at any time before 30 September 2015. The date pegged for payment of tax & penalty is 31 December 2015.

Declaration not eligible in certain areas:

- A notice in respect of undisclosed asset acquired from income chargeable to tax under ITA has been issued in the respect of such year and the proceedings are pending before the AO and the notice in reference has been issued to above and has been served on or before 30 June 2015
- Where a search has been conducted or requisition has been made or survey has been carried out, time for issuance of notice of initiation of assessment has not been expired
- Any information has been received by competent authority from any country under tax treaty/information exchange agreement in respect of undisclosed asset on or before 30 June 2015
- Prosecution proceedings have been initiated against the taxpayer under Indian Penal Code or Unlawful Activities Act, 1967
- Order of detention has been made against the person under the Conservation of Foreign Exchange & Prevention of Smuggling Act, 1974
- Notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992

While there exists some confusion over the receipt of prior information by the tax authorities and taxpayer not being privy to

such information before making the declaration, it has been clarified that ineligible disclosures in the one-time compliance window in good faith will not attract penal provisions of the BMA. FAQ. 15 of Circular 13 states in this respect: "In respect of such assets which have been duly declared in good faith under the tax compliance but found not eligible, he shall not be hit by section 72(C) of the Black Money Act and would be treated as per provisions of Income tax.

Circumstances where declaration shall be void

- The declarant fails to pay entire amount of tax & penalty before 31 December 2015
- The declaration has been made by misrepresentation or suppression of facts/information
- If a declaration is made by people who have undisclosed assets and in an event it is found that these undisclosed assets have been acquired from money earned through corruption, it would amount to misrepresentation of facts and information

Effect of Valid Declaration

- The amount of undisclosed investment in foreign assets declared shall not be included in total income of the declarant for any year under ITA
- Declaration cannot be treated as evidence against the declarant for the purpose of any proceeding relating to the imposition of penalty or for prosecution under ITA, Wealth Tax Act, FEMA, Companies Act or Customs Act. Even Directors/Partners won't be liable for any offence. There shall be no immunity from prosecution under any other act. [FAQ 3 Cir:13]
- The value of asset stated in the declaration shall not be chargeable under Wealth tax Act
- Declaration of undisclosed foreign asset located outside India would not affect the finality of completed assessment and declarant will not be entitled to reopen any assessment or reassessment under IT act or Wealth Tax Act or claim any set off or relief in any appeal
- Information in respect of declaration made will remain confidential. [FAQ 14: Cir 15]

FAQ 4: Cir 13 clarifies the position with respect to Prevention of Money Laundering Act, 2002 which is applicable only on scheduled offences and will not be applicable in respect of assets for which declaration has been made under the one-time compliance window.

7. Penal consequences

The BMA has far reaching penal consequences ranging from monetary exposure in the form of hefty penalties along with prosecution. The penalty and prosecution provisions are contained in Sections 41 to Section 58 of the BMA.

- The BMA has stringent provisions on UFIA and provides for imposing penalty equal to three times of the tax. The BMA has otherwise provided discretion to the AO to impose this penalty, however, once decided the penalty would be three times the tax
- The BMA also imposes penalty of Rs. 10 lakhs on person resident in India who has foreign sourced income or holds asset outside India or beneficiary of asset outside India, for:
 - _ non-filing of the return of Income before the end of the assessment year, or
 - _ fails to furnish particulars or furnishes inaccurate particulars in the return filed

However, taxpayers having bank accounts (wherein aggregate balance doesn't exceed Rs. 500, 000) have been provided some respite as the aforesaid penalty shall not apply to them.

Penalties leviable & offences subject to prosecution under BMA

Particulars	Penalty
Penalty in respect of tax computed on undisclosed foreign income and asset	03 times the tax amount
Penalty for non-filing of Return of Income (ROI) under Section 139(1) by an assessee having an undisclosed foreign income or asset*	INR 10, 00, 000
Non-disclosure or incorrect disclosure in ROI of foreign income or asset*	INR 10, 00, 000
Default in tax payment	Equal to the tax amount
Other defaults (as per Section 45 of the Act: Failure to answer any questions/sign any statement made by him/attend or produce documents)	INR 50, 000 up to INR 2, 00, 000

*No penalty shall apply in respect of an asset being one or more bank accounts, aggregate balance in which does not exceed INR 5 lakh at any time during the previous year.

Offence	Prosecution
Wilful failure to furnish a return of income (before expiry of AY) in respect of UFIA	Rigorous imprisonment from 6 months to 7 years with fine
Wilful failure to disclose information relating to foreign income and assets in return of income	Rigorous imprisonment from 6 months to 7 years with fine
Wilful attempt to evade tax, penalty or interest in relation to UFIA	Rigorous imprisonment from 3 to 10 years with fine
Wilful attempt to evade payment of tax, penalty or interest in relation to UFIA	Rigorous imprisonment from 3 months to 3 years with fine
A person who makes false statement in any verification or delivers false account or statement	Rigorous imprisonment from 6 months to 7 years with fine
A person who abets or induces another person to make and deliver false account, statement or declaration	Rigorous imprisonment from 6 months to 7 years with fine

Another important inclusion in the BMA is the presumption pertaining to the existence of culpable mental state by Courts which completely shifts the onus onto the taxpayer to demonstrate non-existence of such culpable mental state.

Culpable mental state has been clarified to include intention, motive or knowledge of a fact or belief in, or reason to believe a fact.

8. Concluding remarks

The introduction of the parallel legislation in the form of the BMA may be viewed to be Government's reaction to pressure from the civil society and Apex Court's mandamus to tackle the complex issue of black money which has escaped the Indian tax net and resides abroad.

However, if one were to ask the necessity of the introduction of the BMA, when the ITA was well equipped to deal with such issues, it would become apparent that the BMA may not be getting in anything novel. However, the BMA brings about some far reaching consequences in the form of penalty of 300% of the tax payable, vis-à-vis, the penalty embodied in the ITA ranging from 100% to 300% of the tax payable, wherein the higher penalty was rarely resorted to. Also, the BMA being a more stringent law exposes one to Prevention of Money Laundering Act, 2002 by means of characterisation as a predicate offense and elongates the period of imprisonment to 10 years.

The incarnation of the BMA with far reaching consequences (ranging from hefty penalty to prosecution) may be fraught with administrative issues as the tax authorities who have been bestowed discretionary powers with little checks and balances, may lack the comprehension and training for the judicious implementation and invocation of the BMA provisions. This is a concern in the Indian scenario where vexation subsists between the taxpayers and the tax administration, it may lead to added peril of the taxpayers who may have further apprehensions about making disclosures and approaching the tax authorities.

Further the very short time frame existing between the introduction of the BMA and closure of the One-time declaration window has left the taxpayers agitated and frantic about understanding the nuances of the BMA and implication of disclosure under the short compliance window. This lack of facility of time to taxpayers may also go to buttress the point of politically motivated agenda of the Government behind the BMA to showcase delivery on the promises made by the leaders.

The introduction of the BMA may be with the good intention of tracking down and bringing back wealth which legitimately belongs to the country, however a more conscious evaluation of the implementation mechanism, comprehensive drafting in conjunction with facility of time to make disclosure under a more forbearing compliance regime would have helped attain the desired intention and greater acceptability.



About us

ASSOCHAM

The Associated Chambers of Commerce and Industry of India (ASSOCHAM), India's premier apex chamber covers a membership of over 4 lakh companies and professionals across the country. ASSOCHAM is one of the oldest Chambers of Commerce which started in 1920. ASSOCHAM is known as the "knowledge chamber" for its ability to gather and disseminate knowledge. Its vision is to empower industry with knowledge so that they become strong and powerful global competitors with world class management, technology and quality standards.

ASSOCHAM is also a "pillar of democracy" as it reflects diverse views and sometimes opposing ideas in industry group. This important facet puts us ahead of countries like China and will strengthen our foundations of a democratic debate and better solution for the future. ASSOCHAM is also the "voice of industry" – it reflects the "pain" of industry as well as its "success" to the government. The chamber is a "change agent" that helps to create the environment for positive and constructive policy changes and solutions by the government for the progress of India.

As an apex industry body, ASSOCHAM represents the interests of industry and trade, interfaces with Government on policy issues and interacts with counterpart international organisations to promote bilateral economic issues. ASSOCHAM is represented on all national and local bodies and is, thus, able to pro-actively convey industry viewpoints, as also communicate and debate issues relating to public-private partnerships for economic development.

The road is long. It has many hills and valleys – yet the vision before us of a new resurgent India is strong and powerful. The light of knowledge and banishment of ignorance and poverty beckons us calling each member of the chamber to serve the nation and make a difference.

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