

INDIA JURIS

GOVERNMENT ENACTS BLACK MONEY AND IMPOSITION OF TAX LAW:

The Government of India notifies a new and different taxation law for undisclosed income in relation to foreign income and assets, dated on 26th May, 2015 as The Black Money (Undisclosed Foreign Income And Assets) and Imposition of Tax Act, 2015 ("Act").

Further, in exercise of the powers conferred by section 85(1) & 85(2) of the Act, the Central Board of Direct Taxes with approval of Central Government, hereby made the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 ("Rules").

The Act contains provisions to deal with the menace of black money stashed away abroad. It, inter alia, levies tax on undisclosed assets held abroad by a person who is a resident in India at the rate of 30 percent of the value of such assets, provides for a penalty equal to 90 percent of the value of such asset, and also provides for rigorous imprisonment of three to ten years for willful attempt to evade tax in relation to a undisclosed foreign income or asset

After analyzing the Act and Rules made there under, following are the provisions made by the government:

1. Where any undisclosed foreign asset has been acquired prior to the commencement of this Act by the assessee through the undisclosed foreign income shall be chargeable to tax under this Act.
2. The Act shall come into force on the date of 1st day of April, 2016 and where undisclosed foreign income and asset of the previous year i.e., 2015-16, relevant to the assessment year commencing on or after the 1st day of April, 2016 is chargeable under the Act.
3. Under the Act, tax is also chargeable for assessment year 2016-17 for which the relevant previous year is 2015-16. For removal of difficulties the compliance provisions under Section 3 of the Act, Chapter VI (Single window clearance filling by assessee) shall also come into force with effect from the date of commencement of the Act i.e. 1st of July, 2015.
4. whereas section 59 of the Act relating to declaration of undisclosed foreign asset provides for making declaration by any person, on or after the date of commencement of the Act but on or before 30th September, 2015, in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Income-tax Act, for any assessment year prior to the assessment year commencing on the 1st day of April, 2016.
5. (Single window clearance): Whereas if any person files declaration in form 6 of the Rules, under section 59, i.e., on or before 30-9-2015, then he shall be chargeable to tax @ of thirty per cent. of value of such undisclosed asset be liable to penalty @ of

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one hundred per cent. of such tax, on the date of commencement of this Act (under section 60 & 61).

6. The above tax and penalty as per section 60 & 61 of the Act shall be payable on or before 31st December, 2015. If any assessee fails to pay such tax and penalty on the due date i.e., 31-12-2015, then it shall be deemed that assessee has not paid tax and declaration under section 59, 60 & 61 of the Act.
7. If assessee fails to file declaration and taxation as point 4 above or not file declaration, then assessee shall be chargeable to tax @ 30%, penalty @ 300% of such tax and in addition of tax and penalty, imprisonment as per chapter V of the Act (i.e., U/s 51- 3yrs to 10 yrs, 3 months to 3 yrs, 6 months to 7 yrs.).
8. Following are the general terms which is relevant for this Act and Rules:

Assessee: means a person, being a resident other than not ordinarily resident in India 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;

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 of the Act.

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.

9. For computing the “total undisclosed foreign income and asset” of any previous year of an assessee, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee.
10. Illustration: A house property located outside India was acquired by an assessee in the previous year 2009-10 for fifty lakh rupees. Out of the investment of fifty lakh rupees, twenty lakh rupees was assessed to tax in the total income of the previous year 2009-10 and earlier years. Such undisclosed asset comes to the notice of the Assessing Officer in the year 2017-18. If the value of the asset in the year 2017-18 is one crore rupees,

the amount chargeable to tax shall be $A - B = C$

where, $A = \text{Rs.1 crore}$, $B = \text{Rs. (100 x 20/50) lakh} = \text{Rs.40 lakh}$, $C = \text{Rs. (100-40) lakh} = \text{Rs.60 lakh}$.

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