



TAX FLASH NEWS

CBDT prescribes Rules for valuation of undisclosed foreign assets and releases FAQs on one-time compliance window

Background

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (The Black Money Act) has been introduced 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 (other than not ordinarily resident in India) at the rate of 30 per cent of the value of such assets. It 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 wilful attempt to evade tax in relation to undisclosed foreign income or asset.

Recently, the Central Board of Direct Taxes (CBDT) issued the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 (the Rules) under the provisions of Black Money Act. The Rules prescribe the manner of determination of 'fair market value' and illustrations on the same. The Rules further prescribe the procedure for declaration of an undisclosed asset outside India and for an appeal to Commissioner of Income-tax Appeals [CIT(A)] and Appellate Tribunal.

Considering the stringent nature of the provisions of the Black Money Act, CBDT provides for a one-time compliance opportunity for a limited period to persons who have any foreign assets which have not been disclosed for the purposes of income-tax. Under this facility, once the taxpayer pays tax at 30 per cent on the value of undisclosed foreign assets and amount equal to the penalty, he is immune from any other consequence under the Black Money Act.

With respect to the one-time compliance window, the CBDT received queries from stakeholders about the scope of the scheme and the procedure to be followed for declaration. The CBDT has considered the same and issued a circular in the form of questions and answers (FAQs). The clarification deals with issues, such as who qualifies for disclosure, which assets may get covered by the disclosure, immunity available in respect of disclosed amount, etc.

The one-time compliance procedure, Valuation Rules and 32 FAQs issued by CBDT are summarised as follows:

One-time compliance window

- **Scope of compliance window**

A declaration can be made by a person who is a resident (other than not ordinarily resident in India) in respect of undisclosed foreign assets located outside India and acquired from income chargeable to tax under the Income-tax Act, 1961 (the Act) for any Assessment Year (AY) prior to AY 2016-17 where:

- He either failed to furnish a return under Section 139 of the Act, or
- Failed to disclose such income in a return furnished before the date of commencement of the Black Money Act, or
- Such income had escaped assessment by reason of omission or failure on the part of such person to make a return under the Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

- ***Rate of tax and penalty***

The person making the declaration will be liable to pay tax at the rate of 30 per cent of the value of such undisclosed assets. Also, he will be liable to pay a penalty at the rate of 100 per cent of such tax. This special rate of 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.

- ***Time limits for declaration and making payment***

The one time compliance window has been effective from 1 July 2015. The declaration may be made at any time before 30 September 2015. The designated Principal CIT/CIT will issue intimation to the declarant by 31 October 2015. Where any such information had been received by the designated Principal CIT/CIT under the tax treaty, the declarant shall file a revised declaration excluding such assets. The declarant shall not be liable for any consequences under the Black Money Act in respect of, any asset which has been duly declared but has been found ineligible for declaration as the Central Government had prior information on such asset. However, such information may be used under the provisions of the Act. The revised declaration shall be filed within 15 days of receipt of intimation from the designated Principal CIT/CIT.

The declarant is required to pay the requisite tax and penalty on the assets eligible for declaration by 31 December 2015. After the intimation of payment by the declarant, the designated Principal CIT/CIT will issue an acknowledgement of the accepted declaration within 15 days of such intimation of payment by the declarant.

- ***Declaration not eligible in certain cases***

The benefit of one-time compliance window is not available in the following cases:

- A notice in respect of any undisclosed asset acquired from income chargeable to tax under the Act has been issued in respect of such AY and the proceeding is pending before the Assessing Officer and the notice in reference to above has been served on or before 30 June 2015.
- A search has been conducted/requisition has been made/survey has been carried out, time for issuance of a notice of initiation of assessment has not expired.
- Any information has been received by the competent authority under the tax treaty in respect of undisclosed asset before 30 June 2015.
- Prosecution proceedings have been initiated against the taxpayer under Indian Penal Code or Unlawful Activities (Prevention) Act or the Prevention of Corruption Act.

- ***Circumstances where declaration shall be void***

The declaration shall be void if:

- The declarant fails to pay the entire amount of tax and penalty before 31 December 2015
- The declaration has been made by misrepresentation or suppression of facts or information.

Any tax or penalty paid in pursuance of the declaration will not be refundable under any circumstances.

- **Effect of valid declaration**

- The amount of undisclosed investment in the asset declared shall not be included in the total income of the declarant under the Act for any AY.
- Declaration shall not be admissible as evidence against the declarant in any penalty or prosecution proceedings under the Act, the Wealth Tax Act, the Foreign Exchange Management Act (FEMA), the Companies Act or the Customs Act.
- The value of the asset stated in the declaration shall not be chargeable to wealth tax for any AYs
- Declaration of an undisclosed foreign asset will not affect the finality of completed assessments. Therefore, the declarant will not be entitled to claim re-assessment of any earlier year or revision of any order or any benefit or set off or relief in any appeal or proceedings under the Black Money Act or under the Act in respect of declared undisclosed asset located outside India or any tax paid thereon.

- **Forms for declaration**

The declaration is to be made in Form 6. The declaration may be filed with the Commissioner of Income-tax, Delhi. The declaration may also be filed online on the website of the Income tax department using the digital signature of the declarant.

Determination of fair market value

The Rules prescribe valuation method for the assets located outside India. These methods prescribe the fair market value of an asset as on valuation date and will be determined in the following manner:

Sr. No.	Nature of asset	Valuation
1	Bullion, jewellery or precious stone ¹	Higher of • Cost of acquisition and • 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 ¹	Higher of • Cost of acquisition and • Price that the artistic work shall ordinarily fetch if sold in the open market on the valuation date
3	(i) Quoted shares and securities	Higher of • Cost of acquisition and • Average of the lowest and highest price of such shares and securities on the valuation date²

¹ Valuation to be supported by a report from the a recognised valuer

² where on the valuation date there is no trading in such shares and securities, take 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 when such shares and securities were traded

	(ii) Unquoted shares and securities	Higher of • Cost of acquisition and • Value, on the valuation date, of such equity shares as determined in the following manner: $(A+B-L) \times (PV)/(PE)$ A = Book value of all the assets (other than bullion, jewellery, precious stones, artistic work, shares, securities and immovable property)³ B= Fair market value of bullion, jewellery, precious stones, artistic work, shares, securities and immovable property as determined in the manner provided in the Rule L= Book value of liabilities, excluding specified liabilities⁴ PE= Total amount of paid up equity share capital as shown in the balance-sheet PV= The paid up value of such equity shares
	(iii) Other than equity shares and securities – unquoted ¹	Higher of • Cost of acquisition and • Price that the share or security shall ordinarily fetch if sold in the open market on the valuation date
4	Immovable property ¹	Higher of • Cost of acquisition and • Price that the property shall ordinarily fetch if sold in the open market on the valuation date
5	Account with a bank	• The sum of all the deposits made in the account with the bank since the date of opening of the account. It does not include the deposits that are withdrawn earlier from the account • Where a declaration of such account has been made and value of the account (as computed) has been charged to tax and penalty, the sum of all deposits made in the account with the bank since the date of such declaration

³ Book value of assets should be 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 unamortised amount of deferred expenditure which does not represent the value of any asset

⁴ Liabilities specified in the Rules

6	Interest of a person in a partnership firm or in an association of persons or a limited liability partnership of which he is a member	Total of • Net assets of the firm/Association of Person/Limited Liability Partnership to the extent represented by amount of capital to be apportioned amongst the partner/member in capital ratio and • 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 assets of the firm = A+B-L in a manner provided in Sr. No. 3(ii)
7	Any other assets	Higher of • Cost of acquisition and • Price that the asset would fetch if sold in the open market on the valuation date in an arm's-length transaction

Notwithstanding the above valuation, where an asset (other than a bank account) was transferred before the valuation date the fair market value of such asset shall be higher than its cost of acquisition and the sale price⁵.

The fair market value in case of one-time window is to be determined on 1 July 2015. However, in case of an assessment under the Act, it is 1 April of the relevant financial year in which undisclosed asset comes to the notice of tax officer.

Clarification on tax compliance for undisclosed foreign income and assets (FAQs issued by CBDT)

• **Immunity in respect of declaration made under one-time compliance window**

- The Black Money Act provides immunity from prosecution under five Acts viz. the Act, Wealth-tax Act, FEMA, Companies Act and the Customs Act. It does not provide immunity from prosecution under any other Act.
- The Prevention of Money Laundering Act will not be applicable in respect of the scheduled offence of wilful attempt to evade tax in respect of assets for which declaration is made under the Black Money Act.
- In case a company files a declaration of undisclosed foreign assets, the directors of the company will not be liable for any offence under the Act, Wealth-tax Act, FEMA, Companies Act and the Customs Act.
- If a person has three undisclosed foreign assets and declares only two of them, he/she will get immunity from the Black Money Act in respect of the two declared assets and no immunity will be available in respect of the third asset that is not declared.

• **Person is ineligible for one-time declaration even if there is undisclosed foreign income**

- The declaration cannot be made by a person who has undisclosed foreign assets that have been acquired from money earned through corruption. However, if such a declaration is made and in an event it is found that the asset represented money earned through corruption, it would amount to misrepresentation of facts and the declaration shall be void under the Black Money Act.

⁵ In case transfer without any consideration or inadequate consideration, sale consideration to be considered as fair market value on the date of transfer

- Where a search, scrutiny and reassessment notice under various provisions of the Act⁶ is issued to a person under the Act, he will be ineligible from declaration of those foreign assets which have been acquired during the year. However, he is free to declare other foreign assets that have been acquired during other years for which no notice has been issued.
- The declarant will not be eligible for declaration in case where search action has been initiated under the Act and time of notice for search assessment has not expired as on 30 June 2015, even if such notice for relevant AY has not been issued.
- Where an undisclosed foreign asset has been acquired partly during a previous year for which a notice under various provisions⁶ is issued on or before 30 June 2015 and partly in a year in which no notice is served, the declarant is eligible to make declaration in respect of such assets. For computing the amount of declaration, the investment made in the asset during the previous year relevant to AY for which such notice is issued, needs to be deducted from the FMV of the asset.
- Declaration cannot be made in respect of undisclosed foreign assets that have been assessed to tax, and the case is pending before an appellate authority. However, he can voluntarily declare other undisclosed foreign assets that have been acquired or made from income not disclosed and consequently not assessed under the Act.
- Declarant is not entitled to re-open any assessment/re-assessment under the Act. Thus, the declarant is not entitled to avail compliance in respect of those assets. However, he can voluntarily declare other undisclosed foreign assets that have been acquired or made from income not disclosed and consequently not assessed under the Act.
- In case of survey operation, the person is barred from making a declaration in respect of an undisclosed asset acquired in the previous year in which the survey was conducted. However, the person is eligible to make a declaration in respect of an undisclosed asset acquired in any other previous year.
- Where a search/survey operation was conducted, and the assessment has been completed but the undisclosed foreign asset was not taxed, then the taxpayer is eligible to make a declaration of such undisclosed asset under the Black Money Act.
- After a person has filed a declaration, he will be issued intimation by Principal CIT/CIT whether any information has been received by the government and consequently whether he is eligible to make payment on a declaration made. If no information has been received up to 30 June 2015 by the government in respect of such asset the person will be allowed time up to 31 December 2015 for payment of tax and penalty in respect of the declared asset. For e.g. there may be a case where a person makes a declaration in respect of five assets whereas the government has information about only one asset. In such a situation, the person will be eligible to declare the balance four assets under the Black Money Act.

• **Information received under the tax treaty**

- A person cannot make a declaration of an undisclosed foreign asset where the Central Government has received information in respect of such asset under the tax treaty. The person is entitled to a voluntary declaration in respect of other undisclosed foreign assets for which no information has been received.

• **Foreign bank accounts**

- In case of a bank account, the fair market value is the sum of all the deposits made in the account. Therefore, tax and penalty needs to be paid on such fair market value and not on the balance as on date.

⁶ Section 142, 143(2), 148, 153A or 153C of the Act

- Declaration may be made of any undisclosed foreign asset that has been acquired out of income that has not been charged to tax under the Act. Since investment in the bank account is unexplained and from untaxed income, the same may be declared under the Black Money Act.

- ***Inherited property from undisclosed sources***

- Where a person inherited a house property from his father who is no more and such property was acquired by his father from unexplained sources of investment, the legal representative may declare such asset under the Act.
- Where a person acquired a house property in a foreign country in the past from unexplained sources of income and the said property was sold later on and the proceeds were deposited in a foreign bank account, the declaration may be made in respect of both the house property and the bank account at their fair market value.

- ***Disclosure of foreign assets by residents and non-residents***

- Where a person is a non-resident who had acquired foreign assets when he was a resident of India out of income chargeable to tax in India and which was not declared in the return of income, he is eligible to make a declaration since he was a resident in the year in which he had acquired foreign assets (which were undisclosed) out of income chargeable to tax in India.
- Where a person is now a resident but he was a non-resident earlier when he had acquired foreign assets (which he continues to hold now) out of income that was not chargeable to tax in India. Since those assets do not fall under the definition of undisclosed assets under the Act, he is not required to file a declaration in respect of those assets.
- In case 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 not taxed in India. In this case, the person being a resident of India, the foreign bank account needs to be declared as it is an undisclosed asset and acquired from income chargeable to tax in India. No credit for foreign taxes paid shall be allowable in India as the Black Money Act does not provide for credit of foreign tax paid.

- ***Disclosure of exempt or tax-free income***

- If a foreign asset has been acquired partly out of undisclosed income chargeable to tax and partly out of disclosed income/exempt income (tax paid income), the declaration can be made only to about those undisclosed foreign assets of which income has been assessed to tax under the Act.
- If a person, while he was a non-resident in India, acquired or made a foreign asset out of income that is not chargeable to tax in India, such asset are not undisclosed assets under the Black Money Act. However, if income was accrued or received in India while he was a non-resident, such income is chargeable to tax in India. If such income was not disclosed in the return of income and the foreign asset was acquired from such income then the asset becomes an undisclosed foreign asset, and the person may declare such asset under the Black Money Act.

- ***Beneficial ownership***

- The beneficial owner in respect of an asset means an individual who has provided consideration directly or indirectly for the asset, for immediate or future benefit, direct or indirect, for himself or for any other person, is eligible to make declaration, whether or not he is the beneficiary of the asset.

- **Other clarifications**

- If the firm has undisclosed foreign assets, the partner cannot make a declaration in his name. However, the partner may file a declaration in respect of an undisclosed asset held by him.
- In the case where an undisclosed foreign asset is declared under the Black Money Act and tax and penalty is paid on its fair market value, the declarant will be liable for capital gains under the Act on sale of such asset in the future. However, since the asset will be taxed at its fair market value, the cost of acquisition for the purpose of capital gains shall be the said fair market value and the period of holding shall start from the date of declaration of such asset.
- Where any asset has been acquired prior to the commencement of the Black Money Act and no declaration is made, then such asset shall be deemed to have been acquired in the year in which it comes to the notice of the tax officer and the provisions of the Black Money Act shall apply accordingly.
- Where a declaration of asset is made in good faith under the tax compliance but not found eligible, he shall not be hit by the provisions of Black Money Act and no action lies in respect of such assets under the Black Money Act. However, such information may be used for the purpose of the Act. If proceedings under the Act are initiated, options of settlement commission, etc. may be availed in respect of such assets.
- If a person declares undisclosed foreign assets in the Income-tax Return for AY 2015-16 or says 2014-15 (in belated return), declaration should be made in respect of all those foreign assets which are unaccounted/the source of investment in such asset which is not fully explainable. Since an asset reported in Schedule Fixed Assets (FA) does not form part of computation of total income in the income tax return 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.
- Where a person holds certain foreign assets that are fully explained and acquired out of tax paid income but he has not reported these assets in Schedule FA of the income-tax return, he shall be liable for penalty of INR10 lakh under the Black Money Act. The penalty is not applicable in respect of an asset being one or more foreign bank accounts having an aggregate balance not exceeding an amount equivalent to INR5 lakh at any time during the previous year.

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