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CBDT issues further clarifications on tax compliance for undisclosed foreign income and assets under Black Money Act

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 that is undisclosed foreign income and assets held outside India. 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 the Black Money Act.

Considering the stringent nature of the provisions of the Black Money Act, the CBDT has provided 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. The scheme is operative up to 30 September 2015 for declaring of undisclosed overseas assets, with time up to 31 December 2015 for payment of taxes and penalty. With respect to this one-time compliance window, the CBDT received queries from stakeholders about the scope of the scheme and the procedure to be followed for declaration. In this regard, the CBDT issued a Circular[1] providing clarifications to 32 queries. Subsequently, some more queries were received about such tax compliance provisions. The CBDT considered the same and issued further clarifications[2] as follows:

Disclosure by a person who was a non-resident earlier and subsequently becomes a resident

- A person, who while being a non-resident earlier, earned foreign income which was exempt in India, may make a declaration of a foreign bank account when he becomes a resident of India. The value of the undisclosed foreign bank account shall be the sum of interest credits into the account since the beginning of the Financial Year (FY) in which such a person becomes a resident as reduced by the foreign income deposited in the bank account upto such FY.
- Where a person has received salary and contribution to pension account from his employer at the time when he was a non-resident, which was not taxable in India and subsequently when such person becomes a resident in India, any accretion to such pension account will be liable to tax in India. Therefore, declaration of such an account may be made. The value of such an account shall be the accretions to the account since the person becomes a resident in India. Further, the details of such an account are required to be reported in Schedule Fixed Asset of the return of income. The person is not entitled to any credit of taxes paid, if any, in the foreign country.

Disclosure by a private trust

- Where a private trust was created outside India by a settler out of undisclosed foreign income chargeable to tax in India and the trust had set-up a company holding 100 per cent shares, the declaration may be made by the settlor who is the beneficial owner of the assets held under the trust.
- Alternatively, the trustee of the trust holding assets on behalf of beneficiaries may make such declaration of the assets of the trust in the capacity of a representative assesse. The trustee is eligible for declaration even when he is a non-resident.
- In respect of the assets declared, *immunity* shall be available to the settlor, trustee and the beneficiary.

[1] Circular No. 13 of 2015, dated 6 July 2015
[2] Circular No. 15 of 2015, dated 3 September 2015 – Taxsutra.com

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- Where the settlor of the trust has passed away, the beneficiary of the trust may make a declaration in respect of his share in the assets of the trust. In case the beneficiary is a minor, his guardian may file the declaration on behalf of the minor.
- The value of the asset declared shall not be chargeable to tax in the event of distribution of such assets to the beneficiaries.

Declaration of foreign bank account where a bank statement is not available

- For the period for which the bank statement is not available, the person may compute the value for such a period on best estimate basis. However, the person has to furnish a certificate of the bank or any other evidence to the effect that the details are not available with or obtainable from the bank.
- Subsequently, in case if it is found that the value of the bank account is different from what has been declared, the *immunity* under the Income-tax Act, 1961 (the Act) shall be available only upto the extent of the declaration made. Moreover, any excess payment of tax under the declaration on the basis of determination of the value of the asset on a higher side shall not be refundable.
- In case it is found that person has filed a declaration of a foreign bank account on an estimate basis, despite the fact that bank statement is available and the value of such declaration is lower than the value as per the bank account, it will amount to misrepresentation of facts and such a declaration shall be void.

Declaration in the case where the person was a non-resident as per the tax treaty

- A declaration is not required to be made in respect of foreign income which was not chargeable to tax under the Act since the person was a non-resident in India as per the tax treaty.

Declaration of foreign bank account where the account was opened out of undisclosed foreign assets

- A person has a foreign bank account made out of undisclosed income chargeable to tax in India and over the past several years, has invested in securities out of funds from such an account. Subsequently, some of the securities were sold and the proceeds were deposited into the same account. Some expenditure has also been made from this bank account. In this case, the valuation of the bank account and securities is to be made separately in accordance with the Rules[3].

Disclosure of undisclosed brokerage account in a foreign country

- Where a person holds an undisclosed brokerage account in a foreign country which holds within itself shares, mutual funds as well as cash, a composite valuation of such a brokerage account cannot be made and separate valuation is required to be made in respect of such shares, mutual funds and cash.

Basis of working at the time of declaration

- While making the declaration in respect of a bank account, the declarant is required to provide a broad computation where the value of the account is different from the sum of all credits in the account.

Disclosure of immovable property situated outside India

- In case if the resident has an immovable property in a foreign country out of which rental income is received and the same is deposited in an undisclosed foreign bank account while computing the value of the undisclosed foreign bank account, the deduction of rental income will be made from the value of such a bank account.
- Where the property was partially acquired from undisclosed income and partially from an amount not chargeable to tax, while computing the value of the undisclosed asset, a deduction in respect of income not chargeable to tax shall be available from the fair market value of the property. If the mortgage payments are made out of a foreign bank account made out of undisclosed income chargeable to tax in India, then such an account is also required to be declared.

Declaration in the name of a partnership firm

- The partners of the partnership shall not be liable for any offence under the Act, Wealth Tax Act, FEMA, Companies Act and the Customs Act in respect of a declaration made in the name of partnership firm.

Consequences of non-deduction of tax on salary paid in a foreign country

- A person received salary in a foreign country without deduction of tax at source from his employer who is a resident in India. The salary was deposited in a foreign bank account and was chargeable to tax in India. If a declaration of the foreign bank account has been made by the

[3] Rule 3(1), (2) and (3) under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015

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person which includes salary deposited in the account, the employer shall not be treated as an 'assessee in default' under Section 201(1) of the Act for non-deduction of tax. However, the employer shall be liable to pay interest under Section 201(1A) of the Act. Further, a penalty under Section 271C of the Act will be levied, unless the employer proves sufficient reason for failure to deduct tax as per Section 273B of the Act.

Declaration of a bank account by a spouse or child

- In a case where there is only transfer of money from the account of the individual to his spouse or child and there is no independent credits in the account of the spouse or child and the individual had declared the undisclosed foreign bank account, the spouse and the child are not required to make any separate declaration in respect of the account in their names. However, if the transfer of money is made as a consideration for supply of goods, services etc. and tax has not been paid on such an income by the spouse/child, the bank account with such a balance needs to be declared by the spouse/child. Further any accretion to the account of the spouse/child in the nature of interest, etc. may also be required to be declared by the spouse/child.

Other clarifications

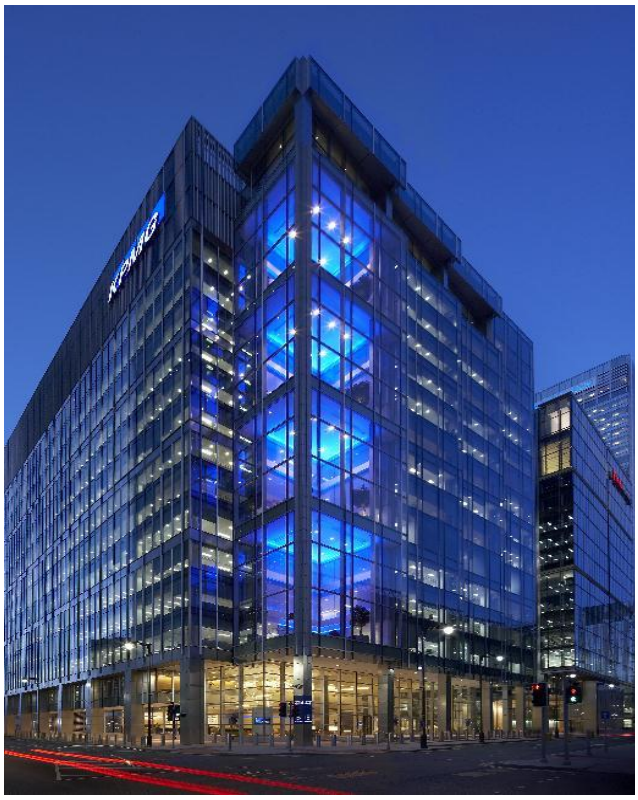
- The information in respect of declaration made under the Black Money Act will be confidential as is the case of return of income filed by taxpayer.
- The value of the undisclosed asset may be determined in foreign currency and the same is to be converted into Indian currency as per the reference rate of the Reserve Bank of India for 1 July 2015.
- A declaration can still be made if the query has been sent by the Competent Authority to a government of any country outside India and no information has been received upto 30 June 2015.
- The e-wallet/virtual card account is similar to a bank account where inward and outward cash movement takes place from the account. Therefore, the valuation and declaration of an e-wallet account may be made as in the case of a bank account.
- Where a public limited company makes a disclosure under the Black Money Act, the directors of the company will not be granted an immunity against prosecution launched by the shareholders under the SEBI Act/Regulations or the Indian Penal Code (IPC), since the Black Money Act does not provide for the same.
- Where in case the undisclosed foreign asset has been acquired during the previous year for which scrutiny assessment proceedings are pending as on 30 June 2015 and the Assessing Officer (AO) has been informed during the assessment proceedings about the investment made in such an undisclosed foreign asset, the same shall be assessable under the provisions of the Act.

Our comments

The government, upon receiving various queries relating to the one-time compliance scheme, has come out with the next set of clarifications pursuant to the earlier clarifications issued on 6 July 2015.

The fresh set of clarifications deal with various practical issues faced by the taxpayer under the provisions of the Black Money Act and the Rules. These clarifications may provide some respite to the taxpayers grappling with the issues arising out of the Black Money Act.

With the one-time compliance window period coming to an end soon, it would be interesting to see if the government would further extend the compliance period beyond 30 September 2015 in order to provide an opportunity to the taxpayers to come clean under the Black Money Act.



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