

Chapter 50

Overview of the Black Money & Imposition Tax Law

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then WHO
not NOW
then WHEN
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Basics of Act

1. This new law has been formulated to act as a strong deterrent and curb menace of black money stashed away abroad by Indians
2. It extend to whole of India

Basics of Charge Sec 3 to Sec 5

- > Every assessee would be liable to tax @30% in respect of his undisclosed foreign income and asset of the PY.
- > An undisclosed asset located outside India shall be charged to tax on its value in PY in which such asset comes to the notice of AO.
- > Undisclosed asset located outside India to be charged to tax on its value in the previous year in which the asset comes to the notice of the AO

Sec 2(2) Assessee

Means a person,

- > Resident in India in the PY; or
- > NR or RNOR in India who was resident in India either in the PY to which the income referred to in section 4 relates; or in the PY in which the undisclosed asset located outside India was acquired.

Sec 2(12) Undisclosed Foreign income & asset

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 sec 4, & computed in the manner laid down in sec 5.

Sec 2(11) Undisclosed asset outside India

- An asset (including financial interest in an 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 explanation given by him is in opinion of AO unsatisfactory.

Sec 3(2) - Value of Undisclosed Asset

The FMV of an asset as per Rule 3 of Black Money Act.

Bullion jewellery or precious stone	Higher of : 1. Cost of acquisition 2. FMV/NRV on valuation date # The assessee may obtain a report from Registered valuer
Archaeological collections, drawings, paint, sculptures/ any work of art	Higher of : 1. Cost of acquisition 2. FMV/NRV on valuation date # The assessee may obtain a report from Registered valuer
Quoted Shares & securities	Higher of : 1. Cost of acquisition 2. Avg of lowest & highest price on valuation date in established security market # Where on the valuation date there is no trading in such shares & securities on any established securities market, 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.
Unquoted shares & securities	Higher of: 1. Cost of acquisition 2. The value on the valuation date of such equity shares as determined in the following manner, namely : The FMV of unquoted equity shares = $\frac{A+B-L}{PE} \times PV$ A = Book value of all the assets (other than bullion, jewellery, precious stone, artistic work, shares, securities & immovable property) minus 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; B = FMV of bullion, jewellery, precious stone, artistic work, shares, securities & immovable property as determined in the manner provided in this rule C = Book value of liabilities, but not including following amounts, namely 1. The PUC in respect of equity shares; 2. The amount set apart for payment of dividends on preference shares & equity shares [Reserve]

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	<p>3. Reserves and surplus, even if the resulting figure is negative, other than those set apart towards depreciation</p> <p>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 book profits in accordance with the law applicable thereto;</p> <p>5. Any amount representing provisions made for meeting liabilities, other than ascertained liabilities;</p> <p>6. Any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;</p> <p>PE = Total amount of PUC share capital as shown in the balance sheet</p> <p>PV = The paid up value of such equity shares</p>
Unquoted share & security other than equity share in a co	Higher of : <ol style="list-style-type: none"> 1. Cost of acquisition 2. FMV/NRV on valuation date
Immovable property	Higher of : <ol style="list-style-type: none"> 1. Cost of acquisition 2. FMV/NRV on valuation date
Bank Account	<ol style="list-style-type: none"> 1. The sum of all the deposits made in the account with the bank since the date of opening of the account; or 2. Where a declaration of such account has been made u/c VI & value of the account as computed under sub-clause (I) has been charged to tax & penalty under that Chapter, the sum of all the deposits made in the account with the bank since the date of such declaration. 3. 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

Value of an interest of a person in a partnership firm or in an AOP or a LLP of which he is a member	<p>Step 1: The net asset of firm, AOP or LLP on the valuation date.</p> <p>Step 2: Thereafter, the portion of the net wealth of the firm, AOP or LLP as is equal to the amount of its capital shall be allocated among its partners or members in the proportion in which capital has been contributed by them.</p> <p>Step 3: The residue of the net asset shall be allocated among the partners or members in the following manner</p> <ol style="list-style-type: none"> 1) In the event of dissolution of the firm or AOP - In accordance with the agreement of partnership or association for distribution of assets 2) In the absence of such agreement for distribution of assets on dissolution - in the proportion in which the partners or members are entitled to share profits <p>Step 4: The sum total of the amount so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the partnership or association.</p> <p>Step 5: Net asset of the firm, AOP or LLP shall be (A + B - L), determined in the manner specified above</p>
Any other asset	Higher of : <ol style="list-style-type: none"> 1. Cost of acquisition 2. FMV/NRV on valuation date

FMV of an asset (other than bank a/c) transferred before valuation date [Rule 3(2)]:

Where an asset (other than a bank account) was transferred before valuation date, the FMV of such asset shall be higher

- 1) Cost of acquisition and
- 2) Sale price. This is notwithstanding valuation rules given in Rule 3(1), However, where such asset was transferred without consideration or for inadequate consideration before valuation date, FMV of the asset shall be higher of its cost of acquisition and the FMV on the date of transfer.

FMV, in case where new asset is acquired out of consideration received from transfer of old asset/ withdrawal from bank account [Rule 3(3)]:

In such a case, the FMV of the old asset or the bank account, as the case may be, determined in accordance with sub-rule (1) & (2) shall be reduced by the amount of the consideration invested in the new asset.

Rate of conversion of currency used to determine FMV of an asset [Rule 3(4)&(5)]

- > Use RBI reference rate as on the date of valuation.
- > Where RBI reference rate is not available FMV of such Assets shall convert in US\$ from foreign currency & thereafter Indian currency by RBI reference.
- > However, where Central Bank of the country/jurisdiction in which asset is located does not specify rate of conversion from its local currency to US Dollar, then, such rate shall be one as specified by any other bank regulated under the laws of that country or jurisdiction.

Relevant Date for determination of market value & conversion of currency
[Expl 2 to Rule 3]

- > IF Assets declared u/s 59: - 1st July 2015
- > In other case: - 1st april of PY

Sec 4 Scope of total undisclosed foreign income & asset

Sec 4(1) - Total Undisclosed foreign income & asset of any PY would be -

- 1) The income from source located outside India which has not been disclosed in ROI filed before due date 139(4)/139(5)
- 2) The income from source located outside India which return is required to be filed u/s 139(1) but no return/ belated or revised return has been filed.
- 3) The value of any undisclosed asset located outside India

Sec 4(2) - Notwithstanding anything contained in sub-sec (1), any variation made in the income from a source outside India in the assessment or reassessment of the total income of any PY, of the assessee under the Income-tax Act in accordance with provisions of section 29 to sec 43C / sec 57 to 59 / sec 92C of the said Act, shall not be included in the total undisclosed foreign income.

Sec 4(3) - The income included in the total undisclosed foreign income and asset under this Act shall not form part of the total income under the Income-tax Act.

Sec 5 Computation of total undisclosed foreign income & asset

- 1) No deduction of any expense/allowance/set off of any loss would be allowed in computing total income of undisclosed foreign income & asset of any PY
- 2) From the value of undisclosed asset located outside India any income which has been so far assessed to tax for any AY prior to AY to which Act applies & income which is assessable or has been assessed to tax or any AY will be reduced. However, Assessee has to furnish proof that the asset has been acquired from income which has been presented to tax previously.
- 3) If above deduction relates to an immovable property then deduction would be amount of which bears the value of asset as on first day of FY in which it comes to notice of AO, the same proportion as assessable/ assessed foreign income bears to the total cost of the asset

Sec 10 Assessment

Service of Notice - Where AO receives information from an income-tax authority or any other authority under any other law or any information comes to his notice, he may, for the purpose making an assessment or reassessment under this Act, serve a notice on any person requiring him to produce/cause to be produced, on date to be specified, such accounts/documents /evidence which he may require for purposes of this Act.

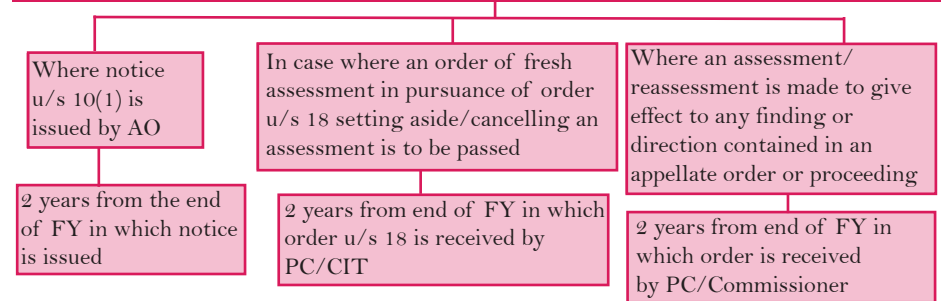
Service of further notices - He may also serve further notices from time to time requiring production of such other accounts/documents/evidence as he may require.

Making inquiry - The AO may, for the purpose of obtaining full information v respect of undisclosed foreign income and asset of any person for the relevant FY(s), make such inquiry as he considers necessary.

Passing an Assessment Order - After considering the accounts, documents or evidence produced by the assessee, and any relevant material which he has gathered, AO has to pass an order in writing assessing or reassessing the undisclosed foreign income and asset and determining the sum payable by the assessee.

Best Judgment Assessment - Where any person fails to comply with all the terms of notice issued, AO shall, after giving the assessee an OOBH & after taking into consideration all the relevant material, make the assessment or reassessment of undisclosed foreign income and asset to the best of his judgment & determine sum payable by the assessee.

Sec 11 Time Limit for Completion of Assessment/Reassessment



Exclusion of specified time period - The time taken in reopening the whole or any part of the proceeding, the period during which the assessment proceeding is stayed by an order or injunction of any court or the period commencing from the date on which a reference or the first of the references for exchange of information is made by the competent authority (w.r.t sec 90/90A of the Income-tax Act, 1961 or u/s 73 of this Act) and ending with the date on which the information requested is last received or a period of one year, whichever is less, shall be excluded in computing the period of limitation. If, after exclusion of such time period, the period of limitation available to AO for making an assessment order is less than 60 days, the period of limitation shall be deemed to be extended to 60 days.

Sec 12 Rectification of mistake

Rectification of a mistake apparent from the record - Any order passed by the tax authority can be amended by it to rectify any mistake apparent from the record.

Time period for rectification - A four year time period has been prescribed and the same has to be reckoned from the end of the FY in which the order sought to be amended was passed.

Opportunity of being heard – Any amendment which has the effect of enhancing the undisclosed foreign income and asset or reducing a refund or otherwise increasing the liability of the assessee cannot be made without giving the assessee an OOBH.

Time limit for deciding an application – Where a tax authority receives an application from the assessee or the AO for amendment of an order, the time limit within which such application has to be decided is six months from the end of the month in which the application is received by it. The tax authority may also make an amendment on its own motion.

Rectification of an order which is a subject matter of appeal or revision – In such a case, the power of the tax authority to amend the order would be restricted to matters other than those decided in appeal or revision.

Sec 13 Notice of Demand

- (a) Service of notice of demand upon the assessee in prescribed form & manner would be mandatory for a tax authority to demand any sum payable in consequence of an order made under this Act.
- (b) Rule 5 provides that where any tax, interest or penalty is payable in consequence of any order passed under the provisions of the Act, AO shall serve upon the assessee a notice of demand in Form 1 specifying the sum so payable

Other Points

A person aggrieved under this act shall have power to file appeal to

1. CIT appeals
2. ITAT
3. High Court/Supreme Court