

BLACK MONEY ACT - COMPLY OR IT WILL MAKE A BLACK HOLE IN YOUR POCKET

By Aditya Kumar



Introduction

The current Indian Government had made tall promises to bring unaccounted money lying outside India to the coffers of the Indian Government. The tool they seem to have adopted is the introduction of **The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Act, 2015** known as **Black Money Act** aims to curb Black Money in the form of undisclosed foreign assets and income and imposes taxes and penalties.

While the provisions of this Act are now in force, what is important to note that there is a **one-time compliance opportunity** for those who have undisclosed foreign assets. Government has recently notified such voluntary disclosure due date to be **30 September, 2015**.

In essence, The Black Money Act provides for separate taxation of undisclosed income in relation to foreign income and assets. It is proposed that such income henceforth shall not be taxed under Income-tax Act, 1961 but under provisions of this new legislation.

Applicability

- Applicability of the Act to the person being an **Ordinary Resident** in India who has undisclosed foreign income and assets (including financial interest in any entity)
- Applicable to legal owners as well as ultimate beneficiaries
- Manager (at any time during the financial year) is responsible for payment of amount due, if the same cannot be recovered from company

- Failure to report balance of bank accounts above INR 0.5 million (in aggregate) would lead to penalty and prosecution
- Extensively covers Companies, Individuals, Association of Persons, HUF's, Trust, Firms

Compliance Window and Penalty Provisions

- The form prescribed for declaring undisclosed foreign assets and income is Form 6, which has been duly notified
- The above declaration provides **immunity from prosecution under 5 Acts namely Income-tax Act, FEMA, Wealth tax, Companies Act and Customs**
- Undisclosed foreign income or assets shall be taxed at a flat rate of 30 per cent with an equal amount of penalty, making the **effective tax rate to be 60% during the compliance window.**
- **Post closure window the effective tax rate to be 120%** of the undisclosed income or asset. (30 per cent tax + 90 per cent penalty = 120 per cent)
- No deduction, allowance or set-off is permissible
- Rigorous imprisonment for 3 to 10 years (with fine) in case of willful default.

Timelines and Procedural aspects

- Disclosure window for above mentioned compliance available upto **30 September, 2015**
- Post disclosure, Principal Commissioner to issue intimation by **31 October, 2015** to inform declarant if the information is already available with the authorities
- In case, the information about the assets is already available with the authorities, declarant to revise the declaration within 15 days from the receipt of information and exclude such assets
- Taxes and penalty on the value computed to be paid before **31 December, 2015**
- Acknowledgement in Form 7 to be issued within 15 days of such intimation of payment

Important points for clarifications

- Value declared and computed as per valuation rules to be considered as cost of acquisition on sale of such undisclosed assets in future
- Ineligibility of person from declaration of undisclosed foreign assets acquired during the year for which notice is issued and served on or before 30 June, 2015
- Ineligibility of person from declaration of undisclosed foreign assets where the Central Government has received an information in respect of such assets under DTAA
- In case of acquisition of asset prior to commencement of Act for which no declaration is made, Assets shall be deemed to have been acquired in the year in which it comes to the notice of the AO and the provisions of Act shall apply
- Penalty of INR 10 Lakhs leviable if foreign assets are not disclosed in schedule of Fixed Assets in the return of income, even if the source of investment is disclosed

- Declaration shall be held as void in case if Assets represents money earned through corruption, which shall amount to misrepresentation of facts

Impact on Resident Indians

This law has a major impact on Resident Indians who have income and assets abroad which have not been disclosed. With the increase in sharing of information between India and other countries, this information regarding foreign assets would be soon available to the Government. If the assessee has not declared the same now, one should be ready for troubled times as it could practically erode the wealth so created.

Impact on Non Resident Indians

For those who are non-residents and never plan to come to India it might not be a big deal.

However, for those who are either expatriates or non-residents for the time being and have undisclosed assets anywhere outside India, it is equally applicable and adequate disclosures must be made now.

Even for Non-Residents, whose families are residents and have assets outside India which are not disclosed, it is opportune moment to file declaration under the Act.

Now is the time to review overseas bank accounts and assets and ensure that they were properly reported in past returns. If not, now is also the time to correct the reporting because once the proposed legislation comes into force, there could be severe consequences

No - SETTLEMENT COMMISSION

The statute clearly provides that for these incomes/assets no recourse to Income Tax Settlement Commission is available and thus prosecution and penalties are inevitable.

VI. Conclusion and Next Step

The stringent provisions of The Black Money Act would have far reaching effects on various assets of resident Indians located in foreign countries. This would also include various pension schemes and social security benefits that the residents enjoy as a part of their income in foreign land.

All those to whom this applies, should take advantage of such one time compliance scheme and disclose all hard and liquid assets situated in foreign jurisdiction.

We at Ashwani & Associates have a dedicated team with experience in making such declarations. For any further information, please feel free to contact us at aditya@ashwaniassociates.in

VII. Contact

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