



# **BLACK MONEY ACT, 2015**

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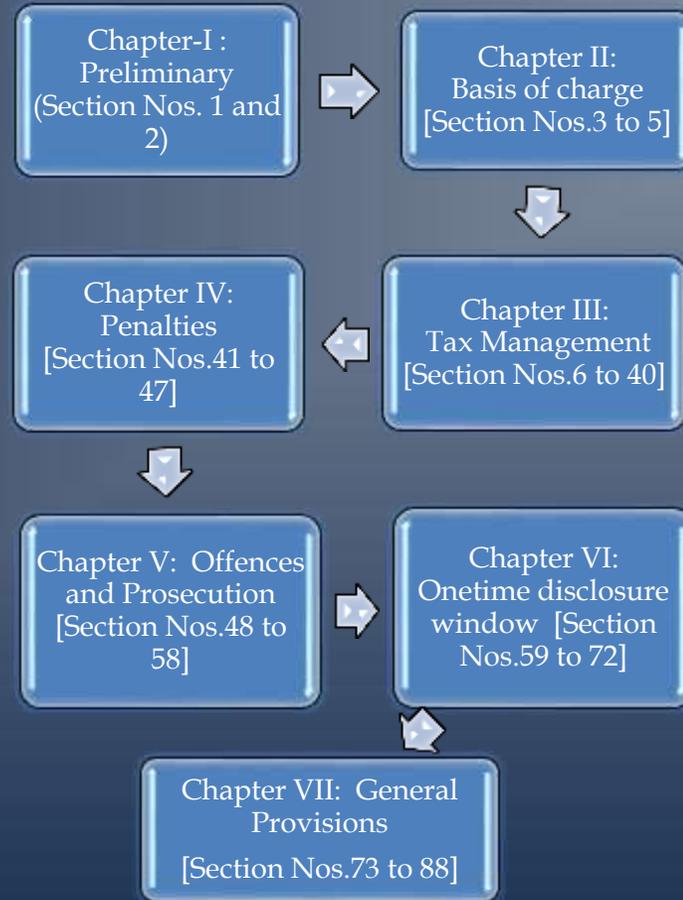
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# CONTENTS OF THE PRESENTATION

- ▣ Structure of the Act
- ▣ Objective
- ▣ Timeline
- ▣ Key Highlights of the Act
- ▣ Applicability
- ▣ Important Definitions
- ▣ Tax Residency and Related Issues
- ▣ Impact of POEM on Residency
- ▣ Issues Related to Beneficial Owner and Financial Interest
- ▣ Charge of Taxes
- ▣ Window of Opportunity
- ▣ Form-6
- ▣ Black Money Rules
- ▣ Scope and Computation of total undisclosed foreign income and asset
- ▣ Assessment Proceedings & Tax Procedures
- ▣ Penalties and Prosecutions
- ▣ Clarifications BY CBDT In Circular No. 13 Dated 6<sup>th</sup> July, 2015

# Structure of the Black Money Law



Black Money Act



Black Money Rules

# Objective

- ▣ To make provisions to deal with the problem of the black money that is undisclosed foreign income and assets
- ▣ To put in place the procedure for dealing with such income and assets and
- ▣ To provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto.

NOTE: The crux is to overcome the limitation of existing legislation to deal with the task of tracking down and bringing down and bringing back undisclosed foreign income and assets which legitimately belong to the nation.

# TimeLine

- ▣ The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 – the Bill in relation whereto christened ‘The Undisclosed Foreign Income and Assets (Imposition of Tax), Bill, 2015’ (No.84 of 2015) was introduced in the Lok Sabha on 20<sup>th</sup> March, 2015.
- ▣ The same, having been passed by the Parliament [by the Lok Sabha on 11<sup>th</sup> May, 2015 and subsequently by the Rajya Sabha on 13<sup>th</sup> May, 2015]
- ▣ It received the assent of the President on 26<sup>th</sup> May, 2015.
- ▣ The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (No.14 of 2015) [‘BMA’, for short] was published in the Gazette of India Extraordinary dated 27<sup>th</sup> May, 2015.

# Key Highlights of the Act

- ▣ Flat rate of tax (@30%) on any undisclosed foreign income and value of asset. No exemption, deduction in respect of any expenditure or set-off of carried forward losses allowed against such incomes. [Section 5(1)]
- ▣ Severe penalty up to 3 times of amount of the tax payable, in addition to the actual tax payable [Section 41].
- ▣ Penalty of Rs. 10 Lakhs in case of failure to file or furnishing inaccurate particulars of foreign asset in the return of income in relation to foreign income and asset [Section 42, 43].
- ▣ Rigorous imprisonment from 3 to 10 years, and fine, for failure to disclose the foreign income and asset [Section 51]
- ▣ Limited Compliance Window- One time compliance opportunity for a limited time – 30% tax and 30% penalty. No prosecution
- ▣ No time limit vis-à-vis period for which the undisclosed foreign income/assets relates or escaped assessment
- ▣ It extends to whole of India.

# Applicability

The BMA has come into force from **1<sup>st</sup> July, 2015** *applicable to assessment year commencing on or after 1<sup>st</sup> April, 2015*

{The BMA, in terms of its notification on 27<sup>th</sup> May, 2015, initially came into force *on the 1<sup>st</sup> day of April, 2016*' [section 1(3)], applicable in relation to *assessment year commencing on or after the 1<sup>st</sup> day of April, 2016* [section 3(1), 59].

However, by the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act (Removal of Difficulties) Order, 2015 dated 1<sup>st</sup> July, 2015, made in exercise of the powers under section 80(1) of the Black Money Act, the '**1<sup>st</sup> day of April, 2016**' has been substituted with '*1<sup>st</sup> day of July, 2015*'. The Order has been made as the provisions of the said Act could not have been given effect prior to the 26<sup>th</sup> day of May, 2015, i.e., when the Act received the assent of the President}

# Applicability

The Act applies to an assessee, i.e. a person being resident other than not ordinarily resident in India, within the meaning of section 6 of the Income-tax Act, 1961 ['ITA', for short], who hold undisclosed foreign income and/or asset.

- ▣ Resident and ordinarily resident liable to pay tax ('Assessee')
- ▣ Meaning of 'resident' and 'ordinarily resident' as per provisions of Section 6 of the ITA
- ▣ Assessee includes every person who is deemed to be an assessee-in-default under the ITA

**The Act applies only to resident and ordinarily residents and not others.**

# IMPORATANT DEFINITIONS

# Important Definitions

- ▣ Section 2(1): “**assessee**” means a person, being a **resident** other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, 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;
- ▣ Section 2(7): “**participant**” means —
  - (a) a partner in relation to a firm; or
  - (b) a member in relation to an association of persons or body of individuals;
- ▣ Section 2(10): “**resident**” means a person who is resident in India within the meaning of section 6 of the Income-tax Act;

# Important Definitions

▣ Section 2(9): “previous year” means –

(a) the period beginning with the **date of setting up** of a business and **ending with date of the closure** of the business or the **31st day of March** following the date of setting up of such business, whichever is earlier;

(b) the period **beginning with** the date on which a **new source of income** comes into existence and **ending with** the date of closure of the business or the **31st day of March** following the date on which such new source comes into existence, whichever is earlier;

(c) the period beginning with the 1st day of the **financial year** and ending with the date of discontinuance of the business other than business referred to in clause (b) above or dissolution of an unincorporated body or liquidation of a company, as the case may be; or

(d) the period of **twelve months commencing on the 1st day of April** of the relevant year in any other case,

and which immediately precedes the assessment year.

# Important Definitions

- ▣ Section 2(11): “**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;
- ▣ Section 2(12): “**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;
- ▣ Section 3(2): “**value of an undisclosed asset**” shall have the meaning assigned to it in sub-section (2) of section 3, i.e., the **fair market value** of an asset (including financial interest in any entity) determined in such manner as prescribed in rules of the Act.

# TAX RESIDENCY AND RELATED ISSUES

# Resident and ordinary resident u/s Section 6 of the Income Tax Act, 1961

- A person is said to be “resident” in India, *in relation to any previous year*, if he
  - is in India in that year for an aggregate period of 182 days or more; or
  - having within the four years preceding that year been in India for a period of 365 days or more, is in India in that year for an aggregate period of 60 days or more.
- The above provisions are applicable to all individuals irrespective of their nationality. However, as a special concession for Indian citizens and foreign citizens of Indian origin, the period of 60 days referred to above, will be extended to 182 days in two cases:
  - (i) where an Indian citizen leaves India in any year for employment outside India; and
  - (ii) where an Indian citizen or a foreign citizen of Indian origin (NRI), who is outside India, comes on a visit to India.
- A person is said to be ordinarily resident if he has been resident in India in 9 out of 10 preceding previous years or he has during the 7 preceding previous years been in India for a period of, or periods amounting in all to, 730 days or more.

# Resident and ordinary resident u/s Section 6 of the Income Tax Act, 1961

## Basic Conditions

Stayed in India in that year for an aggregate period of 182 days or more

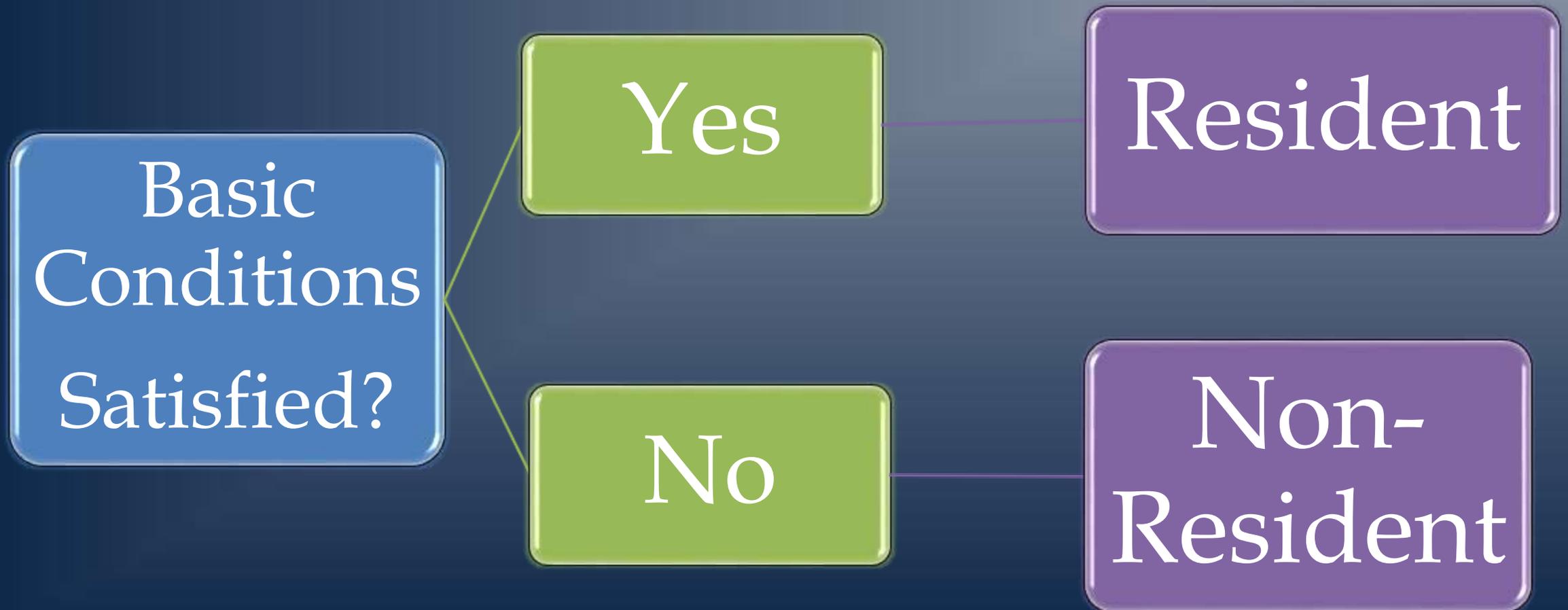
Stayed within the four years preceding that year been in India for a period of 365 days or more, & is in India in that year for an aggregate period of 60 days or more

Indian citizens and foreign citizens of Indian origin, the period of 60 days referred above, will be extended to 182 days in two cases

Indian citizen leaves India in any year for employment outside India

Indian citizen or a foreign citizen of Indian origin (NRI), who is outside India, comes on a visit to India.

# Resident and ordinary resident u/s Section 6 of the Income Tax Act, 1961



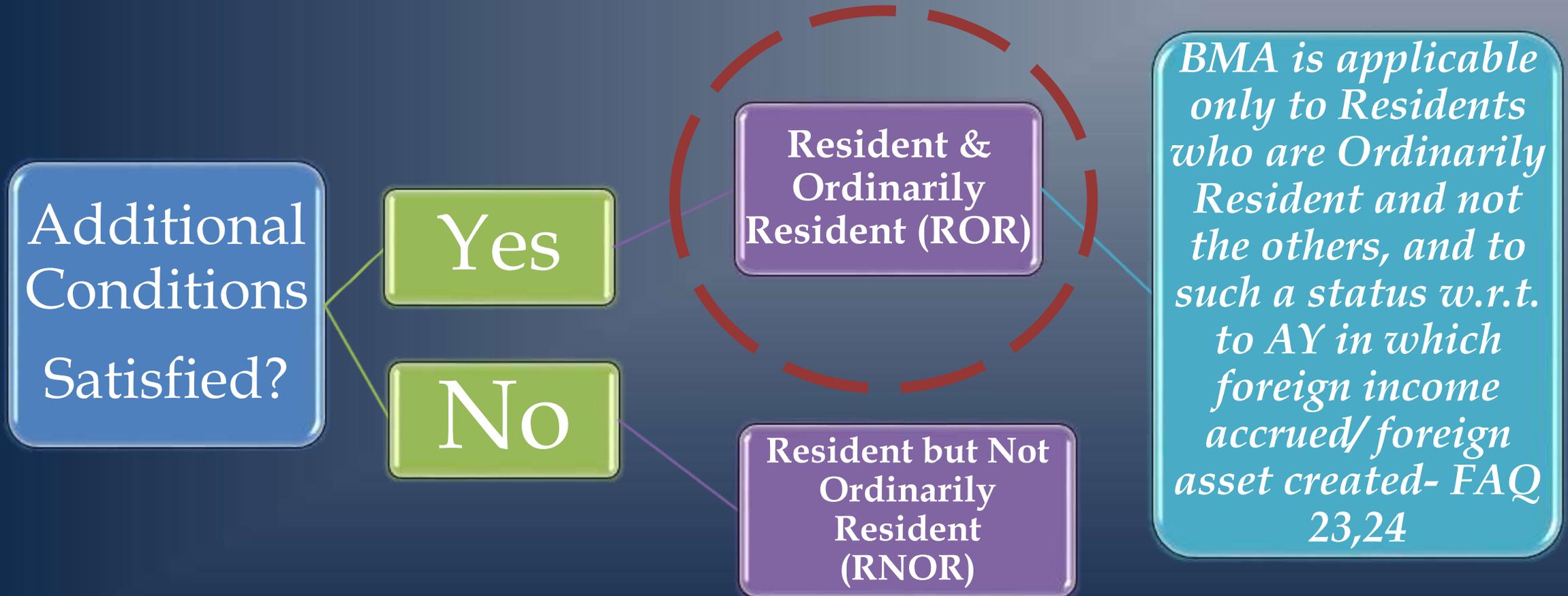
# Resident and ordinary resident u/s Section 6 of the Income Tax Act, 1961

## Additional Conditions

Resident in India in 9 out of 10 preceding previous years

He has during the 7 preceding previous years been in India for a period of, or periods amounting in all to, 730 days or more.

# Resident and ordinary resident u/s Section 6 of the Income Tax Act, 1961 (Also refer: FAQ-23,24,32 for the related issues)



**ISSUE:  
IMPACT OF POEM  
IN RESIDENCY**

# POEM-PLACE OF EFFECTIVE MANAGEMENT

- ▣ Hitherto, the test of residency was whether the company is incorporated in India or is wholly controlled and managed within India.
- ▣ Replaced term “wholly controlled and managed within India” with the standard of “place of effective management” (POEM).
- ▣ *POEM has been defined to mean “a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made”*
- ▣ A foreign company will be considered tax resident in India if its POEM is in India in the relevant financial year..
- ▣ Since POEM has become the test for corporate residence in the ITA in India, the impact of the BMA will have a wider scope than intended.

# POEM-PLACE OF EFFECTIVE MANAGEMENT

- ▣ Indian companies that have foreign operations or web of subsidiaries in tax havens are rushing to tax practitioners to ensure that they are not caught on the wrong side of the black money law that prescribes up to ten years' imprisonment for not disclosing overseas wealth.
- ▣ A combined reading of POEM and the provisions of the BMA necessitates companies and their senior executives to take note of the changes in the tax provisions and ensure full compliance to avoid any dispute and penal consequences
- ▣ Companies headquartered in India with subsidiaries, branch offices and other alliances across the globe will have to take note of their existing structures and review the additional compliance requirements that may get triggered due to the proposed changes in the definition of tax residency.

# POEM-PLACE OF EFFECTIVE MANAGEMENT

## Consequences

- ▣ Many executives are associated with the Indian parent company function as directors of its foreign subsidiaries. Now the power will have to be entirely delegated to an independent board abroad, only associated with the foreign entity. This may increase compliance cost for Indian companies
- ▣ If an Indian company has a subsidiary in another country where it has certain operations and pays taxes to the local authority there, it will have to pay tax back home in India if key decisions with respect to the foreign business are determined to have been taken in India, or if key management personnel like a director on the board of the overseas firm resides in India.

# POEM-PLACE OF EFFECTIVE MANAGEMENT

## Consequences

- ▣ Many overseas subsidiaries are created for the purpose of facilitating business activities like fund-raising and did not have any operations of their own, and these may be especially impacted as a consequence of the proposed amendment law.
- ▣ Foreign companies with legitimate business operations outside India would end up being treated as Indian tax residents and consequently, be subjected to tax in India on their global income. This could occur if, e.g., a board member of the foreign company is present in India and participates in the decision-making process from India only in that single board meeting. This anomalous situation will result in double taxation of income which may not be mitigated by tax treaties as both countries (viz. India and the country of incorporation) will seek to tax the global income of the foreign company

ISSUES RELATED TO  
'BENEFICIAL OWNER'  
AND  
'FINANCIAL INTEREST'

# Financial Interest in any entity

- ▣ 'Financial interest' has, though appears at 9 places, not been defined in the BMA nor in the ITA or the Income Tax Rules. Guidance may be taken from the Instructions accompanying the tax returns. The Instructions provide an illustrative (and not exhaustive) list. Neither the ITA nor the BMA explain the nature and extent of disclosure liability on beneficiaries of foreign discretionary trusts. However, the ITA requires any person being a beneficial owner, or being beneficiary of, any asset (including a financial interest in any entity) located outside India to furnish returns to the Revenue. The ITA provides however that where the income arising from the foreign asset or financial interest is included in the returns of the beneficial owner, the beneficiary will not be required to file returns in regard to such income. To understand what the terms 'financial interest' means for the purposes of the ITA, reference may be made to Section 139 of the ITA and the Instructions for filling of the Income Tax Returns.
- ▣ According to the said Instructions, a financial interest would also be said to exist where the owner of a foreign asset is a trust where the resident has beneficial or ownership interest, or a corporation in which the resident owns, directly or indirectly, any share of voting power.

# Financial Interest in any entity [extracts-Instructions to Form ITR (AY 2016-17)]

Financial interest would include, but would not be limited to, any of the following:-

- (1) if the resident assessee is the owner of record or holder of legal title of any financial account, irrespective of whether he is the beneficiary or not.
- (2) if the owner of record or holder of title is one of the following:-
  - (i) an agent, nominee, attorney or a person acting in some other capacity on behalf of the resident assessee with respect to the entity.
  - (ii) a corporation in which the resident owns, directly or indirectly, any share or voting power.
  - (iii) a partnership in which the resident assessee owns, directly or indirectly, an interest in partnership profits or an interest in partnership capital.
  - (iv) a trust of which the resident has beneficial or ownership interest.
  - (v) any other entity in which the resident owns, directly or indirectly, any voting power or equity interest or assets or interest in profits.
- (3) the total investment in col (5) of part (B) has to be filled up as investment at cost held during the year after converting it into Indian currency

# Beneficial Owner & Beneficiary

[As per Explanations 4 and 5 inserted to sub-section (1) of section 139, inserted w.e.f. 1-4-2016 by the Finance Act, 2015]

- ▣ Explanation 4 u/s 139(1): Beneficial owner in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset and where such asset is held for the immediate or future benefit, direct or indirect, of himself for any other person.
- ▣ Explanation 5 u/s 139(1): Beneficiary in respect of an asset means an individual who derives benefit from the asset during the previous year and where the consideration for such asset has been provided by any person other than such beneficiary.

# Beneficial Owner [RBI Master Circular RBI/2015-16/42]

DBR.AML.BC.No.15/14.01.001/2015-16]

Also given in: Rule 9(3) of the PMLA (Maintenance of Records) Rules, 2005)

When a bank/FI identifies a customer for opening an account, it should identify the beneficial owner(s) and take all reasonable steps in terms of Rule 9(3) of the PML Rules to verify his identity, as per guidelines provided below:

- (a) Where the client is a company, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has/have a controlling ownership interest or who exercises control through other means.

**Explanation-** For the purpose of this sub-clause-

- “Controlling ownership interest” means ownership of/entitlement to more than 25 per cent of the shares or capital or profits of the company.
- “Control” shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

- (b) Where the client is a partnership firm, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has/have ownership of/entitlement to more than 15 per cent of capital or profits of the partnership.

- (c) Where the client is an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has/have ownership of/entitlement to more than 15 per cent of the property or capital or profits of the unincorporated association or body of individuals.

# Beneficial Owner [RBI Master Circular RBI/2015-16/42]

DBR.AML.BC.No.15/14.01.001/2015-16]

Also given in: Rule 9(3) of the PMLA (Maintenance of Records) Rules, 2005)

- (d) Where no natural person is identified under (a), (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official.
- (e) Where the client is a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with 15% or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- (f) Where the client or the owner of the controlling interest is a company listed on a stock exchange, or is a subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies.
  - ▣ There exists the possibility that trust/nominee or fiduciary accounts can be used to circumvent the customer identification procedures. In such cases, banks/FIs should determine whether the customer is acting on behalf of another person as trustee/nominee or any other intermediary. If so, banks/FIs should insist on satisfactory evidence of the identity of the intermediaries and of the persons on whose behalf they are acting, as also obtain details of the nature of the trust or other arrangements in place. The different categories of beneficiaries should be identified as defined above. In the case of a 'foundation', steps should be taken to verify the founder managers/ directors and the beneficiaries, if defined.

# Definition of 'beneficial owner' from the Glossary to the FATF Recommendations

- ▣ Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.
- ▣ Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.
- ▣ This definition should also apply to beneficial owner or a beneficiary under a life or other investment linked insurance policy.

## Charge of tax- Section 3

- Every assessee shall be charged on or after the 1<sup>st</sup> April, 2016, subject to the provisions of this Act, a tax in respect of his total undisclosed foreign income and asset of the previous year at the rate of **30%** of such undisclosed income and asset:
  - Provided that an undisclosed asset located outside India shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer.
- For the purposes of this section “value of an undisclosed asset” means the **fair market value** of an asset (including financial interest in any entity) determined in such manner prescribed under Rule 3 of the Black Money Rules.

# Understanding of the Tax and Penalty

- ▣ Under the Act, those declaring their undisclosed foreign asset under the Compliance Window, are required to pay 30 per cent tax and 30 per cent penalty.
- ▣ However, after the closure of the window of opportunity, the person will be liable to pay 30 per cent tax and 90 per cent penalty and could also face rigorous imprisonment for a period ranging from a minimum of three years to 10 years.
- ▣ The Enforcing Authorities for the Black Money Act will be same as Income Tax Act, i.e, Income Tax Authorities-CBDT.

# Schedule FA in ITR

(Also refer: FAQ-17,18 for the related issues )

## Details of Foreign Assets and Income from any source outside India

A. Details of Foreign Bank Accounts held (including any beneficial interest)	B. Details of Financial Interest in any Entity held (including any beneficial interest)	C. Details of Immovable Property held (including any beneficial interest)	D. Details of any other Capital Asset held (including any beneficial interest)	E. Details of account(s) in which you have signing authority held (including any beneficial interest) which have not been included above	F. Details of trusts, created under the laws of a country outside India, in which you are a trustee, beneficiary or settlor	G. Details of any other income derived from any source outside India which is not included in,-(i) items A to F above and, (ii) income under the head business or profession
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At any time during the previous year

**WHY AVAIL  
WINDOW OF  
OPPORTUNITY ???**

# Annual Return On Foreign Liabilities And Assets Under FEMA, 1999

- ❑ Notified under FEMA 1999.
- ❑ Return to be filed under A.P (DIR Series) Circular No.145 dt 18/6/2014 and submitted to RBI, Mumbai
- ❑ Applicable on all Indian Companies receiving and/or making FDI from/to another country in the Previous Year(s) including current year who hold foreign assets or liabilities.
- ❑ Mandatory FLA return under FEMA 1999 based on audited/unaudited accounts by 15 July every year.
- ❑ FLA return to be in excel based formats with latest format available at :
  - [https://www.rbi.org.in/Scripts/BS\\_ViewFemaForms.aspx](https://www.rbi.org.in/Scripts/BS_ViewFemaForms.aspx)
- ❑ Non-filing of return within time is treated as violation of FEMA and penalty is invoked under FEMA.
- ❑ The return needs to be submitted on the basis of unaudited accounts before 15<sup>th</sup> July if the audit was not done yet and thereafter a revised return on the basis of audited accounts needs to be submitted by the end of September.
- ❑ The information needs to be reported as per the reference period (end-March) and the same cannot be reported as per any different Account Closing Period.
- ❑ The company receiving only share application money but no FLA in the balance sheet on March end, then it doesn't require submitting the FLA return.
- ❑ The FLA return needs to be filed by July 15 if it has FLA as on March ending of the latest year even if it has not received any FDI or made any ODI.

# Annual Return On Foreign Liabilities And Assets Under FEMA, 1999

- ❑ If the Partnership firms, Branches or Trustees have any outward FDI outstanding as on end-March of the reporting year, then they are required to send a request mail to get a **dummy CIN** number which will enable them to file the Excel based FLA Return. If any entity has already got the dummy CIN number from the previous survey, they should use the same CIN number in the current survey also.
- ❑ It is also informed that these dummy CIN numbers are provided by RBI for filling the excel based FLA return only and not for any other purpose.
- ❑ FLA Return and Annual Performance Report (APR) for OVERSEAS DIRECT INVESTMENTS are to be submitted separately if applicable on the company.
- ❑ Only the filled-in Excel based format of FLA by email before due date is required to be submitted. Financial statements or any information in separate annex should not be forwarded along with the FLA return.
- ❑ No signed scanned copy required to be submitted. It is sufficient to submit the validated excel based soft copy of filled-in FLA return through official email id of any authorized person of company like CFO, Director, Company Secretary etc. at email before due date for compliance purpose
- ❑ After sending the Excel based FLA return to email, you will receive an acknowledgement. Ensure that you have received a successful processing acknowledgement. If some error is mentioned in the acknowledgement rather than successful processing statement, resubmission of the form by rectifying the mentioned error is required.

# FATCA and tax crackdown fuel beneficial owner focus

## Foreign Account Tax Compliance Act (FATCA) –US LAW

- ▣ The provisions commonly known as the Foreign Account Tax Compliance Act (FATCA) became law in March 2010.
- ▣ The Foreign Account Tax Compliance Act or FATCA was signed on 9th July 2015 in INDIA
- ▣ FATCA targets tax non-compliance by U.S. taxpayers with foreign accounts
- ▣ FATCA focuses on reporting:
  - By U.S. taxpayers about certain foreign financial accounts and offshore assets
  - By foreign financial institutions about financial accounts held by U.S. taxpayers or foreign entities in which U.S. taxpayers hold a substantial ownership interest.
- ▣ The objective of FATCA is the reporting of foreign financial assets; withholding is the cost of not reporting.

# FATCA and tax crackdown fuel beneficial owner focus

(Also refer: FAQ 14 for the related issues)

- ❑ Beneficial ownership as a policy issue is very multifaceted. It's much larger than anti-money laundering. It also ties into corruption, fraud, sanctions and tax evasion issues. Now, a lot of the focus on it is being driven by international attention on tax evasion.
- ❑ India by signing FATCA has tried to improve international cooperation on tax evasion and push for transparency in the company formation process.
- ❑ Ascertaining the beneficial owners of financial accounts and legal entities has been a financial crime compliance and enforcement challenge for decades. Recently, FATCA and the ambitious global initiatives against tax evasion it has spawned have placed greater emphasis on the need for accurate information on the true owners of bank accounts and corporate vehicles.
- ❑ FATCA requires non-US banks to report to the US Internal Revenue Service the accounts they hold for US persons. The G20, in the same communiqué that stressed improved standards on beneficial ownership, also called for the multinational exchange of bank data, emulating the FATCA model.

## CHAPTER-VI

# Window of Oppportunity

# Window of Opportunity – Not an Amnesty Scheme [Chapter VI]

- ▣ The Act provides for a one time Window of Opportunity where the assessee can disclose any foreign asset acquired prior to the current A.Y.(AY 2016-17).
- ▣ Tax will be levied at 30% and penalty equal to the same amount will be levied as well. However, this is not an amnesty scheme as penalty will not be waived and cannot be avoided
- ▣ There will be no additional interest u/s 234 of the ITA.
- ▣ Such amount disclosed under the Compliance Window shall not be included in the income of any A.Y. under the ITA. Hence, assessments cannot be reopened due to disclosure under this window

# Scope of Window of Opportunity

- ▣ Declaration can be made in respect of undisclosed foreign assets of a person who is a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act.

# Time Frame for availing Window of Opportunity 1<sup>st</sup> July, 2015-31<sup>st</sup> December, 2015

Window Opened	1 <sup>st</sup> July, 2015
Declaration, in Form 6, of foreign asset to CIT(Intl Txn)2	30 <sup>th</sup> September, 2015
Intimation, in the given Performa, by the CIT(Intl Txn)2 [as to whether any information had been received in respect of the assets declared in terms of any agreement u/s 90/90A]	31 <sup>st</sup> October, 2015
Revised Declaration, in Form 6, in pursuance to the above intimation	15 days from the receipt of intimation [within]
Remittance of Tax and Penalty by	31 <sup>st</sup> December, 2015
Acknowledgement, in Form 7, by the CIT(Intl Txn)2 [in respect of the value of foreign asset declared as well as the amount of tax and penalty remitted]	15 days [from the date of furnishing of proof of remittance of tax and penalty]
Window Closes	31 <sup>st</sup> December, 2015

# Window of Opportunity

(Also refer: FAQ-1 for the related issues)

## Manner of Declaration u/s 62

- ▣ A declaration under section 59 shall be made to the Commissioner of Income Tax (International Tax)-2 in form 6 under Rule 9 duly verified.
- ▣ The declaration to be signed by :
  - **individual himself**
  - Karta (in case of HUF)
  - Managing Director (where the declarant is a **company**)
  - Managing Partner (where the declarant is a **firm**)
  - Principal officer (where the declarant is any **other association**)
  - where the declarant is any other person, by that person or by some other person competent to act on his behalf.
- ▣ Any declaration made in conflict with the above provisions shall be VOID.

# Notification of BMR and issue of Explanatory Circular under BMA

(Also refer: FAQ-29,30 for the related issues)

The declaration u/s 59 of the Act may be filed on or before 30.09.2015 in Form 6 appended to the Rules before the designated Commissioner of Income Tax.

The Commissioner of Income Tax (International Tax)-2,

Pratyaksh Kar Bhavan,

S.P.M. Civic Centre,

Minto Road,

New Delhi-110002

has been designated to receive the declarations. The CIT will inform the declarant by 31.10.2015 whether the competent authority already has any information in respect of the asset(s) declared.

# Window of Opportunity

- ▣ The Central Government has notified the 30<sup>th</sup> day of September, 2015, as the date on or before which a person may make a declaration in respect of an undisclosed asset located outside India under the compliance provisions of the BMA.
- ▣ The last date by which a person must pay the tax and penalty in respect of the undisclosed foreign assets so declared shall be the 31<sup>st</sup> December, 2015.
- ▣ Section 63: If the declarant fails to pay the tax in respect of the declaration made under section on or before 31<sup>st</sup> December, 2015 under sub-section (1), the declaration filed by him shall be deemed never to have been made under this Chapter.

# Window of Opportunity

## Effect of valid declaration

(Also refer: FAQ-2,3,4,25 for the related issues)

- ▣ Section 64: Undisclosed foreign asset declared not to be included in total income if the declarant makes the payment of tax referred to in section 60 and the penalty referred to in section 61 by the date notified.
- ▣ Section 65: **No reopening of any assessment** or reassessment made under the Act or the Wealth-tax Act, 1957 or claim any set off or relief in any appeal, reference or other proceeding in relation to undisclosed asset located outside India declared or any amount of tax paid thereon.
- ▣ Section 66: Any amount of tax paid under section 60 or penalty paid under section 61 in pursuance of a declaration made under section 59 shall be non-refundable.
- ▣ Section 67: Declaration not admissible in evidence against declarant for the purposes of prosecution under the Income-tax Act or the Wealth-tax Act or the FEMA or the Companies Act, 2013 or the Customs Act, 1962
- ▣ Section 68: Declaration by misrepresentation of facts to be void
- ▣ Section 69: The value of asset declared in the declaration shall not be chargeable to Wealth Tax for any assessment year or years

# EXCEPTIONS- SECTION 71

**Window of Opportunity not open to :**

- (a) To any person in respect of whom an order of detention has been made under the 'Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974'**
- ▣ Provided that such order of detention has not been set aside by the court of competent jurisdiction or has not been revoked:**
  - on the report of the Advisory Board under section 8 of the said Act; or
  - or before the receipt of the report of the Advisory Board
  - before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9

# EXCEPTIONS- SECTION 71

**Window of Opportunity not open to :**

**(b) in relation to prosecution for any offence punishable under**

- **Chapter IX (Offences By Or Relating To Public Servants) or Chapter XVII (Offences Against Property) of The Indian Penal Code,**
- **The Narcotic Drugs and Psychotropic Substances Act, 1985,**
- **The Unlawful Activities (Prevention) Act, 1967,**
- **The Prevention of Corruption Act, 1988;**

**(c) to any person notified under section 3 (Appointment and functions of Custodian) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.**

# EXCEPTIONS- SECTION 71

(Also refer: FAQ-4,7-9 & 27 for the related issues)

- d) in relation to any undisclosed asset located outside India which has been acquired from income chargeable to tax under the Income-tax Act for any previous year relevant to an A.Y. prior to the A.Y. beginning on the 1st day of April, 2016 –
- Notice has been issued in respect of such AY and the proceeding is pending before the AO under
    - section 142 or
    - section 143(2) or
    - section 148 or
    - section 153A or
    - section 153C of the ITA; or

# EXCEPTIONS- SECTION 71

(Also refer: FAQ-10-13,15,16 for the related issues)

- d) in relation to any undisclosed asset located outside India which has been acquired from income chargeable to tax under the Income-tax Act for any previous year relevant to an A.Y. prior to the A.Y. beginning on the 1st day of April, 2016 –
- Where a notice u/s 143(2) or u/s 153A or 153C of the said Act for an A.Y. relevant to any previous year prior to such previous year has not been issued and the time for issuance of such notice has not expired for
    - a search has been conducted under section 132 or
    - requisition has been made under section 132A or
    - a survey has been carried out under section 133A of the Income-tax Act in a previous year and
  - Information received under an agreement entered into by the CG u/s 90 or 90A of the Act in respect of such undisclosed asset.

*Explanation.* – For the purpose of this sub-clause asset shall include a bank account whether having any balance or not.

# FORM-6

**Form 6**

*Tax compliance for undisclosed foreign asset*

[See rule 9(1)]

***Form of declaration of undisclosed asset located outside India under section 59 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015***

To,

The Principal Commissioner/Commissioner

.....

Sir/ Madam,

I hereby make a declaration under section 59 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. I give below the necessary particulars:-

1. Name of the declarant .....
2. Address: Office.....  
.....  
E-mail.....Telephone No.....  
Residence.....  
.....  
E-mail.....Telephone No.....

3. Permanent Account Number (PAN) .....  
(In case PAN is not held, please apply for PAN and quote here)
  
4. Original/Revised declaration .....  
(If Revised provide date of filing original declaration)
  
5. Status of the declarant  
  - (a) State whether individual, HUF, firm, company etc.  
.....
  - (b) State whether Resident/Non-Resident/Not ordinarily resident .....
  
6. Whether any Income-tax return has been filed? Yes/No. If Yes provide the following details  
  - (a) Asst. Year for which last return filed .....
  - (b) Assessing Officer before whom filed, if above return filed in paper form .....
  
7. Statement of undisclosed asset located outside India (as per annexure)

8. Total amount of declaration of undisclosed asset located outside India Rs.....

9. Tax payable thereon (@ 30% of item 8) Rs.....

10. Penalty payable thereon (@ 30% of item 8) Rs.....

11. Tax paid, if any, on or before the date of declaration Rs.....

(Attach proof of payment and provide details below)

Sl	BSR Code of Bank	Date of Deposit (DD/MM/YYYY)	Serial Number of Challan	Amount (Rs)
(1)	(2)	(3)	(4)	(5)
i				
ii				

12. Balance tax payable.....

#### VERIFICATION

I.....son/daughter/wife of Shri.....  
(Full name in block letters) (name of father/husband)

solemnly declare that-

- (a) the information given in this declaration is correct and complete to the best of my knowledge and belief;
- (b) my own undisclosed foreign asset and also any undisclosed foreign asset of other persons in respect of which I am chargeable to tax and income accruing or arising from assets held by me through any other person, for which I had failed to furnish a return under section 139 of the Income-tax Act, 1961/which I had failed to disclose in a return of income furnished by me before the commencement of the Act/which has otherwise escaped assessment, has been disclosed in this declaration;
- (c) the provisions of section 71(a) in respect of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 are not applicable to me;
- (d) the provision of section 71(b) in respect of Indian penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988 are not applicable to me;
- (e) the undersigned has not been notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992;
- (f) the asset declared has not been acquired from income chargeable to tax under the Income-tax Act for any previous year relevant to assessment year,-
  - (i) where a notice under section 142 or sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act has been received in respect of such assessment year and the proceeding is pending before the Assessing Officer;
  - (ii) where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and a notice under subsection (2) of section 143 of the said Act for the assessment year relevant to

such previous year or a notice under section 153A or under section 153C of the said Act for an assessment year relevant to any previous year prior to such previous year has not been received and the time for issuance of such notice has not expired.

I further declare that I am making this declaration in my capacity as.....  
(designation)

and that I am competent to make this declaration and verify it.

.....  
(Signature)

Place.....

Date.....

\* Score out whichever is not applicable.

## Statement of undisclosed assets located outside India

Description of assets declared (Use separate sheet in case of multiple assets in the same category)

## 1. Bank account

- (a) Name and address of Bank \_\_\_\_\_
- (b) Country of location \_\_\_\_\_
- (c) Account holder name(s) \_\_\_\_\_
- (d) Account Number \_\_\_\_\_
- (e) Account opening date \_\_\_\_\_
- (f) Sum of all credits in the account \_\_\_\_\_
- (g) Fair market Value as per Rule 3 \_\_\_\_\_
- (Provide separate computation if different from (f))

## 2. Immovable property (attach valuation report)

- (a) Nature of property (land/building/flat etc.) \_\_\_\_\_
- (b) Address of the property \_\_\_\_\_
- (c) Country of location \_\_\_\_\_
- (d) Name(s) under which held \_\_\_\_\_
- (e) Date of acquisition \_\_\_\_\_
- (f) Total acquisition cost \_\_\_\_\_
- (g) Value as estimated by the valuer on valuation date \_\_\_\_\_
- (h) Fair Market value as per Rule 3 \_\_\_\_\_
- (Provide separate computation if different from (f) or (g))

3. Jewellery (attach valuation report)

(a) Gold

(I) Purity \_\_\_\_\_, Weight \_\_\_\_\_, Value \_\_\_\_\_

(II) Purity \_\_\_\_\_, Weight \_\_\_\_\_, Value \_\_\_\_\_

(b) Diamond (1 carat or more)

(I) Carat \_\_\_\_\_, Cut \_\_\_\_\_, Colour \_\_\_\_\_, Clarity \_\_\_\_\_, Value \_\_\_\_\_

(II) Carat \_\_\_\_\_, Cut \_\_\_\_\_, Colour \_\_\_\_\_, Clarity \_\_\_\_\_, Value \_\_\_\_\_

(c) Diamond (less than 1 carat) and other precious stones Value \_\_\_\_\_

(d) Other precious metals Value \_\_\_\_\_

4. Artistic work (attach valuation report)

(a) Nature of artistic work \_\_\_\_\_

- (b) Country of location \_\_\_\_\_
  - (c) Name(s) under which held \_\_\_\_\_
  - (d) Date of acquisition \_\_\_\_\_
  - (e) Cost of acquisition \_\_\_\_\_
  - (f) Value of artistic work as estimated by the valuer \_\_\_\_\_
  - (g) Fair Market value as per Rule 3 \_\_\_\_\_
- (Provide separate computation if different from (e) or (f))

5. Shares and securities

- (a) Quoted shares and securities [Rule 3(1)(c)(I)]
  - (i) Description of security/share
    - (A) Name of issuer \_\_\_\_\_
    - (B) Number of securities/shares \_\_\_\_\_
    - (C) Type of security/share \_\_\_\_\_
  - (ii) Established securities market where quoted \_\_\_\_\_
  - (iii) Country where securities market located \_\_\_\_\_
  - (iv) Name(s) under which held \_\_\_\_\_
  - (v) Cost of acquisition \_\_\_\_\_
  - (vi) Date(s) of acquisition \_\_\_\_\_
  - (vii) Value as determined under Rule 3(1)(c)(I) \_\_\_\_\_
  - (viii) Date of valuation \_\_\_\_\_
  - (ix) Fair Market value as per Rule 3 \_\_\_\_\_

(Provide separate computation if different from (v) or (vii))

(b) Unquoted equity share [Rule 3(1)(c)(II)] (attach valuation report)

(i) Description of share

- (A) Name of issuer \_\_\_\_\_
- (B) Number of shares \_\_\_\_\_
- (C) Type of share \_\_\_\_\_

(ii) Country of location \_\_\_\_\_

(iii) Name(s) under which held \_\_\_\_\_

(iv) Cost of acquisition \_\_\_\_\_

(v) Date(s) of acquisition \_\_\_\_\_

(vi) Value as determined under Rule 3(1)(c)(II) \_\_\_\_\_

(vii) Date of valuation \_\_\_\_\_

(viii) Fair Market value as per Rule 3 \_\_\_\_\_

(Provide separate computation if different from (iv) or (vi))

(c) Unquoted shares and securities other than equity shares in a company [Rule 3(1)(c)(III)]  
(attach valuation report)

(i) Description of share/security

- (A) Name of issuer \_\_\_\_\_  
(B) Number of securities/shares \_\_\_\_\_  
(C) Type of security/share \_\_\_\_\_

(ii) Country of location \_\_\_\_\_

(iii) Name(s) under which held \_\_\_\_\_

(iv) Cost of acquisition \_\_\_\_\_

(v) Date(s) of acquisition \_\_\_\_\_

(vi) Value as determined under Rule 3(1)(c)(III) \_\_\_\_\_

(vii) Date of valuation \_\_\_\_\_

(viii) Fair Market value as per Rule 3 \_\_\_\_\_

(Provide separate computation if different from (iv) or (vi))

(6) Any other asset

(a) Description of asset \_\_\_\_\_

(b) Country of location \_\_\_\_\_

(c) Name(s) under which held \_\_\_\_\_

(d) Value as determined under Rule 3(1) \_\_\_\_\_

(e) Date of valuation \_\_\_\_\_

(f) Fair Market value as per Rule 3 \_\_\_\_\_

(Provide separate computation if different from (d))

- (7) Total fair market value of all the assets declared \_\_\_\_\_
- (8) Deduction as per section 5 of the Act \_\_\_\_\_  
(where part of asset acquired from income already assessed under  
the Income-tax Act) (to be provided in respect of each asset separately)
- (9) Deduction on account of investment made in the asset during the  
previous year relevant to the assessment year for which a notice  
u/s 142/143(2)/148/153A/153C of the I.T. Act is issued \_\_\_\_\_
- (10) Total fair market value of all the undisclosed assets declared (7-8-9) \_\_\_\_\_  
(to be taken to item 8 of the form)

.....  
(Signature)

.....  
(Name)

Place.....

Date.....

#### NOTES

1. If the total amount of tax payable is not paid before 31<sup>st</sup> December 2015, the declaration will be treated as void and shall be deemed never to have been made.
2. If the declaration is made by misrepresentation or suppression of facts it shall be void and shall be deemed never to have been made.

# VOID DECLARATIONS

(Also refer: FAQ-27 for the related issues)

Declaration shall be void and shall be deemed to have never been made if the declarant –

- ▣ Fails to pay the entire amount of tax and penalty on or before December 31, 2015 ( Section 63)
- ▣ Where the declaration has been made by misrepresentation or suppression of facts or information. ( Section 68)
- ▣ Where any declaration made in conflict with the provisions of Section-62 (Manner of Declaration)
- ▣ Where declaration is made for asset represented money earned through corruption. (Section 68 and FAQ-27)

Where the declaration is held to be void for any of aforesaid reasons, then declarant would be liable to pay penalty three times of tax and will also be liable for prosecution.

# Valuation of Undisclosed Foreign Assets

*(Section 3(2) read with Rule 3)*

Higher of

Cost of acquisition

The value that may ordinarily be fetched by that asset if sold in open market on the valuation date [FMV]

NOTE: The value of Undisclosed Foreign Asset includes financial interest in any entity  
Fair Market Value is be such as determined in accordance with the manner prescribed in Rule 3 of the BMR

# Valuation Date-

## Notification No. 58/2015 [F.No. 133/33/2015-TPL] / GSR 529(E)

For the purpose of determining the market value as on valuation date referred to in in sub-rule (1), and for the purpose of conversion into Indian currency or conversion of foreign currency into United States Dollar and thereafter into Indian currency, the date shall be-

(a) in respect of asset declared under section 59 of the Act, the 1<sup>st</sup> day of July, 2015;

(b) in any other case, the 1<sup>st</sup> day of April of the previous year.

# FMV of Bullion, Jewellery or Precious Stone & Artistic Work – Rule 3(1)(a) & Rule 3(1)(b)

Higher of

Cost of acquisition

the price that the bullion, jewellery or precious stone shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of bullion, jewellery or precious stone or artistic work under any regulation or law

# FMV of Quoted share and securities- Rule 3(1)(c)



# FMV of Unquoted Equity shares- Rule 3(1)(c)

Higher of

Cost of  
acquisition

The value, on the valuation  
date, of such equity shares=

$$\frac{(A+B-L) \times (PV)}{(PE)}$$

# FMV of Unquoted Equity shares- Rule 3(1)(c)

- ▣ A=Book value of all the assets – (Income-tax paid- Income-tax refund claimed) - Amount shown as asset not representing the value of any asset
  - ▣ B=FMV of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in this rule.
  - ▣ PE=Total paid up equity share capital in the balance-sheet;
  - ▣ PV= Paid up value of such equity shares;
  - ▣ L=Book value of liabilities
- L= Book Value liabilities excluding:
- (i)the paid-up capital in respect of equity shares;
  - (ii)amount set apart for payment of dividends on preference shares and equity shares;
  - (iii)reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
  - (iv)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 the book profits in accordance with the law applicable thereto;
  - (v)any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
  - (vi)any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

# FMV of Unquoted share and security other than equity share in a company- Rule 3(1)(c)

Higher of

Cost of  
acquisition

**The price that shall ordinarily be fetched if sold in the open market on the valuation date** for which the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of share and security under any regulation or law;

# FMV of Immovable Property-Rule 3(1)(d)

(Also refer: FAQ-21 for the related issues)

Higher of

Cost of  
acquisition

The price that shall ordinarily be fetched if sold in the open market on the valuation date for which the assessee may obtain a valuation report from a valuer recognised by the Government of a country or specified territory outside India in which the property is located or any of its agencies for the purpose of valuation of immovable property under any regulation or law;

# FMV of a Bank Account-Rule 3(1)(e)

(Also refer: FAQ-19-20 for the related issues)

Sum of all the deposits made in the account with the bank since the Opening Date of the account

-OR-

In case of a declaration under the Compliance Window of Chapter VI, the sum of all the deposits made in the account with the bank since the Declaration Date.

- *But, deposit made from the proceeds of any withdrawal from the account, shall not be while computing the value of the account.*

# FMV of an interest of a person in a firm or AOP or LLP of which he is a member- Rule 3(1)(f) & 3(1)(g)

The net asset of the firm, AOP or LLP on the valuation date shall first be determined

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 contributed

The residue of the net asset shall be allocated among the partners or members in accordance with the agreement for distribution of assets in the event of dissolution of the firm or association. In the absence of such agreement, in the profit sharing ratio

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.

# Proviso to the above Rules given by Rule 3(2)

Asset (other than a bank account) was transferred before the valuation date

Adequate consideration

Cost of acquisition

Sale Price

Higher of

Inadequate consideration

Cost of acquisition

FMV on the date of transfer

Higher of

# Few Definitions for the above rules: Notification No. 58/2015 [F.No. 133/33/2015-TPL] / GSR 529(E)

- ▣ Established securities market: An exchange that is officially recognized and supervised by a Governmental entity in which the market is located and that has a meaningful annual value of shares traded on the exchange
- ▣ Meaningful annual value of shares traded on the exchange : It has an annual value of shares traded on the exchange (or a predecessor exchange) exceeding \$1 billion during each of the three calendar years immediately preceding the calendar year in which the determination is being made

## Few Definitions for the above rules:

Notification No. 58/2015 [F.No. 133/33/2015-TPL]  
/ GSR 529(E)

- ▣ Quoted share or security: The share or security which has a meaningful volume of trading on an ongoing basis on an established securities market and is regularly quoted by dealers where they actively do offer to, and in fact do, purchase the share from, and sell the share to, customers who are not related to the dealer in the ordinary course of a business
- ▣ Unquoted share or security in relation to share or security means share or security which is not a quoted share or security.

# Asset Acquired from Sale of old Asset - Rule 3(3)

(Also refer: FAQ-22 for the related issues)

Where a new asset has been acquired or made out of consideration received on account of transfer of an old asset or withdrawal from a bank account, then the fair market value of the old asset or the bank account, as the case may be, determined in accordance with sub-rule (1) and sub-rule (2) shall be reduced by the amount of the consideration invested in the new asset.

FMV in Sub  
Rule (1) and  
Sub-Rule (2)

—

Amount of  
consideration  
invested in new  
asset

=

FMV of the  
Old Asset

# Scope of total undisclosed foreign income and asset- Section 4

The total undisclosed **foreign income** and asset of any previous year of an assessee shall be–

- (a) the income from a source located outside India, which has not been disclosed in the return of income furnished within the time specified in *Explanation 2* to sub-section (1) or under sub-section (4) or sub-section (5) of section 139 of the ITA;
- (b) the income, from a source located outside India, in respect of which a return is required to be furnished under section 139 of the ITA but no return of income has been furnished within the time specified in *Explanation 2* to sub-section (1) or under sub-section (4) or sub-section (5) of section 139 of the said Act; and
- (c) the value of an undisclosed asset located outside India.

# Computation of total undisclosed foreign income and assets- Section 4

Computation of total UFIA	Amount
---------------------------	--------

Income from a source located outside India, which has not been disclosed in the return	XXXX
--	------

Income from a source located outside India for which no return of income has been furnished	XXXX
---	------

The value of an undisclosed asset located outside India	XXXX
---	------

# Scope of total undisclosed foreign income and asset- Section 4

## POINTS TO BE CONSIDERED:

(2) Notwithstanding anything contained in sub-section (1), any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of

- section 29 to section 43C [PGBP] or
- section 57 to section 59 [Income from Other Sources] or
- section 92C [ALP] of the said Act

shall not be included in the total undisclosed foreign income

(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.

# Computation of total undisclosed foreign income and assets- Section 5(1)(i)

No deduction in respect of any

- ▣ expenditure or
- ▣ allowance or
- ▣ set off of any loss

shall be allowed to the assessee, whether or not it is allowable in accordance with the provisions of the Income-tax Act;

# Computation of total undisclosed foreign income and assets – Section 5(1)(ii)

(Also refer: FAQ-26,28 for the related issues)

▣ The value of the undisclosed asset located outside India shall be reduced any income, –

(a) which has been assessed to tax for any A.Y. under the Income-tax Act prior to the A.Y. to which this Act applies; or

(b) which is assessable or has been assessed to tax for any A.Y. under this Act,

**Provided:** The assessee proves to the satisfaction of the AO that the asset has been acquired from the income which has been assessed or is assessable, as the case may be, to tax.

## Computation of total undisclosed foreign income and assets- Section 5(2)

- ▣ The amount of deduction referred to in clause (ii) of sub-section (1) in case of an immovable property shall be the amount which bears to the value of the asset as on the first day of the financial year in which it comes to the notice of the Assessing Officer, the same proportion as the assessable or assessed foreign income bears to the total cost of the asset

# Computation of total undisclosed foreign income and assets- Section 5 [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,

- ▣  $A=Rs.1$  crore,

- ▣  $B=Rs. (100 \times 20/50)$  lakh= Rs.40 lakh,

- ▣  $C=Rs. (100-40)$  lakh=Rs.60 lakh

$A=Rs.1$  crore

$B=Rs. (100 \times 20/50)$  lakh=  
Rs.40 lakh

=

$C=Rs. (100-40)$  lakh=Rs.60 lakh

# Assessment Proceedings[Chapter -III Section 10]

- The AO may, on receipt of an information from an income-tax authority or any other authority under any law for the time being in force or on coming of any information to his notice, serve on any person, a notice requiring him to produce accounts or documents or evidence

## Notice

## Inquiry

- AO may **inquiry**, as he considers necessary, for obtaining full information about UFIA of any person for the relevant F.Year(s)

- AO, on the basis of accounts, documents or evidence, relevant material which he has gathered, and any other evidence produced by the assessee, shall by an order, assess the UFIA and **determine** the sum payable by the assessee.

## Assessment

## Best Judgement Assessment

- Person failing to comply the terms of the notice, will be subject to best judgment assessment by the AO on the basis of all the relevant material gathered and giving the assessee an opportunity of being heard

# Assessment Proceedings[Chapter -III Section 10]- Brief

- ▣ The Income Tax Authorities continue to levy taxes and administer revenues through the Income Tax Act, however, will refer to this act with regard to any Foreign Assets and Foreign Incomes
- ▣ AO will serve notice on the assessee before proceeding to take any action under this Act
- ▣ Tax authorities can make any inquiry or investigation into matters of the assessee even though there are no proceedings pending before it
- ▣ The principles of Natural Justice cannot be violated. The assessee will be given an opportunity to be heard and to appeal to the ITAT, High Court and Supreme Court(where substantial question of law is involved)

# Tax Authorities for the Act [Section 8(1) read with Rule 4]

- ▣ The Income-tax authorities specified in section 116 of the Income-tax Act shall be the tax authorities for the purposes of this Act.
- ▣ 'Prescribed Tax Authority/ies' ['PTA', for short] under Section 8 of the BMA are
  - 'Assessing Officer'
  - 'Joint Commissioner'
  - 'Commissioner (Appeals)'
  - 'Commissioner' or 'Principal Commissioner'
  - 'Chief Commissioner' or 'Principal Chief Commissioner'
- ▣ PTA vested with same powers as in a court under the CPC, 1908, for the purposes of making any inquiry or investigation under BMA , irrespective of whether or not any proceedings are pending before it
- ▣ Any proceeding under this Act before a tax authority shall be deemed to be a **judicial proceeding** within the meaning of section 193 and section 228 and for the purposes of section 196 of the Indian Penal Code.

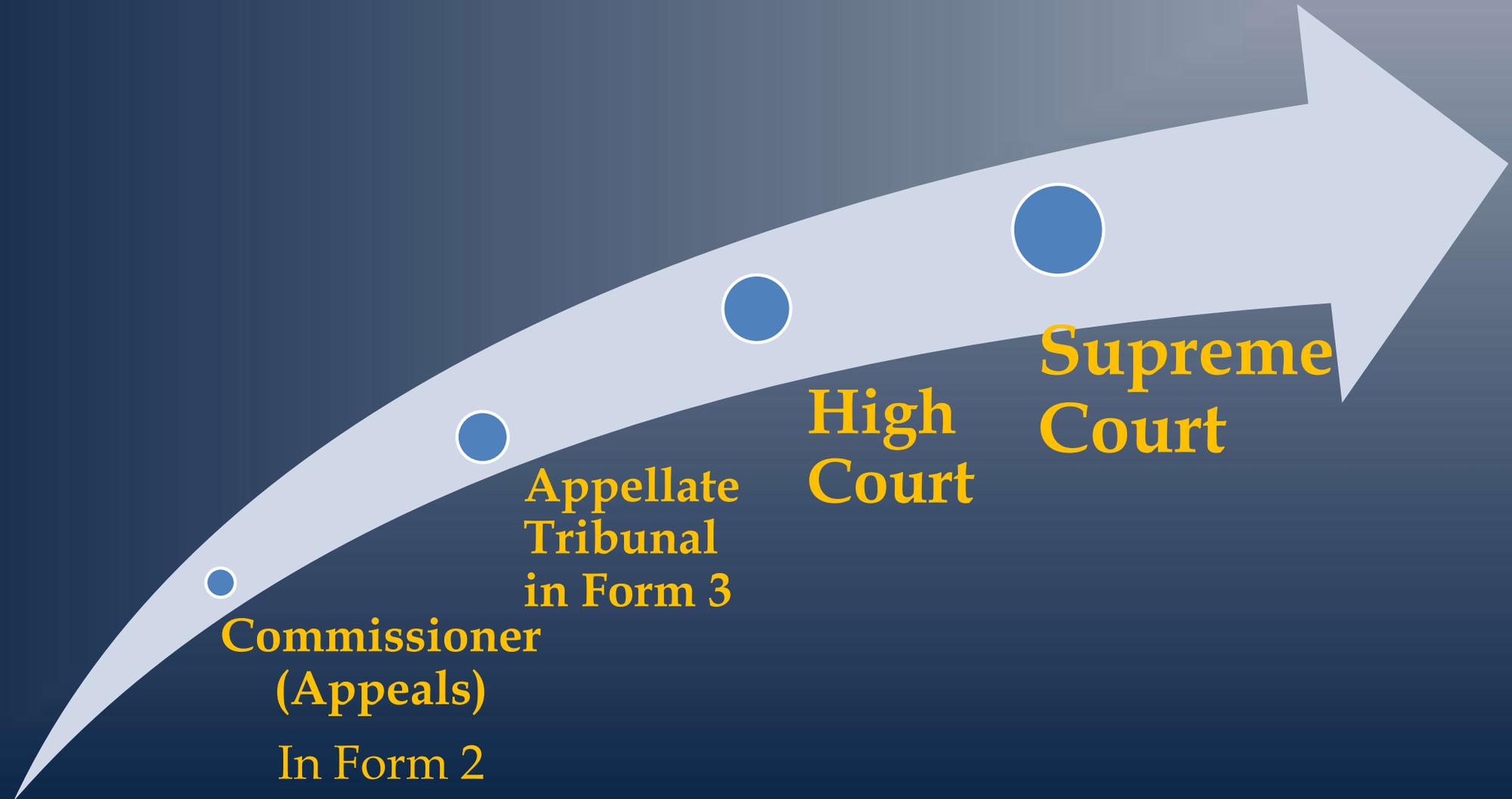
## **Powers of PTA- *Section 8(1) read with Rule 4***

- ▣ Discovery and inspection of evidence,
- ▣ Enforcing the attendance of any person, including any officer of a banking company and examining him on oath
- ▣ Compelling the production of books of account and other documents, and
- ▣ Issuing commissions
- ▣ **Impound any books of account** or other documents produced before it and retain them in its custody for such period as it thinks fit

# Time limit for completion of assessment and reassessment- Section 11

- ▣ The time limit for completion of assessment and re-assessment has been provided under the UFIA. Once the Revenue has issued a notice to a person for providing information, an order of assessment or re-assessment cannot be made after the expiry of two years from the end of the financial year in which the notice was issued which excludes
  - The time taken to receive information under the exchange of information process provided under a tax treaty or exchange of information agreement
  - Time taken 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
- ▣ **Provided** that where immediately after the exclusion of the aforesaid time or period, the period available to the AO for making an order of assessment or reassessment, as the case may be, is less than 60 days, such remaining period shall be extended to 60 days and the aforesaid period of limitation shall be deemed to be extended accordingly.

# Appellate Procedure



# Time Frame to Complete an Appeal by CIT [Section 15(5) read with Rule 6 and 16]

- ▣ *No time frame for disposals of appeal specified. Even section 16(8) talks of disposal of appeal as expeditiously as possible and that endeavor will be made to dispose off within one year. Absence of any definite time frame – as under ITA – may lead to avoidable delay other than on the part of the assessee and possible harassment to the assessee*

# Limitation of 1 year in ITAT-Section 18(5)

- ▣ The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the period referred to in sub-section (3) or sub-section (4), if –
  - (a) it is satisfied that there was sufficient cause for not presenting it within that period; and
  - (b) the delay in filing the appeal does not exceed a **period of one year**.

*Note: the provision putting in place the limitation of one year vis-à-vis period prescribed within an appeal may be preferred, could have been avoided – as appears to be the case in the above corresponding provisions under the ITA. Or else, such a period could have been more/higher*

# Penalties & Prosecutions Chapter IV & V

- ▣ The Act provides for a maximum of 10 years rigorous imprisonment for offenders who evade taxes in relation to foreign assets.

Under its provisions, the concealment of foreign income and assets will be non-compoundable and offenders will not be permitted to approach the Settlement Commission for resolving disputes.

- ▣ It also provides a penalty equivalent to three times the amount of taxes on the concealed income and assets.
- ▣ Non-filing of income tax returns or filing of returns with inadequate disclosure of foreign assets liable for prosecution with punishment of rigorous imprisonment up to 7 years, and with fine.

# Penalties for the various defaults

Section	Penalty	Incidence
41	Penalty in relation to undisclosed Foreign income and asset	3 times of the tax computed u/s 10
42	Penalty for failure to furnish Income tax return in relation to foreign income and asset.	Rs. 10 Lakhs
43	Penalty for failure to furnish in return of income, an information or furnish inaccurate particulars about an asset (including financial interest in any entity) located outside India.	Rs. 10 Lakhs
44	Penalty for default in payment of tax arrear	Amount equal to arrears
45	Penalty for failure to: (a) answer any question (b) sign statement made (c) attend or produce books of account or documents	Rs. 50000/- minimum Rs. 200000/- maximum

*Sections 42, 43 not to apply in respect of one or more foreign bank accounts with aggregate value not exceeding 500000/- rupees at any time during the previous year. The rate of conversion for the valuation of the account shall be the rate adopted by SBI as on that date.*

# Prosecution for defaults

Section	Prosecution	Incidence
49	Punishment for failure to furnish income-tax return in relation to foreign income and asset.	Rigorous imprisonment from 6 months to 7 years with fine
50	Punishment for failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India.	Rigorous imprisonment from 6 months to 7 years with fine
51	Punishment for wilful attempt to evade tax.	Resident Person-Rigorous imprisonment from 3 Years to 10 years with fine Any Person- Rigorous imprisonment from 3 months to 3 years with fine
52	Punishment for false statement in verification.	Rigorous imprisonment from 6 months to 7 years with fine
53	Punishment for abetment.	Rigorous imprisonment from 6 months to 7 years with fine

For the second and every subsequent offence u/s 49-53 (both inclusive) with rigorous imprisonment for a term which shall not be less than 3 years, but which may extend to 10 years and with fine which shall not be less than Rs.5 lakh, but which may extend Rs.1 Cr.

Sr. No	Salient Provisions of the BMA	Penalty Prescribed				Remarks
		Within the Framework of Window of Opportunity u/s 59		Outside the Framework of Window of Opportunity u/s 59		
A	<i>Specifics [A]</i>	<i>Monetary [B]</i>	<i>Prosecution [C]</i>	<i>Monetary [D]</i>	<i>Prosecution [E]</i>	<i>[F]</i>
1	Rate of Tax	30 per cent [u/s 60]	N.A.	30 per cent [u/s 3]	N.A.	Same – No consequence = Tax @ 30%
2	Penalty [corresponding to Rate of Tax]	100 per cent [u/s 61]	N.A.	300 per cent [u/s 41]	N.A.	<b>Penalty triples</b> = a sum equal to three times of tax computed u/s 10 [i.e. @ 90 %]
3	<b>Tax + Penalty</b> vis-à-vis total amount of undisclosed foreign income and asset	130 per cent	N.A.	330 per cent	N.A.	200 % <u>over and above the sum payable under window of opportunity</u>
4	<b>failure to furnish</b> required return of income	Question does not arise		10 Lakh Rupees [u/s 42]		Not to apply where assets is by way of bank accounts with aggregate not exceeding 5 Lakh Rupees

Sr. No	Salient Provisions of the BMA	Penalty Prescribed				Remarks
		Within the Framework of Window of Opportunity u/s 59		Outside the Framework of Window of Opportunity u/s 59		
A	Specifics [A]	Monetary [B]	Prosecution [C]	Monetary [D]	Prosecution [E]	[F]
5	<b>willful</b> failure to furnish required return of income	Question does not arise			<b>RI</b> for a term $\leq$ 6 months but may extend to seven years and with <b>fine</b> [u/s 49]	<i>RI may be in addition to monetary penalty stated against Sr. No.4 [D]</i>
6	where in the return furnished, but failed to furnish any information or <b>furnished inaccurate</b> particulars relating to foreign asset	Question does not arise		10 Lakh Rupees [u/s 43]		Not to apply where assets is by way of bank accounts with aggregate not exceeding 5 Lakh Rupees
7	<b>willful</b> failure to furnish any information or <b>furnished inaccurate</b> particulars relating to foreign asset	Question does not arise			<b>RI</b> for a term $\leq$ 6 months but may extend to seven years and with <b>fine</b> [u/s 49]	<i>Going by the plain reading, RI is in addition to monetary penalty stated against Sr. No.6 [D]</i>

Sr. No	Salient Provisions of the BMA	Penalty Prescribed				Remarks
		Within the Framework of Window of Opportunity u/s 59		Outside the Framework of Window of Opportunity u/s 59		
A	<i>Specifics [A]</i>	<i>Monetary [B]</i>	<i>Prosecution [C]</i>	<i>Monetary [D]</i>	<i>Prosecution [E]</i>	<i>[F]</i>
8	<b>willful</b> attempt in any manner whatsoever to <b>evade</b> any tax, penalty or interest chargeable or imposable [e.g. makes or causes to be made any false entry or statement in books of accounts ....] [u/s 51(1)]	Question does not arise			<b>RI</b> for a term $\leq$ 3 years but may extend to ten years and with <b>fine</b> [u/s 51(1)]	<i>Going by the plain reading, RI is in addition to fine</i>
9	<b>willful</b> attempt in any manner whatsoever to <b>evade payment</b> any tax, penalty or interest, <b>without prejudice</b> to penalty that may be imposable on him .... [u/s 51(2)]	Question does not arise			<b>RI</b> for a term $\leq$ 3 months but may extend to three years, and also, at the discretion of the court, liable to <b>fine</b> [u/s 51(2)]	<i>RI is, at the discretion of the court, in addition to fine</i>
10	where makes a statement in any verification or under any rule, or delivers an account or statement which is <b>false</b> , and which he either <b>knows</b> to be false .... [u/s 52]		<b>RI</b> for a term $\leq$ 6 months but may extend to seven years and with <b>fine</b> [u/s 52]		<b>RI</b> for a term $\leq$ 6 months but may extend to seven years and with <b>fine</b> [u/s 52]	<i>Going by the plain reading, RI is in addition to fine</i>

Sr. No	Salient Provisions of the BMA	Penalty Prescribed				Remarks
		Within the Framework of Window of Opportunity u/s 59		Outside the Framework of Window of Opportunity u/s 59		
A	<i>Specifics [A]</i>	<i>Monetary [B]</i>	<i>Prosecution [C]</i>	<i>Monetary [D]</i>	<i>Prosecution [E]</i>	<i>[F]</i>
11	where <b>abets</b> or induces in any manner another person to make and deliver an account or statement or declaration relating to tax payable ... which is false and he either known to be false or ..... [u/s 52 r/w/s 51(1)]	Question does not arise			<b>RI</b> for a term $\leq$ 6 months but may extend to seven years and with <b>fine</b> [u/s 53]	<i>Going by the plain reading, RI is in addition to fine</i>
12	where a person convicted of any offence under section 49 to section 53 is again convicted of an offence under any of the said provisions for the second and subsequent offence..... [u/s 58]	May not be relevant where a declaration is made. In other words, declaration is not a conviction			<b>RI</b> for a term $\leq$ 3 years but may extend to ten years and with <b>fine</b> $\leq$ Five Lakh Rupees but may extend to One Crore Rupees [u/s 58]	<b>Not relevant</b> in the present context
13	assessee in/deemed to be in default in making payment of tax and in case of continuing default	Question does not arise			equal to the amount of tax arrears [u/s 44]	Would be dependent on the merits of and on a cases to case basis
14	failure to answer any question, sign any statement, attend or produce books of account etc....	Question does not arise			$\leq$ 50 Thousand Rupees but may extend to 2 Lakh Rupees [u/s 45(2)]	Would be dependent on the merits of and on a cases to case basis

# ONUS to Prove- Section 54

- ▣ BMA presumes that the accused has the required culpable mental state for the offence under the Act. That is, it is presumed that the accused had the intention, motive or knowledge of a fact or belief in, or reason to believe, a fact to commit an act considered an offence under the BMA.
- ▣ The onus to prove non-culpability beyond reasonable doubt is shifted to the accused. Considering that penal consequences are being imposed, it is a cause of concern that legislators have sought to shift the burden of proof on to the accused
- ▣ In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution
- ▣ “Culpable mental state” includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

# Amendment of Prevention of Money Laundering Act, 2002 [section 88 of BMA]

- ▣ In the Prevention of Money Laundering Act, 2002 in the Schedule, in Part C, after entry 3 relating to the offences against property under Chapter XVII of the Indian Penal Code, the following entry shall be inserted, namely:  
“(4) The offence of wilful attempt to evade any tax, penalty or interest referred to in section 51 of the Undisclosed Foreign Income and Assets (Imposition of Tax) Act, 2015”.

**CLARIFICATIONS BY  
CBDT IN CIRCULAR  
NO.13 DATED 6<sup>TH</sup>  
JULY, 2015**

# Clarification regarding the signing of Declaration

*[Refer: FAQ-1 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]  
To be r.w.s. 62 of BMA and compliance u/s Sec 59 of Chapter VI*

- ▣ *If firm has undisclosed foreign assets, can the partner file declaration in respect of such asset?*
- ▣ The declaration can be made by the firm which shall be signed by the person specified in subsection (2) of section 62 of the Act. 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.

# *Other Immunity in respect of declaration admissible?*

*[Refer: FAQ-2 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]*

*To be r.w.s. 62, 67 & 69 of BMA*

▣ *Where a company has undisclosed foreign assets, can it file a declaration under Chapter VI of the Act? If yes, then whether immunity would be granted to Directors of the company?*

▣ **Yes, the company can file a declaration under Chapter VI of the Act.** The Directors of the company shall not be liable for any offence under the Income-tax Act, Wealth-tax Act, FEMA, Companies Act and the Customs Act in respect of declaration made in the name of the company.

▣ Clarification/ Observation / Possible Issue:

It needs to be clarified as to how will the immunity under the BMA for any offence under Companies Act, 2013 be ensured as there is presently no such clarification from the MCA. It may be noted that the BMA and Companies Act, 2013 falls under the different ministries, i.e. Ministry of Finance and Ministry of Corporate Affairs respectively.

The other possible issue could be the interest of the Shareholders and the stakeholders of the company whose interest will be jeopardized in the absence of proper clarification regarding the immunity to the declarant for which they can file the necessary suit to protect their interest in the company.

# *Other Immunity in respect of declaration admissible?*

*[Refer: FAQ-3 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]*

*To be r.w.s. 67 of BMA*

- ▣ *Whether immunity in respect of declaration made under the scheme is provided in respect of Acts other than those mentioned in section 67 of the Act?*
- ▣ Section 67 provides immunity from prosecution under the five Acts viz. the Income-tax Act, Wealth-tax Act, FEMA, Companies Act and the Customs Act. It does not provide immunity from prosecution under any other Act. For example- if the undisclosed asset has been acquired out of the proceeds of sale of protected animals the person will not be eligible for immunity under the Wildlife (Protection) Act, 1972.

# Immunity from the Prevention of Money Laundering Act, 2002

[Refer: FAQ-4 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]

To be r.w.s. 51, 59, 67 of BMA

- *Whether the person making declaration will be provided immunity from Prevention from Money Laundering Act, 2002?*
- The offence under the PMLA arises while laundering money generated from the process or activity connected with the offences specified in the schedule to the PMLA. Therefore, the primary requirement under PMLA is commission of a scheduled offence. With the enactment of the Act, the offence of willful attempt to evade tax under section 51 of the Act has become a scheduled offence under PMLA. However, where a declaration of an asset has been duly made under section 59 of the Act the provisions of section 51 will not be applicable in respect of that asset. Therefore, PMLA will not be applicable in respect of the scheduled offence of willful attempt to evade tax under section 51 of the Act in respect of assets for which declaration is made under section 59 of the Act.
- Observation/ Possible Issue:  
It is to be noted in the above FAQ that this applies only to the extent of ITA, i.e. it provides immunity only for the offences which are scheduled as the offences under the ITA. Any offence which is beyond the purview of the offences covered under the ITA will not form the part of immunity to the declarant. So, as the default doesn't become an offence under ITA because of the immunity provided by the BMA u/s 67, the PMLA won't apply as it only considers the offences scheduled under the Act.

# Capital Gain on Asset Declared under Window

[Refer: FAQ-5 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]

To be read with Rule 3 of BMR

- ▣ *Where an undisclosed foreign asset is declared under Chapter VI of the Act and tax and penalty is paid on its fair market value then will the declarant be liable for capital gains on sale of such asset in the future? If yes, then how will the capital gains in such case be computed?*
- ▣ Yes, the declarant will be liable for capital gains under the Income-tax Act on sale of such asset in future. As per the current provisions of the Income-tax Act, the capital gains is computed by deducting cost of acquisition from the sale price. 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 under Chapter VI of the Act.
- ▣ Observation/ Possible Issue:

It is to be noted here that the indexing in respect of cost of the asset will not be done from the date of acquisition of the asset while computing the capital gain on the sale of that asset. Instead, the indexing will be done from the date of the declaration of that asset to compute the capital gains. This will also change the nature of the asset being sold from the long term to short term and related tax impact.

# Ineligibility from Declaration of Foreign Asset relating to year of notices

*[Refer: FAQ-6 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]*

*To be r.w.s. 71(d) of BMA and compliance u/s Sec 59 of Chapter VI*

- ▣ *Where a notice under section 142/ 143(2)/ 148/ 153A/ 153C of the Income-tax Act has been issued to a person for an assessment year will he be ineligible from voluntary declaration under section 59 of the Act?*
- ▣ The person will only be ineligible from declaration of those foreign assets which have been acquired during the year for which a notice under section 142/ 143(2)/ 148/ 153A/ 153C is issued and the proceeding is pending before the Assessing Officer. He is free to declare other foreign assets which have been acquired during other years for which no notice under above referred sections have been issued.
- ▣ Observation/ Possible Issue:  
It is to be noted that the asset which is not there in the year of the notice under the above mentioned sections, it will become like any other asset which will be eligible to be declared u/s 59 of the BMA.

# Notice issued and served prohibits the Declaration

[Refer: FAQ-7 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]

*To be r.w.s. 71(d) of BMA and compliance u/s Sec 59 of Chapter VI*

□ *As per section 71(d)(i), declaration cannot be made where an undisclosed asset has been acquired during any previous year relevant to an assessment year for which a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued. If the notice has been issued but not served on the declarant then how will he come to know whether the notice has been issued?*

□ The declarant will not be eligible for declaration under Chapter VI of the Act where an undisclosed asset has been acquired during any previous year relevant to any assessment year where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been **issued and served** on the declarant on or before 30<sup>th</sup> day of June, 2015. The declarant is required to file a declaration regarding receipt of any such notice in Form 6.

□ Observation/ Possible Issue:

It may be observed that it has been clarified here that the service of the notice is a must vis-à-vis the ineligibility to declare thereby increasing the scope of the declarant. To cause the declaration invalid, the notice must be served. So, the service of notice is increasing the scope for the declarant.

But, it should also be observed that the point regarding the notice u/s 153A appears to be conflicting with FAQ-10 of the same circular as FAQ says that “The person is not eligible to make a declaration under Chapter VI if a search has been initiated and the time for issuance of notice under section 153A has not expired, even if such notice for the relevant assessment year has not been issued”.

Also, it is conflicting with Section 71(d)(ii) of the BMA overruling the section 71(d)(ii) in respect of Section 153A or 153C increasing the scope for the section 143(2) of the ITA.

# UFA acquired partly during AY pending for assessment and partly during other years not pending for assessment

[Refer: FAQ-8 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]

To be r.w.s. 71(d) of BMA and compliance u/s Sec 59 of Chapter VI

□ *Where an undisclosed foreign asset has been acquired partly during a previous year relevant to the assessment year which is pending for assessment and partly during other years not pending for assessment then whether such asset is eligible for declaration under Chapter VI of the Act?*

□ In the case where proceedings are pending before an Assessing Officer in pursuance of a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act served on or before 30-06-2015, the declarant may declare the undisclosed asset under Chapter VI of the Act. However, while computing the amount of declaration the investment made in the asset during the previous year relevant to the assessment year for which such notice is issued needs to be deducted from the fair market value of the asset for which the person shall provide a computation along with the declaration. Further, such investment which is deducted from the fair market value shall be assessable in the assessment of the relevant assessment year pending under the Income-tax Act and the person shall inform the Assessing Officer the investment made during the relevant year in such asset

Also to clarify, where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act is issued on or after 30-06-2015, the declarant shall be eligible to declare full value of asset even if such asset (or part of such asset) is acquired in the previous year relevant to the assessment year for which such notice is issued

□ Observation/ Possible Issue: This FAQ seems to conflict with FAQ-10 of the same circular and Section 71(d)(ii) of BMA in respect of Section 153A & 153C for the reasons mentioned in FAQ-7. In crux, it is clear that the assets which do not relate to the period in respect of which the notice was issued, can be declared by the assessee. For instance the notice issued was in relation to the AY 2001-2002 to 2006-07, then the asset which belong to the period prior or subsequent to such period of notice can be declared by the assessee.

Also, it may be noted that the date of 30<sup>th</sup> June, 2015 acts as a cut off date, which means any asset for which, even notice is received but after 30<sup>th</sup> June 2015, the declarant can declare all the assets as the notice is received after the cut off date.

# Declaration in case of search and survey

[Refer: FAQ-10 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]  
To be r.w.s. 71 of BMA and compliance u/s Sec 59 of Chapter VI

□ *Can a person against whom a search/ survey operation has been initiated file voluntary declaration under Chapter VI of the Act?*

□ (a) The person is not eligible to make a declaration under Chapter VI if a search has been initiated and the time for issuance of notice under section 153A has not expired, even if such notice for the relevant assessment year has not been issued. In this case, however, the person is eligible to file a declaration in respect of an undisclosed foreign asset acquired in any previous year in relation to an assessment year which is prior to assessment years relevant for the purpose of notice under section 153A.

(b) In case of survey operation the person is barred from making a declaration under Chapter VI in respect of an undisclosed asset acquired in the previous year in which the survey was conducted. The person is, however, eligible to make a declaration in respect of an undisclosed asset acquired in any other previous year.

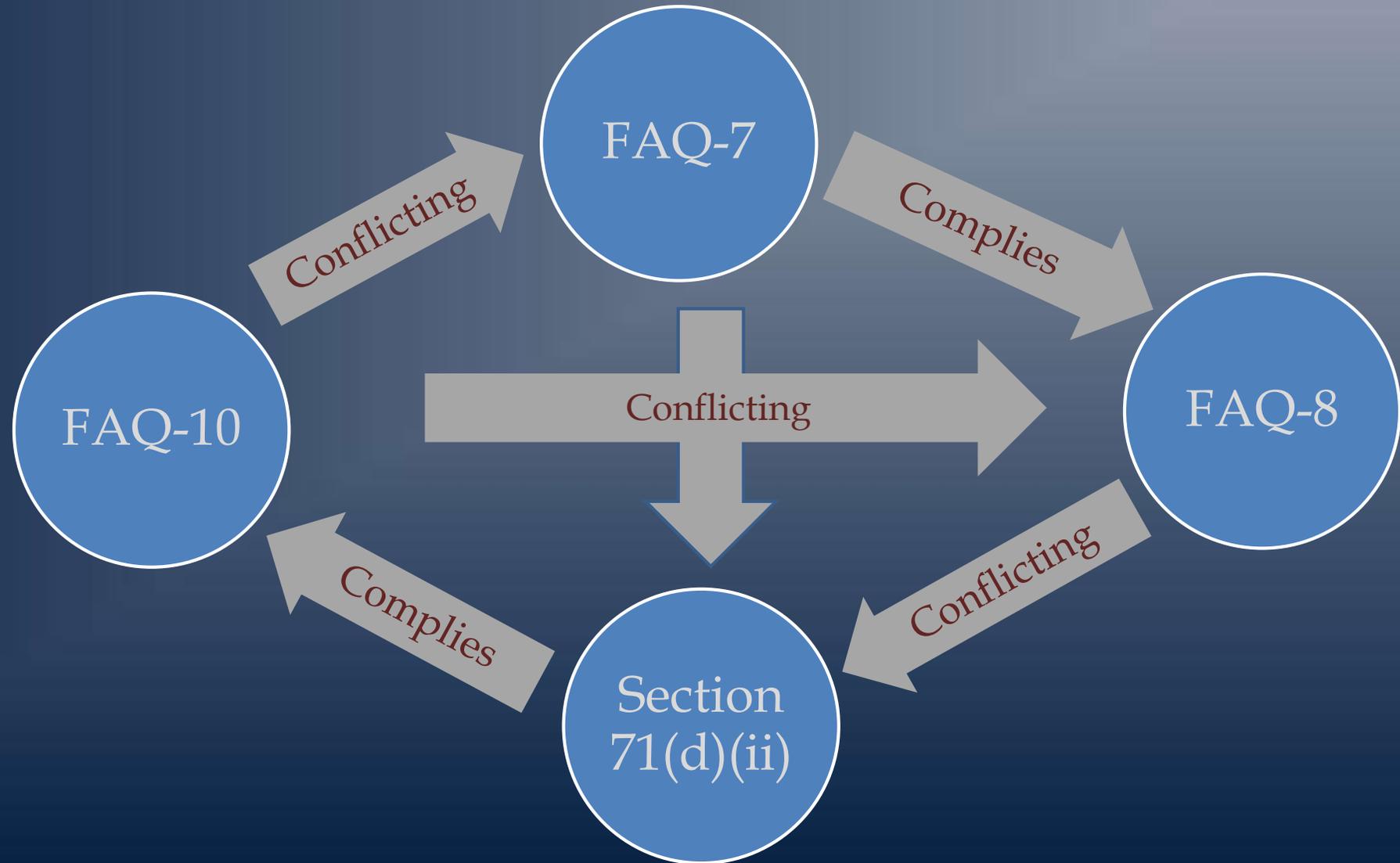
□ Observation/ Possible Issue:

It may be observed that the point regarding the notice u/s 153A appears to be conflicting with FAQ-7 & 8 of the same circular as FAQ says that “The declarant will not be eligible for declaration under Chapter VI of the Act where an undisclosed asset has been acquired during any previous year relevant to any assessment year where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been **issued and served** on the declarant on or before 30<sup>th</sup> day of June, 2015.”

This is conflicting with the above FAQ as the above FAQ limits the scope of declarant regarding the section-153A.

But, unlike FAQ-7 & 8 it complies with Section 71(d)(ii) of the BMA in respect of Section 153A or 153C limiting the scope for the declarant.

# COMBINED READING OF FAQ-7,8,10 AND SEC.-71(d)(ii)



# Assessed to Tax but Appeal pending

[Refer: FAQ-9,11 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]

To be r.w.s. 65, 71 of BMA and compliance u/s Sec 59 of Chapter VI

□ *Can a declaration be made of undisclosed foreign assets which have been assessed to tax and the case is pending before an Appellate Authority?*

□ As per section 65 of the Act, the declarant is not entitled to re-open any assessment or reassessment made under the Income-tax Act. Therefore, he is not entitled to avail the tax compliance in respect of those assets. However, he can voluntarily declare other undisclosed foreign assets which have been acquired or made from income not disclosed and consequently not assessed under the Income-tax Act.

□ *Where a search/ survey operation was conducted and the assessment has been completed but the undisclosed foreign asset was not taxed, then whether such asset can be declared under Chapter VI of the Act?*

□ Yes, such undisclosed asset can be declared under Chapter VI of the Act.

□ Observation/ Possible Issue:

There is a foreign bank a/c as an asset and where as a result of survey/search and/or based on some information with the Department, assessment in respect of that asset has been completed in the AY corresponding to the above information. However, (a) the said asset has been assessed at a lesser value than it was supposed to be and/ or the said asset was assessed for wrong year and/ or

(b) the said asset has been assessed in the AY determined corresponding to the above information, though the asset existed prior to that AY.

Whether it would be in order if the assessee made the declaration u/s 59 in respect of the said asset (vis-à-vis the year in which the same came into existence) and its FMV determined in accordance with the manner prescribed under Rule 3 of BMR,2015.

# Declaration in case of prior receipt of information under DTAA

[Refer: FAQ-12, 15 & 16 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]

To be r.w.s. 71 of BMA and compliance u/s Sec 59 of Chapter VI

- *If a declaration of undisclosed foreign asset is made under Chapter VI of the Act and the same was found ineligible due to the reason that Government had prior information under DTAA then will the person be liable for consequences under the Act?*
- In respect of such assets which have been duly declared in good faith under the tax compliance but not found eligible, he shall not be hit by section 72(c) of the Act and no action lies in respect of such assets under the Act. However, such information may be used for the purpose of the Income-tax Act.
- *In respect of the undisclosed foreign assets referred to in answer to question above, where the proceedings under the Income-tax Act are initiated, can the options of settlement commission etc. under the Income-tax Act be availed in respect of such assets?*
- All the provisions of the Income-tax Act shall be applicable in respect of those assets.
- *Whether a person is barred from voluntary declaration under Chapter VI of the Act if any information has been received by the Government under DTAA?*
- As per section 71(d)(iii), the person cannot make a declaration of an undisclosed foreign asset where the Central Government has received an information in respect of such asset under the DTAA. The person is entitled for voluntary declaration in respect of other undisclosed foreign assets for which no information has been received.
- Observation/ Possible Issue:  
For better understanding, these FAQ should be read with the point 7 of Circular 12 dated 2nd July 2015 which states that “The declarant shall not be liable for any consequences under the 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 Income-tax Act.”

# *Intimation by CG about the receipt of Information u/s 90 or 90A*

*[Refer: FAQ-13 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]*

*To be r.w.s. 71 of BMA and compliance u/s Sec 59 of Chapter VI*

□ *How would the person know that the Government has received information of an undisclosed foreign asset held by him which will make the declaration ineligible?*

□ The person may not know that the Government has information about undisclosed foreign asset held by him if the same has not been communicated to him in any enquiry/proceeding under the Income tax Act. After the person has filed a declaration, which is to be filed latest by 30<sup>th</sup> September, 2015, he will be issued intimation by the Principal Commissioner/Commissioner by 31<sup>st</sup> October, 2015, whether any information has been received by the Government and consequently whether he is eligible to make the payment on the declaration made. If no information has been received up to 30<sup>th</sup> June, 2015 by the Government in respect of such asset the person will be allowed a time upto 31<sup>st</sup> December, 2015 for payment of tax and penalty in respect of the declared asset.

There may be a case where person makes declaration in respect of 5 assets whereas the Government has information about only 1 asset. In such situation the person will be eligible to declare the balance 4 assets under Chapter VI of the Act. In such case the declarant, on receipt of intimation by the Principal Commissioner/Commissioner, shall revise the declaration made within 15 days of such receipt of intimation to exclude the asset which is not eligible for declaration. Tax and penalty on the eligible assets under the Act shall be payable in respect of the revised declaration by 31<sup>st</sup> of December, 2015. respect of the ineligible assets provisions of the Income-tax Act shall apply.

# Impact of FATCA and AEOI if no declaration made of undisclosed foreign assets acquired prior to the Act

[Refer: FAQ-14 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]

To be read with Issues related to FATCA and compliance under Chapter VI

## *Consequences if no declaration under Chapter VI of the Act is made in respect of undisclosed foreign assets acquired prior to the commencement of the Act?*

- ▣ As per section 72(c), where any asset has been acquired prior to the commencement of the Act and no declaration under Chapter VI of the Act is made then such asset shall be deemed to have been acquired in the year in which it comes to the notice of the Assessing Officer and the provisions of the Act shall apply accordingly.

India is expected to start receiving information through Automatic Exchange of Information (AEOI) route under FATCA from USA later in the year 2015. Further, under the multilateral agreement India will start receiving information from other countries under AEOI route from 2017 onwards. As at 18<sup>th</sup> March 2015, 58 jurisdictions (including India) have committed to share information under AEOI by 2017 and 36 jurisdictions have committed to share by 2018, including jurisdictions which have beneficial tax regime

# Impact of FATCA and AEOI if no declaration made of undisclosed foreign assets acquired prior to the Act

*[Refer: FAQ-14 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]*

*To be read with Issues related to FATCA and compliance under Chapter VI*

The multilateral agreement is expected to cover all the countries in the near future. The information under the AEOI will include information of controlling persons (beneficial owners) of the asset. The possibility of discovery of an undisclosed asset may arise at any time in the future; say for example, information of an immovable property can be unearthed if any utility bills/property tax or even gardener's/caretaker's salary has been paid through an existing or closed bank account. Therefore, if any information of an undisclosed foreign asset acquired earlier, say in the year 1975, for \$ 100,000 comes to the notice of an Assessing Officer later, say in the year 2020, when its value becomes, say, \$ 50 Lacs, the liability under the Act amounting to 120 percent of the fair market value of the asset on the valuation date may arise in the year 2020, besides prosecution and other consequences. In this case if the valuation date is in the year 2020 the amount of tax and penalty under the Act will be \$ 60 Lacs.

# Foreign asset reported in Schedule FA of ITR

*[Refer: FAQ-17 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]*

*To be read with compliance under Chapter VI*

- ▣ *A person has some undisclosed foreign assets. If he declares those assets in the Income-tax Return for assessment year 2015-16 or say 2014-15 (in belated return) then should he need to declare those assets in the voluntary tax compliance under Chapter VI of the Act?*
- ▣ As per the Act, the undisclosed foreign asset means an asset which is unaccounted/ the source of investment in such asset is not fully explainable. Since an asset reported in Schedule 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. The foreign asset is liable to be taxed under the Act (whether reported in the return or not) if the source of investment in such asset is unexplained. Therefore, declaration should be made under Chapter VI of the Act in respect of all those foreign assets which are unaccounted/ the source of investment in such asset is not fully explainable.

# Foreign asset acquisition fully explained but not Reported in Schedule FA of ITR

[Refer: FAQ-18 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]

To be read with Issues related ITR Schedule FA and compliance under Chapter VI

- ▣ *A person holds certain foreign assets which are fully explained and acquired out of tax paid income. However, he has not reported these assets in Schedule FA of the Income-tax Return in the past. Should he declare such assets under Chapter VI of the Act?*
- ▣ Since, these assets are fully explained they are not treated as undisclosed foreign assets and should not be declared under Chapter VI of the Act. However, if these assets are not reported in Schedule FA of the Income-tax Return for assessment year 2016-17 (relating to previous year 2015-16) or any subsequent assessment year by a person, being a resident (other than not ordinarily resident), then he shall be liable for penalty of Rs. 10 lakhs under section 43 of the Act. The penalty is, however, not applicable in respect of an asset being one or more foreign bank accounts having an aggregate balance not exceeding an amount equivalent to Rs. 5 lakhs at any time during the previous year.
- ▣ Observation/ Possible Issue:  
It needs to be observed that the penalty should be levied under the ITA as it is a default of failing to file the return under the ITA. Since, the tax is already paid, it should be observed that the Section 43 of BMA is overruling the ITA provisions (section 271B) of the penalty

# Declaration in case of Foreign Bank Accounts

[Refer: FAQ-19 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]

*To be r.w.s. 3(1)(e) of BMR*

- ▣ *A person has a foreign bank account in which undisclosed income has been deposited over several years. He has spent the money in the account over these years and now it has a balance of only \$500. Does he need to pay tax on this \$500 under the declaration?*
- ▣ Section 59 of the Act provides for declaration of an undisclosed asset and not income. In this case the Bank account is an undisclosed asset which may be declared. Tax on undisclosed asset is required to be paid on its fair market value. In case of a bank account the fair market value is the sum of all the deposits made in the account computed in accordance with Rule 3(1)(e). Therefore, tax and penalty needs to be paid on such fair market value and not on the balance as on date.
- ▣ Observation/ Possible Issue:

Where the details of deposits if any made from time to time is not available with the person concerned or the bankers have refused in writing to give old bank statement(s), how would the above-mentioned sum of all the deposits made in the account determined/arrived at? In other words, what is the remedy available to a person desirous of making a declaration under section 59?

# Declaration in case of Foreign Bank Accounts

*[Refer: FAQ-20 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]*

*To be r.w.s. 3(1)(e) of BMR*

- ▣ *A person held a foreign bank account for a limited period between 1994-95 and 1997-98 which was unexplained. Since such account was closed in 1997-98 does he need to declare the same under Chapter VI of the Act?*
- ▣ Section 59 of the Act provides that the declaration may be made of any undisclosed foreign asset which has been acquired from income which has not been charged to tax under the Income-tax Act. Since the investment in the bank account was unexplained and was from untaxed income the same may be declared under Chapter VI of the Act. The consequences of non-declaration may arise under the Act at any time in the future when the information of such account comes to the notice of the Assessing Officer.

# Valuation in case of Foreign House Property

[Refer: FAQ-21 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]

To be r.w.s. 3(1)(d) & 3(2) of BMR

- ▣ *A person inherited a house property in 2003-04 from his father who is no more. Such property was acquired from unexplained sources of investment. The property was sold by the person in 2011-12. Does he need to declare such property under Chapter VI of the Act and if yes then, what will be the fair market value of such property for the purpose of declaration?*
- ▣ Since the property was from unexplained sources of investment the same may be declared under Chapter VI of the Act. However, the declaration in this case needs be made by the person who inherited the property in the capacity of legal representative of his father. The fair market value of the property in his case shall be higher of its cost of acquisition and the sale price as per Rule 3(2) of the Rules.

# Bank deposit from Sale of old Asset

[Refer: FAQ-22 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]

To be r.w.s. 3(1)(e) & 3(3) of BMR and Form-6

- *A person acquired a house property in a foreign country during the year 2000-01 from unexplained sources of income. The property was sold in 2007-08 and the proceeds were deposited in a foreign bank account. Does he need to declare both the assets under Chapter VI of the Act and pay tax on both the assets?*
- The declaration may be made in respect of both the house property and the bank account at their fair market value. The fair market value of the house property shall be higher of its cost and the sale price, less amount deposited in bank account. If the cost price of the house property is higher the declarant will be required to pay tax and penalty on (cost price – sale price) of the house. If the sale price of the house property is higher the fair market value of the house property shall be nil as full amount was deposited in the bank account. The fair market value of the bank account shall be as determined under Rule 3(1)(e) and tax and penalty shall be paid on this amount. (Please also refer to the illustration under Rule 3(3) for computation of fair market value.)

Further, it is advisable to declare all the undisclosed foreign assets even if the fair market value as computed in accordance with Rule 3 comes to nil. This may avoid initiation of any inquiry under the Act in the future in case such asset comes to the notice of the Assessing Officer.

- Observation/ Possible Issue:

It should be observed that there is no column option in Form-6 to declare the assets in such a manner which could represent the sold asset and the bank account value separately in such a way that the higher of the two could be chosen for tax computation. This form might be amended in future but for now, it doesn't provide for any such disclosure being made.

# Impact of Residency on Declaration to be made

[Refer: FAQ-23 & 24 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]

To be r.w.s. 6 of the ITA and S. 2(10) of BMA

- ❑ *A person is a non-resident. However, he was a resident of India earlier and had acquired foreign assets out of income chargeable to tax in India which was not declared in the return of income or no return was filed in respect of that income. Can that person file a declaration under Chapter VI of the Act?*
- ❑ Section 59 provides that a declaration may be made by any person of an undisclosed foreign asset acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to assessment year 2016-17. Since the person was a resident in the year in which he had acquired foreign assets (which were undisclosed) out of income chargeable to tax in India, he is eligible to file a declaration under section 59 in respect of those assets under Chapter VI of the Act.
- ❑ *A person is a resident now. However, he was a non-resident earlier when he had acquired foreign assets (which he continues to hold now) out of income which was not chargeable to tax in India. Does the person need to file a declaration in respect of those assets under Chapter VI of the Act?*
- ❑ No. Those assets do not fall under the definition of undisclosed assets under the Act.
- ❑ Observation/ Possible Issue:  
The clause(b) column 5 of Form-6 requires the declarant to specify the residential status. The observation here lies in the point that if the declarant needs to specify the residential status at the time of Declaration or the residential status for the period relating to which the disclosure of the asset needs to be made.

# *Other Immunity in respect of declaration admissible?*

*[Refer: FAQ-25 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]  
To be r.w.s. 67 of BMA*

- ▣ *If a person has 3 undisclosed foreign assets and declares only 2 of those under Chapter VI of the Act, then will he get immunity from the Act in respect of the 2 assets declared?*
- ▣ It is expected that one should declare all his undisclosed foreign assets. However, in such a case the person will get immunity under the provisions of the Act in respect of the two assets declared under Chapter VI of the Act and no immunity will be available in respect of the third asset which is not declared.

# Credit of Foreign Taxes Paid

[Refer: FAQ-26 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]

To be r.w.s. 3(1)(e) of BMR and Sec 73 of BMA

- *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. Does he need to disclose such income under Chapter VI of the Act? Will he get credit of foreign tax paid?*
- Declaration under Chapter VI is to be made of an undisclosed foreign asset. In this case, the person being a resident of India, the foreign bank account needs to be declared under Chapter VI as it is an undisclosed asset and acquired from income chargeable to tax in India. The fair market value of the bank account shall be determined as per Rule 3(1)(e). No credit of foreign taxes paid shall be allowable in India as section 84 of the Act does not provide for application of sections 90(1)(a)/90(1)(b)/ 90A(1)(a)/ 90A(1)(b) of the Income-tax Act (relating to credit of foreign tax paid) to the Act. Further, section 73 of the Act does not allow agreement with foreign country for the purpose of granting relief in respect of tax chargeable under the Act.
- Observation/ Possible Issue:  
It should be noted that the definition of the beneficial owner and beneficiary has been given as per Explanations 4 and 5 inserted after Explanation 3 to sub-section (1) of section 139 of ITA by the Finance Act, 2015, w.e.f. 1-4-2016. So being such a case, the beneficial owner has been defined currently. Thus, in the years where the beneficial owner was not defined under ITA, whether the credit of the taxes paid would be allowed or not.  
It may also be observed that there is less clarity about the tax treatment for the years when the definition of the beneficial owner was not introduced and would the person be considered beneficial owner with the retrospective effect.

# *Foreign assets acquired from money earned through corruption*

*[Refer: FAQ-27 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]  
To be r.w.s. 71(b) of BMA*

- ▣ *Can a person declare under Chapter VI his undisclosed foreign assets which have been acquired from money earned through corruption?*
- ▣ No. As per section 71(b) of the Act, Chapter VI shall not apply, inter-alia, in relation to prosecution of any offence punishable under the Prevention of Corruption Act, 1988. Therefore, declaration of such asset cannot be made under Chapter VI. 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 section 68 of the Act. If a declaration is held as void, the provisions of the Act shall apply in respect of such asset as they apply in relation to any other undisclosed foreign asset.

# UFA acquired partly out of undisclosed income chargeable to tax and partly out of disclosed income/exempt income

*[Refer: FAQ-28 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]*

*To be r.w.s. of BMA*

- ▣ *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) then whether that foreign asset will be treated as undisclosed? Whether declaration under Chapter VI needs to be made in respect of such asset? If yes, what amount should be disclosed?*
- ▣ As per section 5 of the Act, in computing the value of an undisclosed foreign asset any income which has been assessed to tax under the Income-tax Act from which that asset is acquired shall be reduced from the value of the undisclosed foreign asset. Only part of the investment in such foreign asset is undisclosed (unexplained) hence declaration of such foreign asset may be made under Chapter VI of the Act. The amount of declaration shall be the fair market value of such asset as on 1<sup>st</sup> July, 2015 as reduced by the amount computed in accordance with section 5 of the Act.

# Ownership of Asset and Enquiry by CIT in respect of declaration

*[Refer: FAQ-29 & 30 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]*

- *Whether for the purpose of declaration, the undisclosed foreign asset should be held by the declarant on the date of declaration?*
- No, there is no such requirement. The declaration may be made if the foreign asset was acquired out of undisclosed income even if the same has been disposed off and is not held by the declarant on the date of declaration.
- *Whether at the time of declaration under Chapter VI, will the Principal Commissioner/Commissioner do any enquiry in respect of the declaration made?*
- After the declaration is made the Principal Commissioner/ Commissioner will enquire whether any information has been received by the competent authority in respect of the asset declared. Apart from this no other enquiry will be conducted by him at the time of declaration.
- Observation / Possible Issue:  
It may be noted that the FAQs have clarified that no investigation or enquiry will be made by the Department in respect of the asset declared under the BMA until the asset has been acquired by corruption etc. or and fraud is being intended by the assessee.

# Declaration by Beneficial Owner

[Refer: FAQ-31 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]

To be r.w.s. 2(10) of BMA and issues of beneficial owner and financial interest

- ▣ **Is a beneficiary in a foreign asset eligible for declaration under section 59 of the Act?**
- ▣ As far as ownership is concerned, as per section 2(11) of the Act “undisclosed asset located outside India” means an asset held by the person in his name or in respect of which he is a beneficial owner. The definition of “beneficial owner” and “beneficiary” is provided in Explanation 4 and Explanation 5 to section 139(1) of the Income-tax Act, respectively (which is at variance with the determination of beneficial ownership provided under Rule 9(3) of the PMLA (Maintenance of Records) Rules, 2005). Therefore, for the purpose of the Act “beneficial owner” in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person. Further, “beneficiary” in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary. Therefore, as per the Act the beneficial owner is eligible for declaration under section 59 of the Act.
- ▣ There may be a case where a person is listed as a beneficiary in a foreign asset, however, if he has provided consideration for the asset, directly or indirectly, he will be covered under the definition of beneficial owner for the purposes of the Act.

# Impact of Residency on Declaration to be made

[Refer: FAQ-32 of F. No. 142/18/2015-TPL Circular No. 13 of 2015]

To be r.w.s. 6 of the ITA and S. 2(10) of BMA

- ▣ *A person was employed in a foreign country where he acquired or made an asset out of income earned in that country. Whether such asset is required to be declared under Chapter VI of the Act?*
- ▣ If the person, while he was a non-resident in India, acquired or made a foreign asset out of income which is not chargeable to tax in India, such asset shall not be an undisclosed asset under the Act. However, if income was accrued or received in India while he was 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 undisclosed foreign asset and the person may declare such asset under Chapter VI of the Act.

**THANK YOU...!!!**

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