US-Stamped IT Pros Need to Declare All

Anyone who's worked in the US and opened a 401k account may need to inform the Indian tax authorities or face harsh penalties under the black money law that came into force on July 1. Thousands of India's IT professionals and others who've worked overseas will potentially have to declare such investment plans as these will be considered foreign assets. The law prescribes stiff penalties for non-disclosure even if the asset is from income that's accounted for.

“There are plans where the subscriber has certain control in terms of investments -those would definitely need to be disclosed,“ said Kuldip Kumar, partner at PwC India. Tax practitioners said they have been swamped with queries from professionals who worked overseas to clearly understand the kind of disclosures required to be made.

A number of queries centre around investments made in pension and endowment plans that may yield some benefit to subscribers a few years down the line.

Plans where contributions vest immediately and subscribers are certain to get their money will definitely need to be disclosed. The black money law covers a direct holder of an asset as well as a beneficial owner. The latter is defined as 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.

Any future benefit plans would, therefore, be covered under this definition.

“A plan such as 401k may need to be disclosed. But one would need to analyse the various plans and the vesting criterion under it closely. It should not be merely a contingent right,“ said Divya Baweja, partner at Deloitte Haskins & Sells LLP. “A view may be adopted that if you have an enforceable vested right, it is an asset and needs to be disclosed. Some clarity may be required on this.“

HEFTY PENALTY AND JAIL

While the source of the investment can be explained, not reporting it risks a penalty of up to Rs 10 lakh under the new black money law. Violations could also lead to jail time.

“The core of the black money law is that if a person has an offshore asset (say a bank account or subscription to such plans) and that is not reported in India even after moving back to India, such foreign asset will not be treated as `undisclosed asset' as long as the source of that asset can be explained,“ said Sanjay Sanghvi, partner at Khaitan & Co. “Nevertheless, he will have to report such foreign asset in his Indian income-tax return filing.“ Many Indians who work in the US invest in 401k savings plans or an Individual Retirement Account (IRA) but don't close these when they return home because of the taxes involved. India consumes most of the US H-1B visa quota with about 1 lakh having been issued to citizens of the country in 2014.

“The challenge is in relation to social security and other pension plans run by the foreign governments, where contributions are mandatory under the law but benefit is not linked to the individual contributions,“ said PwC's Kumar.“Individuals get the benefits which are defined under the laws of those respective countries. It may seem disclosure of such scheme may not be needed under Schedule FA (foreign assets), but this needs to be clarified in order to avoid any possible questioning by the authorities at a later stage."

FOREIGNERS WORKING IN INDIA EXEMPT

Foreigners working in India, however, will not need to disclose these details as the government has amended the new return forms to exempt them. In 2012-13, the government made it incumbent on expatriates who qualified as resident and ordinary residents to mandatorily file a return of their assets in a foreign country. This requirement has now been scrapped.

The black money law, part of the Narendra Modi government's crackdown on black money, provides one last opportunity for people to declare overseas assets under a compliance window that closes on September 30. All those who have a foreign asset can make use of this by paying 30% tax and 30% penalty, and avoid prosecution.

After the closure of the compliance window, tax authorities will be able to initiate action under the new law on the basis of information from other jurisdictions. India has begun to receive information from tax havens on assets held by its citizens. It will start sharing similar data with the US later this year with more countries being added to the list in the next few years.

Undisclosed foreign income or assets will face a tax of 30% plus 90% penalty besides prosecution. The law provides for rigorous imprisonment of up to 10 years.

(Economic Times)