



FACT SHEET: THE UNDISCLOSED FOREIGN INCOME & ASSETS (IMPOSITION OF TAX), BILL 2015.

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Abstract

The Finance Minister on 20 March, 2015 introduced in the Parliament a comprehensive new law on Black Money slashed away abroad. The new Bill is known as “The Undisclosed Foreign Income & Assets (Imposition of Tax) Bill, 2015. The Bill provides for separate taxation of any undisclosed income in relation to foreign income and assets. Such income will henceforth not be taxed under the Income-tax Act but under the stringent provisions of the proposed new legislation. The government hopes these steps will help in countering the constraints faced by it given the secrecy clauses in various information exchange and double taxation avoidance agreements that India has with other countries. India has been in talks with Switzerland unsuccessfully for the past few years to get information on bank accounts held in Swiss banks by Indians. As per the new bill, non-filing of returns or filing of returns with inadequate disclosure of foreign assets will be liable for prosecution, with rigorous imprisonment. In this article an attempt has been made to bring the salient features of this new Bill so that all those persons who are holding foreign income and assets can take advantage of the provisions contained in this Bill.

Key Words: *Undisclosed Foreign Income And Assets, Non-Disclosure, Penalty, Prosecution.*

INTRODUCTION

The Finance Minister of India (FM) presented the Union Budget for the fiscal year 2015-16 on February 28, 2015. During his budget speech, Finance Minister Arun Jaitley announced the government’s intention to bring in a new law to deal with black money stashed abroad, along with strengthening the Benami Transactions (Prohibition) Bill to check domestic black money and enable confiscation of so-called *benami* property—where a person is a beneficial owner without having his or her name mentioned anywhere. The proposed legislation will provide a further push to the efforts undertaken so far to identify and seize black money hoarded abroad, “With indications that the government is likely to join the multilateral competent authority agreement on automatic exchange of financial account information and implementation of Foreign Account Tax Compliance Act, the efforts to identify funds stashed abroad will receive considerable fillip,” he said. As promised by the Finance Minister, the Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 (hereinafter the ‘Bill’) was introduced in Parliament on March 20, 2015. The Bill provides for separate taxation of any undisclosed income in relation to foreign income and assets. Such income will henceforth not be taxed under the Income-tax Act but under the stringent provisions of the proposed new legislation.

SCOPE

The Undisclosed Foreign Income and Assets (Imposition of Tax) Act, 2015 is applicable to every assessee of the whole of India with effect from 1st day of April 2016. 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;

- I. The provisions will apply to all persons resident in India. Section 2(31) of Income-tax Act, 1961 states that person includes:
- (i) an individual
 - (ii) a Hindu undivided family
 - (iii) a company
 - (iv) a firm



- (v) an association of persons or a body of individuals, whether incorporated or not
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses

A person is said to be a Resident and Ordinary Resident if the following conditions are fulfilled:

- a) Stayed in India for 182 days or more in the relevant year or stayed for 60 days or more in the relevant year and 365 days or more in the preceding previous years.
- b) If a person is non-resident in 9 out of the 10 preceding previous previous year or been in India for 729 days or less during the preceding 7 years.

TAX RATE

According to section 3 (1) of the draft bill every assessee for every assessment year have to pay a tax in respect of his total undisclosed foreign income and asset of the previous year at the rate of thirty per cent 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. No exemption or deduction or set off of any carried forward losses which may be admissible under the existing Income-tax Act, 1961, shall be allowed.

THE UNDISCLOSED FOREIGN INCOME AND ASSETS

Subsection (11) defines “**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;

Subsection (12) defines “**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; Thus, the assets include even those assets where the assessee is beneficial owner and also the income arising from the assets where the assessee has beneficial interest.

Giving an illustration on how the tax would be charged, 'The Undisclosed Foreign Income and Assets (Imposition of Tax) Bill 2015', which seeks to curb the black money menace, says that the tax liability on an overseas property would be computed on the basis of its current market price and not the price at which it was acquired.

"A house property located outside India was acquired by an assessee in the previous year 2009-10 for Rs 50 lakh. Out of the investment of Rs 50 lakh, Rs 20 lakh 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 Rs one crore, the amount chargeable to tax shall be... Rs 60 lakh," said the illustration appended to the Chapter on Basis of Charging Tax.

The calculation takes into account that tax assessment was made on an amount of Rs 20 lakh after purchase of the property, meaning a non-disclosure of assets worth about Rs 30 lakh at that time. Since the the total value of the property has doubled to Rs 1 crore, in the same ratio the quantum of undisclosed asset also doubles from Rs 30 lakh to Rs 60 lakh.

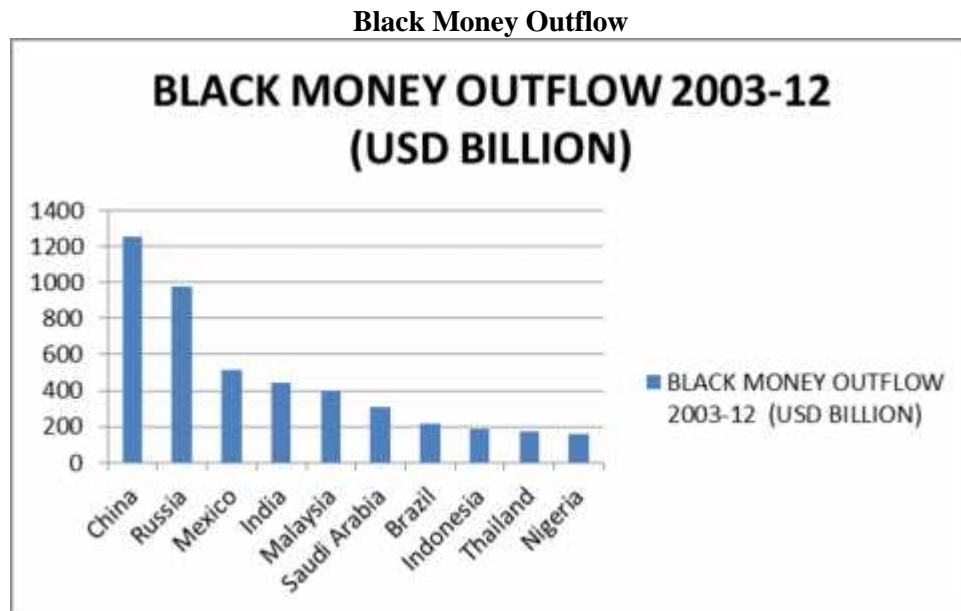
DISCLOSURE IN THE INCOME TAX RETURN

It may be noted that most of the Income-tax Return forms now require that tax payer to mention details of Foreign Assets in the Schedule FA. This schedule requires the tax payer to fill up details of the following Foreign

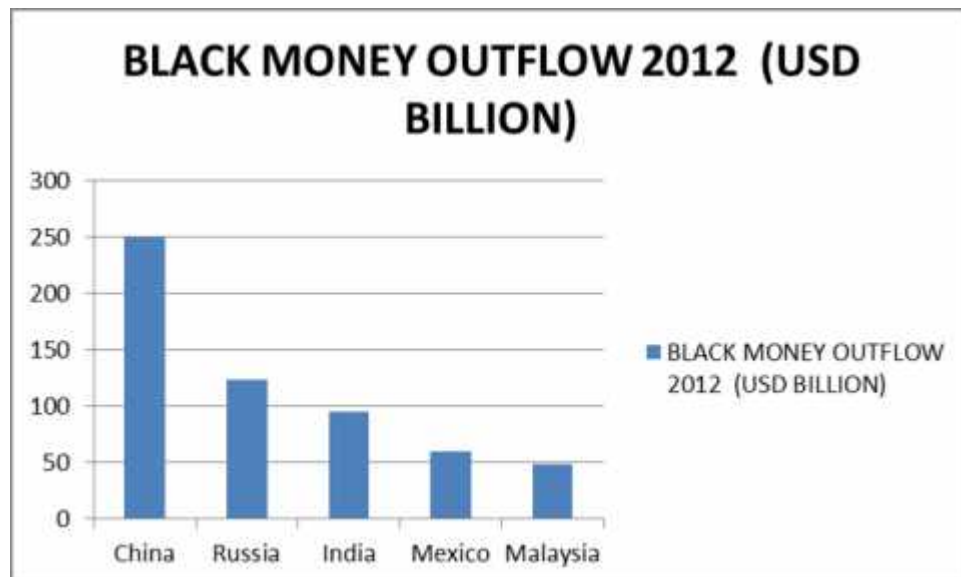


Assets:

- a) Details of Foreign Bank Account
- b) Details of Financial Interest in any account
- c) Details of Immovable Property
Details of any other Asset in the nature of investment
- d) Details of the accounts in which the tax payer is having signing authority
- e) Details of trusts created under the laws of a country outside India in which the assessee is a trustee, beneficiary or settlor.



Source: GFI 2014 Figures rounded off.



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From the above charts it was inferred that India stood fourth place in black monay outflow during the period 2003-12. During the year 2012 china and India stood in first and third place respectively in black money outflow.

PENALTY AND PROSECUTION

Penalty for Non-Disclosure: The penalty for non-disclosure of income or an asset located outside India will be equal to three times the amount of tax payable thereon, i.e., 90 percent of the undisclosed income or the value of the undisclosed asset. This is in addition to tax payable at 30%.

If a person, who is required to furnish a return of his income for any previous year

- i. held any asset (including financial interest in any entity) located outside India as a beneficial owner or otherwise; or
- ii. was a beneficiary of any asset (including financial interest in any entity) located outside India; or
- iii. had any income from a source located outside India, and fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten lakh rupees:

Penalty for Tax evasion

If a person wilfully attempts in any manner whatsoever to evade the payment of any tax he shall, be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

Prosecution for wilful fails to furnish return

If a person, who at any time during the previous year, held any asset located outside India as a beneficial owner or otherwise, or was a beneficiary of such asset or had income from a source outside India and wilfully fails to furnish in due time the return of income which he is required to furnish he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine:

Prosecution for False information

If a person, makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

Opportunity

The Bill provides for a one-time compliance opportunity for a limited period to persons who have undisclosed foreign assets that to date have not been disclosed for income tax purposes. Such persons may file a declaration before the specified tax authority within a specified period, followed by payment of tax at the rate of 30% and an equal amount by way of penalty. Such persons will not be prosecuted under the stringent provisions of the proposed legislation. This provision is not an amnesty scheme as no immunity from penalties is being offered. It is merely an opportunity for persons to confess and ensure compliance before the stringent provisions of the new legislation come into force. The government will notify the duration of the compliance window after the bill is passed by Parliament.

Appeal

Any person, – (a) objecting to the amount of tax on undisclosed foreign income and asset for which he is assessed by the Assessing Officer; may appeal to the Commissioner (Appeals).within a period of thirty days

- i. from the date of service of the notice of demand relating to the assessment or penalty, or



- ii. the date on which the intimation of the order sought to be appealed against is served in any other case.

The Commissioner (Appeals) shall hear and determine the appeal and, subject to the provisions of this Act, pass such orders as he thinks fit. In disposing of an appeal, the Commissioner (Appeals) shall have the following powers, namely:—

- a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;
- b) in an appeal against an order imposing a penalty, he may confirm or cancel such order;
- c) in any other case, he may determine the issues arising in the appeal and pass such orders thereon, as he thinks fit.

Any assessee aggrieved by an order passed by the Commissioner (Appeals) may appeal to the Appellate Tribunal against such order. The appeal shall be filed within a period of sixty days from the date on which the order sought to be appealed against is communicated to the assessee. An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal. An appeal filed before the High Court shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges. An appeal shall lie to the Supreme Court from any judgment of the High Court delivered which the High Court certifies to be a fit case for appeal to the Supreme Court.

No Liability for Small Assessee

To protect persons holding foreign accounts with minor balances which may not have been reported out of oversight or ignorance, it has been provided that failure to report bank accounts with a maximum balance of up to Rs.5 lakh at any time during the year will not entail penalty or prosecution.

CONCLUSION

Returning undisclosed money from overseas was one of the key election promises of this new government. This is an important step towards that goal and the government has already introduced this Bill in the lower house of the Parliament for discussion. Once the Bill is passed by both houses of the Parliament it will be then sent to the Honourable President of India for his assent before it becomes law.

While the intention behind the law is good, and this is a good beginning, the law needs to be further refined to build in sufficient safeguards to prevent misuse and harassment by tax authorities in legitimate cases. Also, a big part of black money is in India itself. Besides the requirement to quote the Permanent Account Number for purchases above Rs.1 lakh, no other initiatives seem to be planned on the domestic front against black money. Would that happen only once there is a direction of the Supreme Court, as was the case in respect of foreign black money?

REFERENCE

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