

# TransPrice Times

## Clarification on 'Black Money Act' and recent case laws and news

Edition: 1<sup>st</sup> – 15<sup>th</sup> September 2015



**Quanter**  
Global

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as 'the Act') has introduced a tax compliance provision under Chapter VI of the Act. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 (hereinafter referred to as 'the Rules') have been notified.

**In this regard, circular No. 13 of 2015 dated 6th July, 2015 issued by the Central Board of Direct Taxed ('CBDT') provided clarifications to 32 queries.** Subsequently, **CBDT issues second set of clarifications** on compliance window under the Act.

Since these FAQ's are comprehensive, we summarise the same below for quick reference.

### ***Declaration of Foreign Bank Account***

- 1) Where non-resident person receiving income becomes resident and deposits the same in foreign bank account, **the declaration of Foreign Bank account** shall be made under tax compliance from the year in which he becomes resident and **value of such account** shall be the sums of credit made to the account from fiscal year in which he becomes resident
- 2) Where person has Foreign Bank A/c in joint names then the **declaration shall be made by both the persons** in respect of funds contributed by them in the bank account
- 3) For the purpose of valuation of foreign bank account for the period for which statement is not available, the person shall compute the value of such bank account **on estimate basis** for that period. The documents to be furnish are **certificate of bank or any other evidence to the effect that details are not available or obtainable from bank.**
- 4) In cases where it is found that despite of having statement of foreign bank account, the resident has made declaration on estimate basis and the value as declared is lower than value as per bank account, then it shall amount to **misrepresentation of facts.**

### ***Declaration of Undisclosed assets***

- 1) Where the Undisclosed foreign assets are acquired from income not chargeable to tax in India **then the assets shall not be required to be declared under Chapter VI of the Act.**
- 2) Where person being non-resident was receiving income from **accretion to pension account** for the fiscal period during which he was employed in foreign country and thereafter becomes resident **the declaration of pension account** shall be made under tax compliance and **value of such account** shall be accretion made to the account from the year in which he becomes resident. **Further details of such account are required to be reported in Schedule of Fixed Assets of return of income.**
- 3) Person eligible to make declaration: **settlor in capacity of beneficial owner or alternatively the trustee of trust holding assests on behalf of beneficiary** in case where private trust was created outside India by settlor out of undisclosed income chargeable to tax in India.

### *Declaration of undisclosed Brokerage account*

Where a person holds undisclosed brokerage account in foreign country which holds within itself shares, mutual funds, cash etc. the declaration shall be made **of different assets with different valuation as the Rules read with Act provides for differential valuation.**

### *Offences and Penalties*

Where partners of partnership firm files declaration of undisclosed assets, then the Partners of partnership firms **shall not be liable for any offence** under Income-tax Act, Wealth-tax Act, FEMA, Companies Act and the Customs Act in respect of declaration made in the name of Partnership firm.

In case where a public limited company makes disclosure under Chapter VI of the Act then the Act **does not provide immunity** against offence punishable under the SEBI Act / Regulations or under IPC to the Directors of the company.

### *Coverage of Miscellaneous Points for Clarifications*

- 1) The information in respect of declaration made under Chapter VI of the Act **is confidential** as in the case of return of income filed by taxpayer.
- 2) With respect to undisclosed foreign assets declared under Chapter VI of the Act, it is required to show such assets in books of account and if the concerned person is not required to maintain books of account then he shall maintain record of the same.
- 3) It is **not mandatory to file valuation report of the undisclosed foreign assets along with declaration** under chapter VI of the Act. However for arriving at the value of such assets, the declarant should have valuation report or any other document.
- 4) As prescribed under the rules, the value of undisclosed foreign assets determined in foreign currency which is converted into Indian currency shall be as per the **reference rate of RBI for 1st July, 2015, in case where declaration of such assets is made under section 59 of the Act.**
- 5) Whereby the undisclosed foreign assets are acquired during the year for which scrutiny assessment proceedings are pending as on 30th June 2015 and the Tax Officer has been informed during the proceedings about such investment made in undisclosed foreign assets , then the same shall be assessable under Income-tax Act and if Tax Officer has not been informed about such undisclosed foreign assets during such proceedings under Income-tax Act then the same shall be liable for assessment under the provisions of Black Money Act when it comes to notice of the Tax Officer.

## W.B. Engineers International Private Limited – ITAT- Pune

**Outcome:** In favour of taxpayer

**Category:** Associated Enterprise (AE)

The tax court rejected the TPO's contention of considering two parties as AE as one part carried out substantial purchases from the other.

The tax court agreed with the tax payers views that though it purchased substantial amount of goods from a single party, the prices relating thereto were not controlled or influenced by the third party considering the terms of the distribution agreement.

## Global-e Business Operations Pvt Ltd – ITAT- Bangalore

**Outcome:** In favour of taxpayer

**Category:** KPO vs. BPO

The tax court upheld the tax payer's view on rejection of two KPO Comparables while undertaking a benchmarking analysis for a low risk ITeS company, being functionally different.

## Corning S.A, India Branch Office – ITAT- Delhi

**Outcome:** In favour of department

**Category:** Combined vs. transactional approach

The tax court upheld that the functions and risk involved in the distribution and agency services provided by the tax payer are different and such segments cannot be combined and analysed together. Hence both the segments to be analysed at independent transaction level.

## Recent News

### Applicability on Minimum Alternate Tax (MAT) on FII's / FPI's

The Government of India has accepted the recommendation made by a Committee on Direct Tax Matters on the issue of applicability of MAT. As per the recommendation, The FII's / FPI's which do not hold any Permanent Establishment (PE) / place of business in India are exempted from the provisions of Section 115JB.

### Commerce Ministry introduces 'Arm's Length' provisions on facility sharing

The Department of Industrial Policy & Promotion (DIPP) recently issued a clarification on FDI policy on Facility Sharing Arrangements between group companies.

As per the clarification, the facility sharing agreements between group companies through leasing / sub-leasing arrangements for larger interest of business will not be treated as 'real estate business' as per the provisions of the Consolidated FDI policy Circular 2015.

This is provided when such arrangements are the ALP and annual lease rent earned by the lessor does not exceed 5% of the total revenue.



Contact Us!

CA. Akshay Kenkre  
Director  
TransPrice Solutions LLP

Mobile : + 91 9819245424  
Email : [akshaykenkre@transprice.in](mailto:akshaykenkre@transprice.in)  
[info@transprice.in](mailto:info@transprice.in)