Government issues another set of FAQs on one time compliance window scheme of The Black Money Taxation Act, 2015

September 11, 2015

In brief

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (the Black Money Taxation Act or the Act) has been made effective from 1 July 2015. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 (the Black Money Taxation Rules), along with explanatory notes, were issued on 2 July 2015 providing rules for the valuation of foreign assets and also details about one-time compliance window (refer to our news alert dated 7 July 2015 for further details).

There were several aspects which required clarifications and accordingly, the Central Board of Direct Taxes (CBDT) released Frequently Asked Questions (FAQs) on 6 July 2015 (Circular No. 13 of 2015 dated 6 July 2015- refer to our news alert dated 10 July 2015 for further details).

CBDT has yet again come out with a second set of FAQs (Circular No. 15 of 2015 dated 3 September 2015) providing further clarity on some of the aspects relevant for those who wish to avail the one time compliance window scheme.

In detail

The FAQs are summarised below for quick reference.

Key clarifications/guidelines

Sr No.	FAQs	Answers/ Clarifications
	Declaration of undisclosed foreign assets	
1	A person holds an undisclosed brokerage account in a foreign country which holds within itself shares, mutual funds as well as cash. Can the brokerage account be declared as one asset or is separate disclosure required to be made in respect of shares, mutual funds and cash?	Different computational mechanisms are provided for shares, mutual funds and cash holdings in a bank account. A composite valuation of a brokerage account cannot be made. The declaration must include the different assets with different valuations. **[FAQ No. 8]**
2	Where a partner in a partnership firm files for a declaration in respect of undisclosed foreign assets held by the firm, is immunity available to partners in the firm?	Yes, the partners shall not be liable for any offence under the following laws: – Income-tax Act; – Wealth-tax Act; – FEMA; – Companies Act; and – Customs Act. **[FAQ No. 12]**
3	An undisclosed foreign asset was acquired in financial year (FY) 2012-13 relating to assessment year (AY) 2013-14. The assessment order for AY 2013-14 has been passed on 10 August 2015, in which such undisclosed foreign asset was not examined and consequently went untaxed. Can a declaration of such asset be made under chapter VI of the Act?	Yes. **[FAQ No. 13]**
4	In respect of undisclosed foreign asset declared under chapter VI of the Act, is it mandatory to include such asset in the books of account of the person?	The declarant is required to show the asset so declared in his books, and if the person does not maintain the books of accounts, he shall maintain record of such assets. Further, if the person continues to hold such assets, he is required to report the same in Schedule FA of Return of Income. **[FAQ No. 17]**
5	Is it necessary to file a valuation report of an undisclosed foreign asset along with declaration under Chapter VI of the Act?	No. It is not mandatory to file the valuation report. However, the declarant should have some basis for arriving at the value of the asset. While e-filing the declaration, a facility for uploading such documents is available. **[FAQ No. 19]**
6	A person has an undisclosed foreign asset, being a bank account in joint names, say A and B. Should the disclosure of this account be made by both or can any one person make the declaration?	If the funds in the bank account are contributed only by A, then disclosure is required to be made by A only. However, if both of them have contributed independently, then both need to make the declaration. **[FAQ No. 25]**
	Foreign immovable property	
7	A resident has an immovable property in a foreign country for which rental income is received. Under the Double Taxation Avoidance Agreement (DTAA), the taxation rights on such	No. If the DTAA provides that the rental income shall be taxed only in the country in which the property is situated, then taxation rights will exclusively be with that country. The rental income shall not be taxable in India. Thus while

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	rental income are with the foreign country in which the property is situated. The rental income has been deposited in an undisclosed foreign bank account. For the purposes of declaration, will the value of the bank account include such rental income?	working out the value of the undisclosed bank account, a deduction for rental income (in this case exempt income) will be made. **[FAQ No. 10]**
8	A person has an undisclosed property outside India in the name of his spouse. The funds for the acquisition of the property were provided by the person himself. Can the person make a declaration under Chapter VI in their own name?	The person is treated as a beneficial owner of the property and may file a declaration in his own name as the beneficial owner. Immunity in respect of the assets declared is available to both, the person and his/ her spouse**. [FAQ No. 11]**
9	A person has acquired an immovable property in a foreign country for $50,000 out of which an investment of $10,000 was made out of their own undisclosed income chargeable to tax in India and the balance through loan funding from a bank. The fair market value on 1 July 2015 (the effective date of the Black Money Taxation Act) is $100,000. Can the property be declared under Chapter VI and if so, at what value?	The property was part-funded from undisclosed income and part from an amount not chargeable to tax (bank loan funding). The property can be declared under Chapter VI and the proportionate value of the asset on 1 July 2015, i.e. $20,000, needs to be taken as the value of the undisclosed asset. If mortgage payments to the banks are made out of the undisclosed foreign bank account, then the account must also be declared. **[FAQ No. 24]**
10	A person acquired an immovable house property located outside India out of undisclosed income chargeable to tax in the year 2012-13. A notice under section 143(2) for AY 2013-14 was issued prior to 30 June 2015, and the assessment proceedings are pending before the assessing officer (AO). As clarified in FAQ no. 8 of the earlier FAQs dated 6 July 2015 as issued by the CBDT, the taxpayer is not eligible for declaration under Chapter VI of the Act in respect of this asset. However, he shall inform the AO about the acquisition of such an asset in the assessment proceedings, and same shall be assessable under the provisions of the Income-tax Act. Do the provisions of section 72(c) of the Act apply and may the AO proceed to assess the undisclosed asset under the Act?	Section 72(c) is applicable where any undisclosed foreign asset has been acquired prior to the commencement of the Act and no declaration is made. Where the undisclosed foreign asset has been acquired during the year previous year for which scrutiny assessments are pending as at June 30th 2015, and the AO has been informed during the assessment proceedings about the investments made in the undisclosed foreign assets, the assets are assessable under the provisions of the Income-tax Act. If the AO has not been informed about such undisclosed foreign assets under the pending scrutiny assessment proceedings, and same is not assessed, then the same shall be liable for assessment under the Act when it comes to the notice of the AO. **[FAQ No. 27]**
Private trusts		
11	A private trust was created outside India by a settlor out of undisclosed income chargeable to tax in India. The trust has set up a company holding 100% of the shares. What are the options for declaration under Chapter VI of the Act?	Declaration may be made by the settlor in the capacity of a beneficial owner of such assets of the trust. Alternatively, the trustee of the trust may make the declaration of such assets of the trust in the capacity of a representative taxpayer. The trustee is eligible to make the declaration even if non-resident. In case the settlor has passed away, the Beneficiary of the Trust may make declaration in respect of their respective share in the assets of the Trust. In respect of assets declared under the Act, immunity is available to the settlor, trustee and beneficiary. The assets of the trust shall be valued under Rule 3(1)(g) as in the case of an AOP. Where the assets under the trust have been declared under the Act, the value of the assets so declared is not chargeable to tax in the event of distribution to

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		beneficiaries. **[FAQ No. 4]**
	Tie-breaker rule	
12	A person is resident in India as well as a foreign country in FY 2011-12. However, after applying the provisions of the DTAA under the tie-breaker rule, the person becomes a resident of the foreign country only. Does such a person need to file a declaration of assets acquired/ made out of foreign income earned during FY 2011-12, in which he was a non-resident in India according to the DTAA?	No. As the assesse was non-resident, the foreign income for FY 2011-12 was not chargeable to tax in India; therefore, declaration for the assets acquired out of such income is not required. **[FAQ No. 6]**
	Foreign bank account	
13	A person, while being a non-resident, earned foreign income not chargeable to tax in India (exempt income), which was deposited in a foreign bank account. The person became resident in India in FY 2013-14 and since then, only interest is being credited to the account. Such income, including interest income, has not been offered to tax in India. In such case what should be the disclosure?	As stated, the person was non-resident upto FY 2012-13, and the foreign income for such years was not chargeable to tax in India. For FY 2013-14 and subsequent years, he is resident in India and thus global income is taxable in India. Accordingly, a declaration may be made of the foreign bank account, and the value of such account shall be the sum of all credits in the bank account as reduced by income not chargeable to tax in India (exempt income), i.e. the foreign income deposited in the bank account up to FY 2012-13. Therefore, in effect, the value of the bank account would be the sum of interest credits paid into the account since 1 April 2013. **[FAQ No. 1]**
14	A person was a non-resident from FY 1996-97 to 2010-11, during which he was employed in a foreign country. The person received salary which was taxable in the foreign country and credited into a foreign bank account. The person also received contributions to his pension account from his employer. The person became a resident in India in FY 2011-12. Is the person required to declare the pension account in order to achieve tax compliance?	Yes. , The declaration of the account may be made, and the value shall be the accretions to the pension account (in the form of interest, dividend, capital gain or any other sum) after 1 April 2011, which is chargeable to tax in India. The details of such account should be reported in Schedule FA of the Return of Income from AY 2016-17 onwards. **[FAQ No. 2]**
15	A person was employed in a foreign country during FY 1996-97 to 2010-11, during which time he received salary which was taxable in the foreign country. From FY 2011-12 onwards, he received pension from his ex-employer. The person has been resident in India from FY 2014-15 onwards. The salary and pension was deposited in a foreign bank account. Due taxes have been deducted on the salary and pension by the ex-employer in the foreign country. No taxes have been paid in India on pension received. Is the person required to disclose the bank account, and if yes, what should be its valuation?	The person was non-resident up to FY 2013-14 and the salary and pension received were not chargeable to tax in India. However, from FY 2014-15 onwards, the pension received is chargeable to tax in India. The person may declare the foreign bank account under the Act and the value shall be the sum of credits into the account from 1 April 2014 onwards. The person is not entitled to any credit of taxes paid, if any, in the foreign country. **[FAQ No. 3]**
16	A person has had a foreign bank account since 2000 containing undisclosed income chargeable to tax in India. However, he does not have the bank statements for years prior to 2011. The	Declaration of the bank account should be made with the value determined on the basis of available statements according to Rule 3 of the Rules, and for the period prior to 2011, for which statements are not available, the value

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	bank has not provided bank statements despite all attempts made by him. In such a case, how will the value of the account be computed for the purposes of declaration under Chapter VI of the Act?	should be determined on best estimate basis. However, he has to furnish any evidence to the effect that the details are not available or obtainable from the bank. If it is later found that the value of the bank account was different from what had been declared, immunity under the Act shall be available only to the extent of the declaration made under the Act. If it is later found that the value of bank account was lower than what was declared, any excess payment of tax on the basis of value of asset shall not be refundable. If it is found that the declaration of a foreign bank account was filed on an estimate basis despite having bank statements, and the value of the declaration is lower than the value of the bank account, this will amount to misrepresentation of facts under section 68 of the Act and the declaration shall be void. **[FAQ No. 5]**
17	A person has a foreign bank account containing undisclosed income chargeable to tax in India. Over a past several years, the person invested in securities which were funded from such account. Some of the securities were sold and the proceeds were deposited into the same account. Some expenditure has also been made from the bank account. What would be the declaration in such case under Chapter VI of the Act?	The valuation of the bank account and securities are to be made separately and computed as per Rules 3(1) (e), 3(2) and 3(3) of the Rules. **[FAQ No. 7]**
18	A person has declared an undisclosed foreign bank account after computing its value according to the Rules. At the time of declaration, will the declarant be expected to explain the basis of working out the value of the account, or required to explain the details of entries in the account?	While filing a declaration in respect of a bank account, the declarant is expected to provide a broad computation where the value of the account is different from the sum of all credits in the account. Apart from this, the declarant will not be required to explain the details of entries in the account at the time of declaration. **[FAQ No. 9]**
19	A person received salary in a foreign country from his employer who is a resident in India. The salary which was chargeable to tax was deposited in foreign bank account. If declaration of the foreign bank account is made by the person, which includes salary in the account, will the employer be liable for non-deduction of tax deducted at source on salary paid?	Where the employee has declared undisclosed assets made out of income received from his employer, the employer will not be deemed to be a taxpayer in default under the Income-tax Act for non-deduction of tax. However, employer shall be liable to other consequences such as payment of interest from the date on which tax was deductible up to the date of payment of tax by the declarant. Penalty, under the Income-tax Act, would also be attracted unless he proves that there was a reasonable cause for such failure. **[FAQ No. 15]**
20	A person has an undisclosed foreign bank account containing income chargeable to tax in India. From this account he has transferred money to his spouse's/ child's account from time to time. There are no independent credits into the spouse or child's account, except for such transfers. In this case, do both the person and the spouse/ child need to declare the undisclosed foreign bank account under Chapter VI of the Act?	No. However, if the transfer is made as consideration for the supply of goods, services etc. and tax has not been paid on such income by the spouse/ child, the bank account must be declared by the spouse/ child. Any accretion to the account of the spouse/ child in the nature of interest etc. may also be required to be declared by the spouse/ child. **[FAQ No. 16]**
21	According to rule 3(1)(e), for the purpose of valuation of a bank account, any deposit made	The provision to Rule 3(1)(e) in respect of valuation of bank accounts covers only amounts withdrawn in cash and

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	from the proceeds of any withdrawal from the account shall not be taken into consideration while computing the value of the account. Does this mean that only the re-deposit of cash withdrawn is covered for this purpose, or would it cover withdrawals used for funding cost of investments where the proceeds are subsequently deposited on sale of investments?	re-deposited into the same bank account. In case amount is transferred from a first bank account and deposited into a second bank account then the provisions of Rule 3(3) apply, and the value of the first bank account shall be reduced by the amount deposited in the second bank account and the value of second bank account shall be computed in accordance with Rule 3(3). **[FAQ No. 18]**
Immunity from applicability of other laws		
22	Where a public limited company makes a disclosure under Chapter VI of the Act, will the directors of the company be granted immunity against prosecution launched by shareholders under the SEBI Act/ Regulations or Indian Penal Code (IPC)?	The Act does not provide immunity against offences punishable under the SEBI Act/ Regulations or under the IPC. **[FAQ No. 23]**
Confidentiality		
23	Will the declarations made under Chapter VI of the Act be kept confidential?	Yes. The information provided in a declaration is confidential as in the case of Returns of Income filed by taxpayers. **[FAQ No. 14]**
Miscellaneous		
24	If a query has been sent by the competent authority in respect of the foreign asset of a person to a Government of any country or territory outside India, but no information has been received up to 30 June 2015, can such an asset be declared under Chapter VI of the Act?	Such an asset shall not be hit by section 71(d) (iii) of the Act, and can be declared if other provisions contained in section 71 are not applicable**. [FAQ No. 20]**
25	What shall be the exchange rate for the purpose of conversion of foreign currency into Indian currency?	The value of the undisclosed foreign asset may be determined in the foreign currency and converted into Indian currency according to the reference rate of the RBI for 1 July 2015. **[FAQ No. 21]**
26	A person maintains an e-wallet/ virtual card account online on a website hosted in a foreign country, which was initially funded by income chargeable to tax in India on which tax has not been paid. The person plays online games/ poker through the funds lying in the e-wallet/ virtual card and has earned money, which was credited to the e-wallet/ virtual card account. Can a declaration be made in respect of the e-wallet/ virtual card? If so, what shall be the valuation of the e-wallet/ virtual card?	An e-wallet/ virtual card account is similar to a bank account where inward and outward cash movement takes place. Therefore, the valuation and declaration of an e-wallet account may be made as in the case of a bank account. **[FAQ No. 22]**
27	In reference to the answer to question no. 23 of the earlier FAQs dated 6 July 2015 as issued by the CBDT, a non-resident can file a declaration under Chapter VI of the Act in respect of asset acquired out of income chargeable to tax earned when he was resident in India in the past. However, paragraph 3 of Explanatory Circular	Paragraph 3 of Explanatory Circular No. 12 provides that a resident may file a declaration. It does not say that a non-resident who was earlier resident in India cannot file a declaration in respect of an asset acquired out of income chargeable to tax in India earned when he was a resident. The answer to question no. 23 of the earlier FAQs says that a person may make a declaration in respect of an

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	No. 12 dated 2 July 2015 states that the declaration may be filed by a person, being a resident in India. Are these positions contradictory?	undisclosed foreign asset acquired in the year when he was resident in India. Thus, this specific situation has been dealt with in answer to question no. 23 of the earlier FAQs. **[FAQ No. 26]**

The takeaways

Given very short time is left to avail one time compliance window scheme, these FAQs providing the clarity will certainly prove to be useful for taxpayers.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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