
Government issues clarifications in form of FAQs on one time compliance window scheme of the Black Money Taxation Act

July 10, 2015

In brief

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (the Black Money Taxation Act) was enacted on 26 May 2015 and has been made effective from 1 July 2015. The Black Money Taxation Act provides for separate taxation of undisclosed income in relation to foreign income and assets. Such income will henceforth not be taxed under the Income-tax Act, 1961 (the Act) but under the provisions of the Black Money Taxation Act.

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 (the Black Money Taxation Rules) along with explanatory notes was issued recently on 2 July 2015 providing the rules for valuation of foreign assets and also details about one time compliance window. (Refer to our [news alert dated 07 July 2015](#))

One of the important highlights of the Black Money Taxation Act is the one-time compliance opportunity to those who have undisclosed assets situated overseas. Such persons now can declare their undisclosed assets in the prescribed form with the prescribed authorities and come clean by paying 60% as tax and penalty thereon. No prosecution will be launched against them under the Black Money Taxation Act.

In order to provide clarification on several unclear aspects, especially provisions related to “one time compliance window”, the Central Board of Direct Taxes (CBDT) has recently released Frequently Asked Questions (FAQs) ([Circular No. 13 of 2015 dated 06 July 2015](#)).

In detail

Since these FAQs are comprehensive, we summarise the same below for quick reference.

Key clarifications/guidelines

Sr No.	FAQs	Answers/Clarifications
Declaration of undisclosed foreign assets		
1	Can a partner file a declaration in respect of the undisclosed assets held by the firm?	No. The firm needs to declare undisclosed assets held by it and the same needs to be signed by the person authorised (managing partner, etc.) [FAQ No. 1]
2	Can a company, having undisclosed foreign assets, file declaration under the one time window scheme? If yes, then whether immunity would be granted to directors of the company?	Yes. The directors of the company shall not be liable for any offence under the Act, Wealth Tax Act, FEMA, Companies Act and the Customs Act in respect of declaration made in the name of the company. [FAQ No. 2]
3	Whether a beneficiary of an undisclosed foreign asset needs to make declaration under the one time window?	Yes. [FAQ No. 31]
4	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 the one time window scheme?	Yes. [FAQ No. 23]
5	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 the income which was not chargeable to tax in India. Does the person need to file a declaration in respect of those assets under the one time window scheme?	No. The foreign assets, which were acquired at the time when the person was non-resident does not fall under the definition of undisclosed assets and therefore, not required to be declared under the one time window scheme. [FAQ No. 24]
6	Where a person voluntarily declares 2 out of 3 undisclosed foreign assets, will he get immunity from the Black Money Taxation Act in respect of 2 assets declared?	A person will get immunity in respect of 2 undisclosed foreign assets voluntarily declared under the one time window scheme. No immunity will be available in respect of the third undisclosed foreign asset, which is not declared. [FAQ No. 25]
7	Can a person declare his undisclosed foreign assets under the one time window scheme which have been acquired from money earned through corrupt means?	No. If the declaration is still made, it will amount to misrepresentation of facts and will stand void and the provisions of the Black Money Taxation Act shall apply in respect such asset. [FAQ No. 27]
8	Where a foreign asset has been acquired partly out of undisclosed income chargeable to tax and partly out of disclosed income/ exempt income, then is it necessary to make a voluntary declaration under the one time window scheme in respect of such asset? If yes, what amount should be disclosed?	Yes. The amount of declaration shall be the fair market value of such asset less amount computed in accordance with section 5 of the Black Money Taxation Act. [FAQ No. 28]

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9	For the purpose of declaration, should the undisclosed foreign asset be held by the declarant on the date of declaration?	No. The declaration may be made if the foreign asset was acquired out of the undisclosed income, even if the same has been disposed off and is not held by the declarant on the date of declaration. [FAQ No. 29]
10	A person was employed in a foreign country where he acquired or made an asset out of income earned in that country. Is such asset required to be declared under the one time window scheme?	If a person is a non-resident in India and he has 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 Black Money Taxation Act, and therefore need not be declared. However, he may declare such assets under the one time window scheme, if it was acquired from income which was accrued or received in India, and thus chargeable to tax in India, but not disclosed in the return of income, or he has not filed a return. [FAQ No. 32]
11	What are the consequences if undisclosed foreign assets acquired prior to the commencement of the Black Money Taxation Act are not declared under the one time window?	Any undisclosed assets which have not been declared under the one time window shall be deemed to have been acquired in the year in which they come to the notice of the tax officer, and the provisions of the Black Money Taxation Act shall apply accordingly. [FAQ No. 14]
12	Can a declaration be made of undisclosed foreign assets which have been assessed to tax, and the case is pending before an Appellate Authorities?	No. However, the declarant can voluntarily declare other undisclosed foreign assets which have been acquired or made from income not disclosed, and consequently not assessed under the Act. [FAQ No. 9]
13	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, was not taxed in India. Does he need to disclose such income under the one time window scheme? Will he get credit for foreign taxes paid?	The person may declare the foreign bank account, and the valuation will be as per the rules prescribed in the Black Money Taxation Rules. No credit of foreign taxes paid shall be allowed. [FAQ No. 26]
14	At the time of declaration under the one time window scheme, will the principal commissioner/ commissioner of income-tax (CIT) conduct any enquiry in respect of the declaration made?	After the declaration is made, the principal commissioner/ CIT will enquire only whether any information in respect of declared assets has been received by the competent authorities. Apart from this, no other enquiry will be conducted by him at the time of declaration. [FAQ No. 30]
Foreign bank account		
15	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?	The Black Money Taxation Act provides for declaration of an undisclosed asset, and not income. Where the bank account is undisclosed, the same may be declared under the one time window scheme. The tax and penalty needs to be paid on the fair market value (FMV) of the bank account determined as per the rules prescribed and not on the balance as on date. [FAQ No. 19]

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16	A person held an unexplained foreign bank account for a limited period between 1994-95 and 1997-98. Such account was closed in 1997-98. Does he need to declare the same under the one time window scheme?	<p>The Black Money Taxation Act provides for declaration of undisclosed foreign asset which has been acquired from income which has not been charged to tax under the Act.</p> <p>Where the investment in the bank account was unexplained and was from untaxed income, the same may be declared under the one time window scheme to avoid consequences in future under the Black Money Taxation Act. [FAQ No. 20]</p>
Foreign immovable property		
17	A person inherited a house property in 2003-04 from his father, who is no more. Such property was acquired from unexplained source of investment. The property was sold by the person in 2011-12. Does he need to declare such property under one time window scheme? If yes, then what will be the FMV of such property for the purpose of declaration?	Yes, the person may declare such property under the one time window scheme in the capacity of legal representative of his father. The value of the property should be the FMV determined as per the Black Money Taxation Rules. [FAQ No. 21]
18	A person acquired a house property in a foreign country during the year 2000-01 from unexplained source 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 the one time window scheme and pay tax on both the assets?	<p>The declaration may be made in respect of both the assets i.e. house property and the bank account at their FMV determined in accordance with the prescribed rules.</p> <p>The FMV of the house property shall be: Higher of cost price and the sale price of the property less amount deposited in the bank account. Tax and penalty shall be payable on this amount in respect of the undisclosed house property.</p> <p>The FMV of the bank account shall be determined as per Black Money Taxation Rules and tax and penalty shall be payable on this amount. [FAQ No. 22]</p>
Disclosure of foreign assets in income-tax return		
19	Where a person declares undisclosed foreign assets in his income tax return for financial year (FY) 2014-15 or for FY 2013-14 (in belated return) then does he/ she also need to declare those assets in the one time window scheme?	<p>As per the Black Money Taxation Act, an undisclosed foreign assets mean an asset which is unaccounted/ the source of such asset is not fully explainable.</p> <p>Mere reporting of a foreign asset in the income-tax return form does not mean that the source of investment in the asset has been explained. The foreign asset is liable to be taxed under the Black Money Taxation Act (whether reported in the past year's return or not) if the source of investment in such asset is unexplained. Therefore, such undisclosed foreign assets should be voluntarily declared. [FAQ No. 17]</p>
20	A person hold foreign assets which are fully explained and acquired out of tax-paid income. However, he has not reported these assets in the income-tax return in the past. Should he declare such assets under the one time window scheme?	<p>The assets which are fully explained are not treated as undisclosed assets. They should not be declared voluntarily under the one time window scheme. However, if the assets are not reported in the income-tax return of FY 2015-16 or any subsequent year by the person being an ordinary resident of India, then he shall be liable to penalty of INR 1 million under the Black Money Taxation Act.</p> <p>The penalty is however not applicable in respect of an asset being one or more foreign bank accounts having an</p>

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		aggregate balance not exceeding an amount equivalent to INR 500,000 at any time during the relevant FY. [FAQ No. 18]
<i>Information of undisclosed foreign assets received by Government under the tax treaty</i>		
21	Is a person barred from voluntary declaration if any information has been received by the Government under Double Tax Avoidance Agreement (tax treaty)?	Yes. However, he is entitled to make voluntary declaration in respect of other undisclosed foreign assets in respect of which no information has been received. [FAQ No. 12]
22	How would a person know that the Government has received information of an undisclosed foreign asset held by him, which will make the declaration ineligible?	Where the declarant does not know that the Government has information about any undisclosed foreign asset held by him, and he has made a declaration of such undisclosed asset in the declaration form on or before 30 September 2015, the Principal Commissioner/ CIT will intimate the declarant by 31 October 2015 where any information of such undisclosed assets has been received by them on or before 30 June 2015. The declarant then shall revise the declaration made within 15 days of such receipt of intimation to exclude such ineligible assets. However, in respect of such ineligible assets, all provisions of the Act shall apply including the option to approach the Settlement Commission. [FAQ No. 13,15 & 16]
<i>Applicability of capital gain on sale of disclosed assets</i>		
23	Will the declarant be liable for capital gains tax on sale of foreign assets declared under the one time window scheme?	The declarant will be liable for capital gains under the Act on sale of assets declared under one time window scheme. The cost of acquisition and period of holding for the purpose of calculation of capital gain tax will be: (i) Cost of acquisition – FMV as determined under the Black Money Taxation Act. (ii) Period of Holding – Period from the date of declaration till the date of sale. [FAQ No. 5]
<i>Declaration not eligible in certain cases</i>		
24	Will a person be ineligible to declare those foreign assets which have been acquired during the year for which a notice under section 142/ 143(2)/ 148/ 153A/ 153C of the Act has been issued for an assessment year (AY) on or before 30 June 2015?	Yes. He will be ineligible from declaration of those undisclosed assets under the one time window scheme. [FAQ No. 6 & 7]
25	Where an undisclosed foreign asset has been acquired partly during a previous year relevant to the AY which is pending for assessment and partly during other years not pending for assessment, then is such asset eligible for declaration?	The declarant may declare such undisclosed foreign asset, after making adjustment of an amount attributed to that part of the asset acquired by him during the previous year relevant to the AY for which no notice has been issued. However, where the notice is issued on or after 30 June 2015, the declarant is eligible to declare full value of such asset. [FAQ No. 8]

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Search and Seizure		
26	Can a person against whom a search/ survey operation has been initiated file voluntary declaration under the one time compliance scheme?	No [FAQ No. 10]
27	Where a search/ survey operation was conducted and assessment has been completed but the undisclosed foreign asset was not taxed, can such assets can be declared?	Yes. Such assets can be declared. [FAQ No. 11]
Immunity from applicability of other laws		
28	Is immunity provided in respect of declaration made under the one time window scheme in respect of laws/ Acts other than those mentioned in the Black Money Taxation Act?	The Black Money Taxation Act provides immunity from prosecution under the following five Acts – <ul style="list-style-type: none"> - Income Tax Act, 1961 - Wealth Tax Act, 1957 - Foreign Exchange Management Act, 1999 - Companies Act, 2013 - Custom Act, 1962 It does not provide immunity from prosecution under any other Act. [FAQ No. 3]
29	Whether the person making the declaration will be provided immunity from the Prevention of Money Laundering Act, 2002 (PMLA)?	PMLA will not be applicable in respect of assets for which declaration has been made under the one time window scheme. [FAQ No. 4]

The takeaways

Issuance of the FAQs is timely, as the one time compliance window is open until 30 September 2015.

These FAQs have provided clarifications on many practical situations and these would 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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