Government notifies valuation rules and timelines for one-time compliance window under Black Money Taxation Act

July 7, 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 (*Notification No. – 56/2015*).

The Black Money Taxation Act covers all persons who are resident in India in accordance with the provisions of the Income-tax Act, 1961 (the Act). However, individuals qualifying as resident but not ordinarily resident (RNOR) in India are excluded from the ambit of the Black Money Taxation Act.

Any undisclosed foreign income and undisclosed foreign assets detected after 30 June 2015 will henceforth be taxed under the Black Money Taxation Act, and not under the Act. Besides the stringent penalties and prosecution, the Black Money Taxation Act contained the provision of a one-time compliance opportunity to those who have undisclosed foreign assets. Where any disclosure is made under one time compliance the window, the declarant is required to pay the tax @ 30% and an additional 30% as penalty, and no other penalty or prosecution under the Black Money Taxation Act or the Act will be launched in such cases.

The Government has recently notified (*Notification No. G.S.R. 529 (E) dated 2 July 2015*) the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 (the Black Money Taxation Rules) containing the timelines and procedures of the disclosure in relation to the undisclosed foreign assets.

In detail

Key features of the rules are summarised here below:

Who can make the declaration?

All resident persons (excluding RNORs) who have undisclosed foreign assets acquired from income chargeable to tax under the Act can make declaration under this compliance window.

Timelines

- The window to make disclosure in relation to undisclosed foreign assets is available up to 30 September 2015.
- The taxes and the penalty on such undisclosed foreign assets have to be paid on or before 31 December 2015.

What can be covered in the declaration?

The declaration has to be made in Form 6 before the designated Principal Commissioner or Commissioner of Income-tax (PCIT/ CIT). This can be made in respect of any undisclosed foreign assets acquired from income chargeable to tax under the Act for any financial year prior to 2015-16, for which:

a) the declarant has failed to file the return or has filed the return but failed to disclose such income in the return and,

b) such income has escaped assessment by reason of omission or failure to file return under the Act or failure to disclose fully and truly all material facts necessary for the assessment.

What cannot be covered in the declaration?

- No declaration can be made by any:
  - Person in respect of whom an order of detention has been made under the conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
  - In respect of person notified under section 3 of the Special Court(Trial of Offences Relating to Transactions in Securities) Act, 1992
- No declaration can be made in respect of any undisclosed foreign asset acquired from income for the financial year chargeable to tax under the Act for which:
  - A notice under section 142, 143(2), 148, 153A or 153C of the IT Act has been issued on or before 30 June 2015 and the proceedings are pending before the tax officer in relation to such notice.
  - A search has been conducted under section 132, or a requisition has been made under section 132A, or a survey has been carried out under section 133A, and the time for issuance of notice under section 143(2), 153A or 153C for the relevant year has not expired.
  - Information in respect of such undisclosed foreign assets has already been received by the competent authority on or before 30 June 2015 under the Double Tax Avoidance Agreement (tax treaty) entered into by central government under the Act.
  - No immunity in relation to Prosecution for any offence punishable under Chapter IX (offences relating to public servants) or Chapter XVII (offences against property) of the Indian Penal Code, or under the Unlawful Activities (Prevention) Act, or under the Prevention of Corruption Act are pending.

Procedural aspects

- Upon receipt of declaration from the declarant, the PCIT/ CIT will issue intimation by 31 October 2015 in the prescribed Proforma to inform the declarant as to whether any information in respect of the declared assets has been received by the competent authority on or before 30 June 2015 under the tax treaty.
- Declarant shall then revise the declaration and exclude such assets, and file the revised declaration within 15 days of the receipt of the intimation from PCIT/ CIT.
- The declarant is required to pay the taxes and penalty on or before 31 December 2015, and intimate the payment to the PCIT/ CIT, who will then issue an acknowledgement in Form 7 within 15 days of receipt of intimation of such payment.

Invalid Declaration

Failure to pay taxes and penalty before 31 December 2015 and/ or any misrepresentation or suppression of facts or information will render the declaration void. In such a case, it shall be deemed as if the declaration was never made, and provisions of the Black Money Taxation Act, including penalty and prosecution, shall apply accordingly. Further, there would be no refund of taxes and penalty paid.

How to value undisclosed foreign assets

An undisclosed asset located outside India (including a financial interest in any entity) will be valued at its 'fair market value'. The valuation will be done on 1 July 2015 (in case of one-time compliance window) and 1 April of the relevant financial year in other cases. Fair market value shall be determined for various assets as tabulated below:

<table>
<tr><th>Type of asset</th><th>Fair market value</th></tr>
<tr><td>1. Bullion, Jewellery or precious stones
2. Archaeological collections, drawings, paintings, sculptures or any work of art
3. Immovable property</td><td>Higher of -
• Cost of acquisition; and
The price that the asset shall ordinarily fetch, if sold in the open market on the valuation date[1].</td></tr>
<tr><td>4. Share and securities</td><td>(A) In case of share and securities quoted on the established securities market[2] -
Higher of –
• Cost of acquisition; and
Price as determined in the following manner -
– The average of the lowest and highest price of such shares and securities quoted on any established securities market on the valuation date;
– Where there is no trading on the valuation date, the average of the lowest and highest price of such shares and securities on any established securities market on a date immediately preceding the valuation date where such shares and securities were traded on such securities market.
(B) In case of unquoted share and securities
<u>Equity shares</u>
Higher of –
• Cost of acquisition; and
Fair market Value $=\frac{A+B-L}{(PE)} \times (PV)$
Where,
– A = book value of all the assets (other than bullion, jewellery, precious stones, artistic works, shares, securities and immovable property) as reduced by -
(a) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any, and
(b) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;
– B = fair market value of bullion, jewellery, precious stones, artistic works, shares, securities and immovable property as determined in the manner provided in this rule;
– L= book value of liabilities, but not including the following amounts, namely:-</td></tr>
</table>

[1] The declarant may obtain a valuation report from a valuer recognised by the Government of a country or specified territory outside India in which the asset is located, or any of its agencies, for the purpose of valuation of the relevant asset under any regulation or law

[2] "**Established securities market"** means an exchange which is officially recognised and supervised by a Government entity in which the market is located, and that has a meaningful annual value of shares traded on the exchange.

M**eaningful annual value of shares traded on the exchange"** with respect to an exchange means it has an annual value of shares traded on the exchange (or predecessor exchange) exceeding one billion US dollars during each of the three calendar years immediately preceding the calendar year in which the determination is being made.

"Meaningful volume of trading on an on-going basis" with respect to each class of share means - (i) trades in each such class are effected, other than in *de minimis* quantities, on one or more established securities markets on at least sixty business days during the prior calendar year; and (ii) the aggregate number of shares in each such class that are traded on such market or markets during the prior year are at least ten percent of the average number of shares outstanding in that class during the prior calendar year.

<table>
<tr><th>Type of asset</th><th>Fair market value</th></tr>
<tr><td></td><td>(i) the paid-up capital in respect of equity shares;
(ii) the amount set apart for payment of dividends on preference shares and equity shares;
(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;
– PE = total amount of paid up equity share capital as shown in the balance sheet;
– PV = the paid up value of such equity shares;
<u>Share and securities (other than equity share)</u>
Higher of –
• Cost of acquisition; and
The price that the shares or securities shall ordinarily fetch, if sold in the open market on the valuation date[1].</td></tr>
<tr><td>5. Bank account</td><td>Value of an account with a bank shall be -
• The sum of all the deposits made in the account with the bank since the date of opening of the account; or
• Where a declaration of such account has been made under Chapter VI, and the value of the account as computed above has been charged to tax and penalty under that Chapter, the sum of all the deposits made in the account with the bank since the date of such declaration. However, where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account.</td></tr>
<tr><td>6. Interest of a person in a partnership firm or in an association of persons or a limited liability partnership of which he/ she is a member</td><td>The net asset of the firm, association of persons or limited liability partnership on the valuation date shall first be determined and the portion of the net asset of the firm, association of persons or limited liability partnership as is equal to the amount of its capital shall be allocated among its partners or members in the proportion in which capital has been contributed by them and the residue of the net asset shall be allocated among the partners or members in accordance with the agreement of partnership or association for distribution of assets in the event of dissolution of the firm or association, or, in the absence of such agreement, in the proportion in which the partners or members are entitled to share profits and the sum total of the amount so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the partnership or association.
Explanation.- For the purposes of this clause the net asset of the firm, association of persons or limited liability partnership shall be –
$(A + B - L)$, which shall be determined in the manner provided under section 'shares & securities'</td></tr>
</table>

Type of asset	Fair market value
7. Any other asset	Higher of – • Cost of acquisition or the amount invested; and • The price that the asset would fetch if sold in the open market on the valuation date in an arm's length transaction.

Other considerations

- Where an asset (other than a bank account) was transferred before the valuation date, the fair market value of such asset shall be the higher of its cost of acquisition and the sale price. However, where such asset was transferred without consideration or inadequate consideration before the valuation date, the fair market value of the asset shall be higher of its cost of acquisition and the fair market value on the date of transfer.
- Where a new asset has been acquired or made out of consideration received on account of transfer of an old asset or withdrawal from a bank account, then the fair market value of the old asset or the bank account, as the case may be, determined as per the rules above, shall be reduced by the amount of the consideration invested in the new asset.

The takeaway

The much-awaited Rules for valuation of undisclosed foreign assets are finally out. Although the Black Money Taxation Rules for valuation of foreign assets seem to be simple, only time will tell whether authorities can hold a different view on the valuation arrived at. Declarants should be vigilant and diligently make full and complete disclosure in relation to foreign assets. Any suppression of facts and/ or information may result in the declaration being considered as void. If that happens, the declarant would be subject to various penal consequences, including prosecution under the Black Money Taxation Act, and taxes and penalty paid earlier would also not be refunded.

Let's talk

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

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