

Black Money Menace and the Proposed Law



By **CMA** AMIT DEY,
M.Com , **LLB.**

INTRODUCTION

- The **Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015**, passed on 26.5.2015, provides for stringent taxation of any undisclosed income in relation to foreign income and assets.
- This new law has been formulated to act as a strong deterrent and curb the menace of black money stashed away abroad by Indians. This law would be effective **from A.Y.2016-17**, unless otherwise provided in any section of this Act, and extends to the **whole of India**.

BASIS OF CHARGE & Relevant previous year of chargeability to tax

Charge of tax [Section 3]

- Rate of tax [Section 3(1)] - Every Assessee would be liable to **tax@30%**

in respect of his undisclosed foreign Income of the **previous year**. (Taxed in the year of Income)

However, 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. (Taxed in the year founded)

Definition - Assessee

A person,—

- being a **resident in India** within the meaning of section 6 of the Income-tax Act, 1961 in the previous year; or
- being a **non-resident or not ordinarily resident in India** within the meaning of section 6(6) of the Income-tax Act, 1961 in the previous year, who was resident in India either in the previous year to which the income referred to in section 4 relates ; or in the previous year in which The undisclosed asset located outside India was acquired.

However, the previous year, in case of acquisition of undisclosed asset outside India, shall be determined without giving effect to the provisions of section 72(c) which states that where any asset has been acquired or made prior to commencement of this Act, and no declaration in respect of such asset is made under Chapter VI (Tax Compliance for Undisclosed Foreign Income and Assets), such asset shall be deemed to have been acquired or made in the year in which a notice under section 10 is issued by the Assessing Officer and the provisions of this Act would apply accordingly

In effect, it has been clarified that a person would be an assessee, if he is resident in the previous year in which the undisclosed asset located outside India was actually acquired by him and not the year in which notice under section 10 is issued by the Assessing Officer.

Definition - Undisclosed foreign income and asset

Term	Section	Meaning
Undisclosed foreign Income and Asset	2(12)	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 .
Undisclosed asset located outside India	2(11)	An asset (including financial interest in an entity) located outside India, <ul style="list-style-type: none">- 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.

Value of an undisclosed asset [Section 3(2)]

- The **fair market value** of an asset determined in the prescribed manner as laid down in Rule 3 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015, would be the value of an undisclosed asset.
- The following table gives the manner of determination of fair market value of different assets -

	Asset	Fair market value as per Rule 3(1)
(a)	Bullion, jewellery or precious stone	<p>Higher of –</p> <p>(i) its cost of acquisition; and</p> <p>(ii) the price that the bullion, jewellery or precious stone shall ordinarily fetch if sold in the open market on the valuation date.</p> <p>For this purpose, the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of bullion, jewellery or precious stone under any regulation or law.</p>

	Asset	Fair market value as per Rule 3(1)
(b)	Archaeological collections, drawings, paintings, sculptures or any work of art (artistic work)	<p>Higher of -</p> <p>(i) Cost of acquisition; and</p> <p>(ii) the price that the artistic work shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of artistic work under any regulation or law;</p>
(c)(I)	Quoted Shares and securities	<p>Higher of -</p> <p>(i) cost of acquisition; and</p> <p>(ii) the price as determined in the following manner, namely:—</p> <p>(A) the average of the lowest and highest price of such shares and securities quoted on any established securities market on the valuation date (1st April – Starting day of a Financial Year); or</p> <p>(B) where on the valuation date there is no trading in such shares and securities on any established securities market, 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 when such shares and securities were traded on such securities market;</p>

	Asset	Fair market value as per Rule 3(1)
(c)(II)	Unquoted shares and securities	Higher of – (i) Cost of acquisition; and (ii) The value, on the valuation date, Fair value Net Asset / Number of Share
(d)	Immovable property	Higher of,— (i) its cost of acquisition; and (ii) the price that the property shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a valuation report from a valuer recognised by the Government of a country or specified territory outside India in which the property is located or any of its agencies for the purpose of valuation of immovable property under any regulation or law.
(h)	Any other asset	Higher of – (I) its cost of acquisition or the amount invested; and (II) the price that the asset would fetch if sold in the open market on the valuation date in an arm's- length transaction.

FMV, in a case where a new asset is acquired out of consideration received on account of transfer of an old asset or withdrawal from a bank account [Rule 3(3)]:

Example

- *House A located in a country outside India was bought in 1995 for 15 lakh.*
- *It was sold in 2000 for ` 22 lakh. This amount was deposited in a bank account in that country.*
- *In the year 2001 another House B was purchased for 35 lakh. The investment in House B was made through withdrawal from the bank account in the foreign country. House B has not been transferred before the valuation date and its value on the valuation date is 48 lakh.*
- *Assuming that the opening value of foreign bank account as computed under Rule 3(1)(e) is 60 lakh, the fair market value (FMV) of the assets would be computed in the following manner:*

Ans:

- *FMV of House A = ` 22 lakh (being higher of 15 lakh and 22 lakh) - 22 lakh (invested in foreign bank account) = Nil*
- *FMV of Foreign Bank account = 60 lakh - 35 lakh (invested in House B) = Rs. 25 lakh*
- *FMV of House B = Higher of ` 35 lakh and 48 lakh = Rs. 48 lakh*

Rate of conversion of currency used to determine FMV of an asset [Rule 3(4) & 3(5)]:

- The fair market value of an asset determined in a currency which is one of the permitted currencies designated by the **RBI** under the Foreign Exchange Management Regulations, has to be converted into Indian currency as per the **reference rate of the RBI on the date of valuation**.
- Where the FMV of an asset is determined in a currency **other than one of the permitted currencies designated by the RBI**, then, such value shall be converted into United States Dollar on the date of valuation as per the rate specified by the **Central Bank of the country** or jurisdiction in which the asset is located. Such value in United States Dollar shall be converted into Indian currency as per the reference rate of the RBI on the date of valuation.
- However, where the Central Bank of the country or jurisdiction in which the asset is located does **not specify the rate of conversion from its local currency to United States Dollar**, then, such rate shall be the one as specified by **any other bank** regulated under the laws of that country or jurisdiction.



Thank You!

By **CMA** Amit Dey
M.com **LLB**