India’s Black Money Act

When Finance Minister Arun Jaitley announced his intentions to pursue black money stashed overseas, he was only the most recent in a long line of government officials to denounce tax avoidance. However, when the government subsequently passed a black money law, and notified foreign asset disclosure rules in July, it signaled that the time for talking about getting tough on off-shore accounts had run out.

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (“the Act”) raises the stakes for those who take advantage of off-shore tax havens. Since the rules took effect July 1, the government has run a one-time voluntary compliance program to allow taxpayers with secret off-shore holdings to come clean. Now that time is running short as well. The voluntary compliance program ends on September 30, 2015.

Countries like Australia, Italy and the US have successfully used amnesties to force their citizens to disclose substantial sums of money stashed in tax havens As for the Indian Law, it is still uncertain whether the Indian scheme will offer quick closure or even after disclosure under the said scheme whether the declarants will be under scanner and the movements of their balances will be monitored leading to unlawful harassments.

To better understand the Act, it is important to review its four main areas: who is liable for the tax, how the tax is computed, penalties for non-compliance, procedures for availing of the one-time compliance window.

Who is Liable?

Indian residents, other than not ordinarily resident Indians, are liable for the tax. An individual who has resident by not ordinarily resident tax status is taxed only in India-sourced income. Ordinary residents are taxed on worldwide income, and many are not paying their fair share.

The Act levies a tax on any undisclosed foreign income assets and held abroad by a person who is ordinarily resident in India. Undisclosed foreign assets can include but are not limited to bank accounts, immovable property, jewelry, bullion, shares, partnerships, archaeological collections and art work.

How is the Tax Computed?

Previously undisclosed foreign income and assets are taxed at a rate of 30 percent of the fair market value of the assets, while a penalty is imposed at the rate of 100 percent of the tax. The total combined tax rate, including penalties, is 60 percent of the value of the fair market value of the foreign assets. The Act provides acceptable methods for determining fair market value of various assets located outside India.

Penalties for Non-compliance

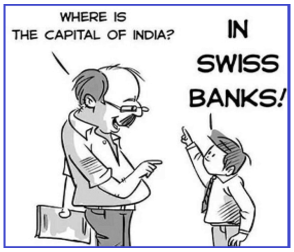
Willful tax evasion in relation to undisclosed foreign income and assets, failure to furnish the return of income by the person holding the foreign asset, or failure to disclose the foreign asset in the return or furnishing an inaccurate return can result in imprisonment for a term of six months up to seven years.
These activities also result in a penalty of 10 lakh Rupees (US $15,190). Subsequent offenses can be punishable by imprisonment from three to ten years and penalties of up to 25 lac Rupees (US $37,960). The burden of proof rests with the taxpayer to show that tax evasion was not willful.

Compliance Window Procedures

The Act provides for a one-time compliance window for taxpayers who have undisclosed foreign income and assets. The taxpayer is liable for the 30 percent tax on the fair market value of the assets and the penalty of 100 percent of the tax.

The compliance window expires on September 30, 2015, and the taxes must be paid by December 31, 2015. Taxpayers wishing to avail of the one-time compliance window should use Form 6, as proscribed in the Black Money and Imposition of Tax Rules, 2015.

Once the declaration is made and accepted, the amount of undisclosed income will not be included in the taxpayer's total income for the assessment year, the contents of the declaration cannot be used as evidence against the taxpayer under the Income Tax Act, the Wealth Act, or FEMA, and the value of the assets will not be chargeable to wealth tax. If the taxpayer fails to pay the entire amount of the tax or where the taxpayer misrepresents the foreign assets, the declaration under the tax compliance window will be void.



Black Money Act Considerations

The government has issued simple rules that provide a detailed process for making the declaration of undisclosed foreign assets. However, the rules stop short of offering confidentiality, a serious drawback. Further, it is unclear what the process is if the government finds the fair market value to be inadequate after declaration or what the process is for disclosing assets after the compliance window closes.

Declarations of black money were below expectations during the 90-day compliance window that ended September 30 because of lack of clarity on immunity, questions of confidentiality, fear of future harassment and lack of time, experts said. Several tax and legal advisors of high net worth individuals (HNIs) told ET that their suggestion to their clients was that they shouldn't declare unaccounted wealth to the government for these reasons. None of them wanted to be named.

While the government said that anyone declaring black money during the compliance window would be exempted from the Foreign Exchange Management Act (Fema), this clarification came just a week before the due date. With the government pledging a crackdown against those who didn't take advantage of the window, some HNIs are looking at how to avoid getting caught up in this. Those who have invested in India through shell companies are shutting them and ope ..

Some experts suggested the window was part of a well-devised government strategy and was more of a signal of intent than anything else. "The intention of the government was not to collect a certain amount of tax but to give a window to people to come clean," said Amit Maheshwari, partner, Ashok Maheshwary and Associates. "That said, the amount collected is minuscule compared to what would actually be in the system." It is widely perceived that the government wanted to send warning signals to black money holders to start paying taxes from here on. Many experts said that the high tax rate was also responsible for low declarations.

Department of Accountancy

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