

Tax Insights on The Black Money Taxation Act, 2015



Introduction to

- The Black Money Tax Act 2015
- The Black Money Tax Rules, 2015
- Clarifications on One Time Compliance Window Scheme

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September 2015

Tax Insights on Black Money Act & One Time Compliance Window

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Introduction to the Black Money Taxation Act, Rules & 90 day One Time Compliance Window ending 30 September 2015

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ([‘the Black Money Taxation Act’](#) or ‘The Act’) released on 26 May 2015 shall come into force from 1 April 2016. The Act has been introduced by the Parliament to deal with the taxation of Black Money ie undisclosed foreign income and assets held outside India.

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 ([‘The Black Money Taxation Rules’](#) or ‘the Rules’) notified on 2 July 2015 provide methodology for valuation of undisclosed foreign assets along with relevant forms encompassing details of a One Time Compliance Window.

An interesting feature of the Black Money Taxation Act is the opportunity given to those who have undisclosed assets and income overseas, to gain relief from prosecution and reduction in penalty if they suo moto declare the same before 30 September 2015.

Snapshot of benefits to tax evader for opting the One Time Compliance Window Scheme

Applicability of	On opting for One time Compliance Scheme	In other cases
Income Tax rate	30%	30%
Interest u/s234A, 234B and u/s 234C of the Income Tax Act 1961	✓	✓
Penalty	30%	90%
Prosecution	Immunity from prosecution under : <ul style="list-style-type: none"> • Foreign Exchange Management Act • Income Tax Act • Wealth Tax Act • Companies Act, and • Customs Act <p>No immunity from other Acts including:</p> <ul style="list-style-type: none"> • SEBI Act • Indian Penal Code provisions <p>Further, no immunity if funds are later found to be unlawful gains.</p>	No Immunity from prosecution
Imprisonment	✘	Up to 10 years imprisonment
Accessibility to scrutinize prior Assessment Years	16 years prior to relevant assessment year if disclosure later found to be incomplete.	16 years prior to the relevant assessment year

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Insights on CBDT Circular no.13 of 2015 & Circular no.15 of 2015

To throw light on the scope of the scheme and procedure to be followed, the Central Board of Direct Taxes (CBDT) has issued [Circular no. 13 of 2015](#) dated 6 July 2015 in the form of Frequently Asked Questions (FAQs).

Recently, on 3 September 2015, vide [Circular no. 15 of 2015](#), CBDT issued a second set of clarifications and also relaxed conditions regarding submission of bank account statements by accepting "best estimate" declarations with a rider that penalty would follow if disclosures were incomplete.

Key clarifications/ guidelines of Circular no.13 of 2015

S No	FAQs	Clarifications
Declaration of undisclosed foreign bank accounts		
1.	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 Act provides for declaration of an undisclosed asset, and not income. The bank account being an undisclosed asset, 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]
2.	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?	The Act provides for declaration of undisclosed foreign asset which has been acquired from income which has not been charged to tax under the Income Tax Act. If the investment in the bank account was unexplained and was from untaxed income, the same may be declared under the one time window scheme. [FAQ No. 20]
Declaration of undisclosed foreign assets		
3.	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 authorized (managing partner, etc.) [FAQ No. 1]
4.	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]

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S No	FAQs	Clarifications
5.	Whether a beneficiary of an undisclosed foreign asset needs to make declaration under the one time window?	Yes. [FAQ No. 31]
6.	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]
7.	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]
8.	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]
9.	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]
10.	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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S No	FAQs	Clarifications
11.	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]
12.	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]
13.	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]
14.	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]
15.	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]

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S No	FAQs	Clarifications
16.	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]
Declaration of undisclosed foreign immovable properties		
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. 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>
Declaration of foreign assets in income tax returns		
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?	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. 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. Thus, such undisclosed foreign assets should be voluntarily declared. [FAQ 17]

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S No	FAQs	Clarifications
20.	A person holds 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?	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. The penalty is however not applicable in respect of an asset being one or more foreign bank accounts having an aggregate balance not exceeding an amount equivalent to INR 500,000 at any time during the relevant FY. [FAQ No. 18]
Declaration of undisclosed foreign assets received by Government under the tax treaty		
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]

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S No	FAQs	Clarifications
Applicability of capital gain on sale of disclosed assets		
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]
Declaration not eligible in certain cases		
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]
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 be declared?	Yes. Such assets can be declared. [FAQ No. 11]

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S No	FAQs	Clarifications
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 – - 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]

Key clarifications/ guidelines of Circular no.15 of 2015

S No	FAQs	Clarifications
1.	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 & since then only interest is being credited to the account. Such income including interest income has not been offered to tax in India. What should be the tax compliance disclosure?	As mentioned, foreign income for the FY 2012-13 and earlier years, is exempt income, not chargeable to tax. The Act provides for an Indian resident's global income to be taxed in India. Accordingly, for FY 2013-14 and subsequent years, the declaration of foreign bank having partially undisclosed income chargeable to tax should be made as per the Rules prescribed and a deduction of the exempt income deposited into the bank account up to FY 2012-13 shall be allowable. Therefore, effectively, the value of bank account would be sum of interest credits into the account since 1 April 2013.
2.	A person was a non-resident from 1996-97 to 2010-11 during which he was employed in a foreign country. The person received salary taxable in the foreign country & credited into a foreign bank account. The person also received contributions to his pension account from his employer. The person became resident in India	Being a resident Indian in FY 2011-12, accretion to the pension account (in the form of interest, dividend, capital gain, etc) on or after 1 April 2011 is required to be declared. Further, details of such account are required to be reported in the return of income & from AY 2016-17 onwards, non-

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S No	FAQs	Clarifications
	in FY 2011-12. Whether declaration of his pension account is required under the tax compliance?	declaration of such account may attract penalty under the Act.
3.	A person was employed in a foreign country during the FY 1996-97 to 2010-11 where he received salary taxable in the foreign country. From FY 2011-12 onwards he is receiving pension from his ex-employer. The person became a resident in India from FY 2014-15 onwards. The salary and pension was deposited in his 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. Whether the person is required to disclose such bank account and if yes, what should be its valuation?	As stated the person was non-resident up to the FY 2013-14 and the salary and pension received from services rendered outside India was not chargeable to tax in India. However, from FY 2014-15 onwards, the pension received is chargeable to tax in India. In this case, the person may declare his foreign bank account under Chapter VI of the Act. The valuation for the purpose of declaration shall be the sum of credits into the account from 1 April 2014 onwards. The pension is not entitled for any credit of taxes paid, if any, in the foreign country.
4.	A private trust was created by a settlor out of undisclosed income chargeable to tax in India. The trust has set up a company holding 100% shares. What are the options for declaration under Chapter VI of the Act?	<p>The settlor in the capacity of the beneficial owner of the trust should make a declaration in respect of the assets of the trust.</p> <p>Alternatively, the trustee of the trust holding assets on behalf of the beneficiaries may make the declaration of the trust assets in the capacity of a representative assessee even if he is a non-resident. In such a case, immunity will be given to the settlor, trustee and beneficiary.</p> <p>Value of the trust assets shall be as per the prescribed rules of valuation of shares and net assets of the trust.</p>
5	A person has a foreign bank account since year 2000 made out of undisclosed income chargeable to tax in India. However, he does not have the bank has also not provided the bank statement to him despite all attempts made by him. In such case how will the value of the account be computed for the purpose of declaration under Chapter VI of the Act?	For the purpose of declaration, the person may compute the value of the bank account for which the statement is available as per the prescribed Rules. For the period prior to year 2011 for which the statement is not available, the person may compute the value for such period on best estimate basis. However, he has to furnish a certificate of the bank or any other evidence to the effect that the details are not available with or obtainable from the bank. Further, in such case, later if it is found that the value of the bank account is

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		<p>different from what has been declared, the immunity under the Act shall be available only up to the extent of declaration made. Moreover, any excess payment of tax under the declaration on the basis of determination of the value of asset on a higher side shall not be refundable.</p> <p>It may also be mentioned that in an event it is found that the person has filed a declaration of a foreign bank account on an estimate basis despite the fact that he had a bank statement and the value of such declaration is lower than the value as per the bank account, it will amount to misrepresentation of facts under the Act and such declaration shall be void.</p>
6	<p>A person was a resident in India as well as a foreign country in F.Y. 2011-12. However, after applying the provisions of the Double Taxation Avoidance Agreement (DTAA) under the tie breaker rules the person became resident of the foreign country. Whether such person needs to file a declaration under Chapter VI of the Act in respect of assets acquired/ made out of foreign country. Whether such person needs to file a declaration under Chapter VI of the Act in respect of assets acquired/ made out of foreign income earned during F.Y. 2011-12 in which he was non-resident in India as per the DTAA?</p>	<p>As per section 59 of the Act, a declaration may be made in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to assessment year beginning on 01.04.2016. In this case, since the foreign income of F.Y. 2011-12 was not chargeable to tax in India under the Income-tax Act as the assessee was a non-resident as per DTAA, the same is not required to be declared.</p>
7	<p>A person has a foreign bank account made out of 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?</p>	<p>In this case, the valuation of bank account (BA1) and securities (say, S1 S2 etc.) is to be made separately and it is to be computed as per the prescribed Rules.</p>

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8	A person holds an undisclosed brokerage account in a foreign country which holds within itself shares, mutual funds as well as cash. The shares and mutual funds in the brokerage account have had multiple trades over a period of time. Further dividend and interest has been credited to the account. Whether the brokerage account can be declared as one asset under Chapter VI of the Act or separate disclosure in respect of shares, mutual funds and cash is required to be made?	The Rules read with the Act provides for different computational mechanism for valuing shares, mutual funds and cash holding in a bank account. Therefore a composite valuation of brokerage account cannot be made and separate valuation of shares, mutual funds and cash holdings is required to be made. Further, the declaration shall consist of different assets with different valuations.
9	A person has declared an undisclosed foreign bank account after computing its value as per the Rules. At the time of declaration, will the declarant be expected to explain the basis of working of the value of the account or required to explain the details of entries in the account?	While filing the 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. For example – if the person has purchased 50 shares over past several years out of funds in the account which is represented by debits to the account, the person is expected to provide a computation in the declaration showing the amount of reduction in respect of cost of such 50 shares from the value of account as per the prescribed Rules mentioned in the prescribed Form. Further, he has to compute the value of shares. Apart from this, the declarant will not be required to explain the details of entries in the account at the time of declaration.
10	A resident has an immovable property in a foreign country out of which rental income is received. As per the DTAA, the taxation right on such rental income is exclusively with such foreign country in which the property is situated. The rentals were deposited in an undisclosed foreign bank account. For the purpose of declaration under Chapter Vi of the Act, will the value of the bank account include such rental income deposited in the account.	If the DTAA entered with any country provides that the rental income 'shall' be taxed only in the country in which the property is situated, then the taxation right in this respect will exclusively be with that country. In such case where property is outside India, the rental income is not chargeable to tax in India as per the Income-tax Act read with DTAA. Thus while working the value of undisclosed foreign bank account the deduction of rental income (in this case it is exempt income) will be made from the value of foreign bank account computed as per the Rules.

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S No	FAQs	Clarifications
11	A person has an undisclosed property situated outside India in the name of his spouse. The funds for acquisition of the property were provided by such person. In this case, whether the person can make a declaration under Chapter VI of the Act in his own name?	In this case, the person is treated as a beneficial owner of the property and he may file a declaration of the undisclosed asset in his name, being a beneficial owner. The immunity in respect of the asset declared shall be available to both the person and his spouse.
12	Where a partner of partnership firm files a declaration in respect of undisclosed foreign assets held by the firm, then whether immunity would be available to partners of the firm?	Yes, the partners of the partnership shall not be liable for any offence under the Income-tax Act, Wealth-tax Act, FEMA, Companies Act and the Customs Act in respect of the declaration made in the name of the partnership firm.
13	An undisclosed foreign asset was acquired in F.Y. 2012-13 relating to A.Y. 2013-14. The assessment order for A.Y.2013-14 has been passed on 10 th 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, declaration of such undisclosed foreign asset can be made.
14	Will the declarations made under Chapter VI of the Act be kept confidential?	The Act incorporates the provisions of section 138 of the Income-tax Act, 1961 relating to disclosure of information in respect of assessee. Therefore, the information in respect of declaration made is confidential as in the case of return of income filed by assessee.
15	A person received salary in a foreign country from his employer who is a resident in India. The salary was deposited in a foreign bank account and was chargeable to tax in India. If a declaration of the foreign bank account is made by the person, which includes salary deposited in the account, will the employer be liable for consequences under the Income-tax Act for non-deduction of tax at source on the salary paid by the employee?	Where the employee has declared an undisclosed asset made out of income received from his employer, the employer shall not be deemed to be an assessee in default under section 201(1) of the Income-tax Act for non-deduction of TDS on such income. However, the employer shall be liable for other consequences under the provisions of the Income-tax Act, such as payment of interest from the date of payment of tax by the declarant. Penalty will also be attracted unless he proves that there was a reasonable cause for such failure as per the provisions of the Income-tax Act.

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S No	FAQs	Clarifications
16	A person (say, A) has an undisclosed foreign bank account made out of income chargeable to tax in India. From such account he has transferred money to his spouse's/child's (say, B) account from time to time. There are no independent credits into the spouse's account except for such transfers. Whether in this case both the person and the spouse need to declare the undisclosed foreign bank account under Chapter VI of the Act?	In case where there is only transfer of money from the account of the individual to his spouse or child and there are no independent credits in the account of the spouse or child and the individual has declared the undisclosed foreign bank account under Chapter VI of the Act, the spouse and the child are not required to make any separate declaration in respect of the account in their names. However, if the transfer of money is made as a consideration for supply of goods, services etc. and tax has not been paid on such income by the spouse/child, the bank account with such balance needs to be declared by the spouse/child. Besides, 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.
17	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?	It is expected/required that the declarant will show the asset so declared in his books of accounts and if he is not required to maintain books of account, he shall maintain the record of such asset. Further, if he continues to hold such asset he shall be required to report such asset in schedule FA of the return of income.
18	As per rule 3(1)(e), for the purpose of valuation of bank account, any deposit made 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 redeposit of cash withdrawn is covered for this purpose or it would cover withdrawal used for funding cost of investment where proceeds are subsequently deposited on sale of investments?	The proviso to rule 3(1)(e) in respect of valuation of bank account covers only amount withdrawn in cash and re-deposited into the same bank account. In case amount is transferred from first bank account and deposited into second bank account then provisions of rule 3(3) shall apply and the value of first bank account shall be reduced by the amount deposited in the second bank account and the value of second bank account shall be in accordance with rule 3(1)(e).
19	Is it necessary to file a valuation report of an undisclosed foreign asset along with declaration under Chapter VI of the Act?	It is not mandatory to file the valuation report of the undisclosed foreign asset along with the declaration. However, the declarant should have either the valuation report or any other documents for arriving at the value of the asset. While e-filing the declaration on the departmental website, a

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S No	FAQs	Clarifications
		facility for uploading the documents is available.
20	If a query has been sent by the competent authority in respect of a foreign asset of a person to a Government of any country or territory outside India but no information has been received up to 30.06.2015 can such asset be declared?	Such 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.
21	What shall be the exchange rate for the purpose of conversion of foreign currency into Indian currency?	As per rule 3(4) of the Rules, the value of the undisclosed foreign asset may be determined in the foreign currency in accordance with rule 3 of the Rules and the same is to be converted into Indian currency as per the reference rate of RBI for 01.07.2015.
22	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 some money which was credited to the e-wallet/virtual card account. Can a declaration be made in respect of e-wallet/virtual card? If yes, what shall be the valuation of fee e-wallet/virtual card?	The e-wallet/virtual card account is similar to a bank account where inward and outward cash movement takes place from the account. Therefore, the valuation and declaration of an e-wallet account may be made as in the case of a bank account.
23	Where a public limited company makes a disclosure under Chapter VI of the Act then whether 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 offence punishable under the SEBI Act/Regulations or under IPC.
24	A person acquired an immovable property in a foreign country for USD 50,000 out of which investment of USD 10,000 was made out of his own undisclosed income chargeable to tax in India and balance	The property was partially acquired from undisclosed income and partially from amount not chargeable to tax. The property can be declared under Chapter VI of the Act and in such case while computing the value of the undisclosed

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S No	FAQs	Clarifications
	<p>USD 40,000 was made out of loan acquired from a bank. The fair market value of the property as on 01-07-2015 is USD 100,000. Whether the property can be declared under Chapter VI of the Act and if yes, what would be the value of declaration in such case?</p>	<p>asset, deduction as per section 5(2) of the Act in respect of income not chargeable to tax shall be available from the fair market value of the property. The value of such immovable property shall be :</p> <p>FMV as on 01-07-15 = USD 100,000</p> <p>Deduction under Section 5(2) : = USD(100,000X <u>40,000</u>) 50,000 = USD 80,000</p> <p>Value of the undisclosed Asset to be declared Under Chapter VI : = USD(100,000-80,000) = USD 20,000</p> <p>Since the declaration is in respect of 20% of the value of the property, the declarant shall be issued an acknowledgement in Form 7 only in respect of such portion of the immovable property.</p> <p>Further, in such case it may be ensured that the mortgage payment to the bank has not been/are not being paid out of undisclosed income chargeable to tax in India. However, if the mortgage payments are made out of a foreign bank account made out of undisclosed income chargeable to tax in India then such account is also required to be declared under Chapter VI of the Act.</p>
25	<p>A person has an undisclosed foreign asset, being a bank account in joint names, say A and B. Should the disclosure of such account is to be made by both A and B or anyone can make the declaration?</p>	<p>Where the funds in the bank account have been contributed only by A the disclosure is to be made by A. However, where the funds have been contributed by both A and B independently, the declaration is to be made by both A and B in respect of the funds contributed by them into the bank account.</p>
26	<p>As per answer to question No.23 of Circular No.13 dated 06.07-2015, a person being 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</p>	<p>Para 3 of the Explanatory Circular No.12 dated 02-07-2015 provides that a resident may file a declaration under Chapter VI of the Act. It does not say that a non-resident who was earlier resident in India cannot file a declaration in respect of asset acquired out of income chargeable to tax</p>

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	<p>past. However, para 3 of the Explanatory Circular No.12 dated 02-07-2015 states that a declaration may be filed by a person being a resident in India. Are these positions contradictory?</p>	<p>in India earned when he was a resident. Answer to question No.23 of Circular No.13 dated 06-07-2015 says that a person may make a declaration under section 59 of the Act in respect of an undisclosed foreign asset acquired by him in the year in which he was resident in India. Thus a specific situation has been dealt in answer to question No.23 of Circular No.13 dated 06-07-2015 which answers the query clearly.</p>
27.	<p>A person acquired an immovable house property in the year 2012-13 located outside India out of undisclosed income chargeable to tax in India. A notice under section 143(2) for assessment year 2013-14 (relevant to previous year 2012-13) has been issued prior to 30-06-2015 and the assessment proceeding is pending before the assessing officer. As clarified in Question No.8 of circular dated 06-7-15 the assessee is not eligible for declaration under Chapter Vi of the Act in respect of this asset, however, he shall inform the assessing officer about the acquisition of such asset in the assessment proceedings and the same shall be assessable under the provisions of the Income-tax Act. Whether the provisions of section 72(c) of the Act will apply in this cases and the Assessing Officer may proceed to assess the undisclosed asset under the Act?</p>	<p>Section 72(c) is applicable where any undisclosed foreign asset has been acquired prior to commencement of the Act and no declaration in respect of such asset has been made. In such case the same shall be assessable under the Act. In the present case since scrutiny proceedings under the Income-tax Act are pending, the person is not eligible to declare such asset under Chapter Vi of the Act. Therefore, it is hereby clarified that where the undisclosed foreign asset has been acquired during the previous year for which scrutiny assessment proceedings are pending as on 30-06-2015 and the assessing officer has been informed during the assessment proceedings about the investment made in such undisclosed foreign asset, the same shall be assessable under the provisions of the Income-tax Act. However, where the assessing officer has not been informed in the pending scrutiny assessment proceedings under the Income-tax Act about such undisclosed foreign asset and it is not assessed under the Act, the same shall be liable for assessment under the provisions of the new Act when it comes to the notice of the Assessing Officer.</p>

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Key Takeaways

Government's take: Timely FAQs have been issued to encourage tax evaders to declare undisclosed foreign assets and income and take advantage of the leniency extended through the one time compliance window. As on 15 August 2015, declarations of black money amounting to INR 6,500 crore have been received by the government of India.

Taxpayer's take:

Wanting immunity from all prosecution, tax evaders seem to be finding alternative ways of safeguarding their interests. While some endeavor to transfer assets to third parties based abroad, others explore means of setting up multi-level trusts to obscure identity. Tax evaders are migrating to Dubai, the UK, Singapore, Hong Kong, while a few are ready for litigation with the government.

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