

F. No. 142/18/2015-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)

Dated 2nd of July, 2015

EXPLANATORY NOTES ON PROVISIONS RELATING TO TAX COMPLIANCE FOR UNDISCLOSED FOREIGN INCOME AND ASSETS AS PROVIDED IN CHAPTER VI OF THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015

Introduction

THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015 (referred to here as 'the Act') as passed by the Parliament received the assent of the President on the 26th of May 2015. The Act contains provisions to deal with the menace of black money stashed away abroad. It, *inter alia*, levies tax on undisclosed assets held abroad by a person who is a resident in India at the rate of 30 percent of the value of such assets, provides for a penalty equal to 90 percent of the value of such asset, and also provides for rigorous imprisonment of three to ten years for wilful attempt to evade tax in relation to a undisclosed foreign income or asset.

2. Considering the stringent nature of the provisions of the new law, Chapter VI of the Act, comprising sections 59 to 72, provides for a one-time compliance opportunity for a limited period to persons who have any foreign assets which have hitherto not been disclosed for the purposes of Income-tax. This circular explains the substance of the provisions of the compliance window provided for in the said Chapter VI of the Act.

Scope of compliance window

3. A declaration under the aforesaid chapter can be made in respect of undisclosed foreign assets of a person who is a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act.

4. A declaration under the aforesaid Chapter 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 the assessment year 2016-17 for which he had, *either* failed to furnish a return under section 139 of the Income-tax Act, *or* failed to disclose such income in a return furnished before the date of commencement of the Act, *or* such income had escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

Rate of tax and penalty

5. The person making a declaration under the provisions of the chapter would be liable to pay tax at the rate of 30 percent of the value of such undisclosed asset. In addition, he would also be liable to pay penalty at the rate of 100% of such tax (i.e., a further 30% of the value of the asset as on the date of commencement of the Act). Therefore, the declarant would be liable to pay a total of 60 percent of the value of the undisclosed asset declared by him. This special rate of tax and penalty specified in the compliance provisions will override any rate or rates specified under the provisions of the Income-tax Act or the annual Finance Acts.

Time limits for declaration and making payment

6. A declaration under the Act can be made anytime on or after the date of commencement of the Act but before a date to be notified by the Central Government. As regards the commencement of the Act, section 1 provides that the Act shall come into force on the 1st of April, 2016. However, section 3 which specifies the charge of tax, lays down that tax shall be charged for every assessment year commencing on or after the 1st day of April, 2016. Hence, under the Act, tax is also chargeable for assessment year 2016-17 for which the relevant previous year is 2015-16. In exercise of its power to remove difficulties under section 86 of the Act, the Central Government by an order has clarified that the Act shall come in to force on 1st July, 2015. Accordingly, the compliance provisions under

Chapter VI shall also come into force with effect from the date of commencement of the Act i.e. 1st of July, 2015.

7. The Central Government has further notified 30th September, 2015 as the last date for making the declaration before the designated Principal Commissioner or Commissioner of Income Tax (PCIT/CIT) and 31st December, 2015 as the last date by which the tax and penalty mentioned in para 5 above shall be paid. Accordingly, a declaration under Chapter VI in Form 6 as prescribed in the Rules may be made at any time before 30.09.2015. After such declaration has been furnished, the designated Principal CIT/ CIT will issue an intimation in the proforma annexed to the Circular to the declarant by 31.10.15 whether any information in respect of the declared asset had been received by the Competent Authority on or before 30th June 2015, under an agreement entered into by the Central Government under section 90 or 90A of the Income-tax Act. Where any such information had been received, the declarant shall file a revised declaration in Form 6 excluding such asset. The declarant shall not be liable for any consequences under the Act in respect of, any asset which has been duly declared but has been found ineligible for declaration as the Central Government had prior information on such asset. However, such information may be used under the provisions of the Income-tax Act. The revised declaration shall be filed within 15 days of receipt of intimation from the designated Principal Commissioner /Commissioner i.e. if a declarant has received the intimation on 10th October 2015, he can file a revised declaration on or before 25th October, 2015. However, in all cases, the declarant is required to pay the requisite tax and penalty on the assets eligible for declaration latest by 31.12.2015. After the intimation of payment by the declarant, the Principal CIT/CIT will issue an acknowledgement in Form 7 of the accepted declaration within 15 days of such intimation of payment by the declarant.

Form for declaration

8. As per the Act, declaration under the chapter is to be made in such form and shall be verified in such manner as may be prescribed. The form prescribed for this purpose is Form 6 which has been duly notified. The table below mentions the persons who are authorized to sign the said form:

Sl.	Status of the declarant	Declaration to be signed by
1.	Individual	Individual; where individual is absent from India, person authorized by him; where the individual is mentally incapacitated, his guardian or other person competent to act on his behalf.
2.	HUF	<i>Karta</i> ; where the <i>karta</i> is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of the HUF
3.	Company	Managing Director; where for any unavoidable reason the managing director is not able to sign or there is no managing director, by any director.
4.	Firm	Managing partner; where for any unavoidable reason the managing partner is not able to sign the declaration, or where there is no managing partner, by any partner, not being a minor.
5.	Any other association	Any member of the association or the principal officer.
6.	Any other person	That person or by some other person competent to act on his behalf.

The declaration may be filed with the Commissioner of Income-tax, Delhi. The declaration may also be filed online on the e-filing website of the Income Tax Department using the digital signature of the declarant.

Declaration not eligible in certain cases

9. As per the provisions of section 71 of the Act no declaration under the compliance window can be made in respect of any undisclosed foreign asset which has been acquired from income chargeable to tax under the Income-tax Act for assessment year 2015-16 or any earlier assessment year in the following cases –

- (i) where a notice under section 142 or section 143(2) or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer. For the purposes of declaration under section 59 it is clarified that the person will not be eligible under the compliance window if any notice referred above has been served

upon the person on or before 30th June 2015 i.e. before the date of commencement of this Act.

In the form of declaration (Form 6) the declarant will verify that no such notice has been received by him on or before 30th June 2015.

(ii) where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and the time for issuance of a notice under section 143 (2) or section 153A or section 153C for the relevant assessment year has not expired. In the form of declaration (Form 6) the declarant will also verify that these facts do not prevail in his case.

(iii) where any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act in respect of such undisclosed asset. For the purposes of declaration under section 59 it is clarified that the person will not be eligible under the compliance window if any information referred above has been received by the competent authority on or before 30th June 2015 i.e. before the date of commencement of this Act.

A person in respect of whom proceedings for prosecution of 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 the Prevention of Corruption Act are pending shall not be eligible to make declaration under Chapter VI.

Circumstances where declaration shall be invalid

10. In the following situations, a declaration shall be void and shall be deemed never to have been made:-

- (a) If the declarant fails to pay the entire amount of tax and penalty within the specified date, i.e., 31.12.2015;
- (b) Where the declaration has been made by misrepresentation or suppression of facts or information.

Where the declaration is held to be void for any of the above reasons, it shall be deemed never to have been made and all the provisions of the Act, including penalties and prosecutions, shall apply accordingly.

Any tax or penalty paid in pursuance of the declaration shall, however, not be refundable under any circumstances.

Effect of valid declaration

11. Where a valid declaration as detailed above has been made, the following consequences will follow:

- (a) The amount of undisclosed investment in the asset declared shall not be included in the total income of the declarant under the Income-tax Act for any assessment year;
- (b) The contents of the declaration shall not be admissible in evidence against the declarant in any penalty or prosecution proceedings under the Income-tax Act, the Wealth Tax Act, the Foreign Exchange Management Act, the Companies Act or the Customs Act;
- (c) The value of asset declared in the declaration shall not be chargeable to Wealth Tax for any assessment year or years.
- (d) Declaration of undisclosed foreign asset will not affect the finality of completed assessments. The declarant will not be entitled to claim re-assessment of any earlier year or revision of any order or any benefit or set off or relief in any appeal or proceedings under the Act or under Income-tax Act in respect of declared undisclosed asset located outside India or any tax paid thereon.



(Gaurav Kanaujia)
Director to the Government of India

Copy to:-

1. PS to FM/ OSD to FM/ OSD to MoS(R).
2. PS to Secretary (Revenue).
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Pr. Chief Commissioners/ Pr. Director General of Income-tax - with a request to circulate amongst all officers in their regions/ charges.
5. Pr. DGIT (Systems)/ Pr. DGIT (Vigilance)/ Pr. DGIT (Admn.)/ Pr. DG (NADT)/ Pr. DGIT (L&R).
6. Media Co-ordinator and Official spokesperson of CBDT.
7. Web manager for posting on the departmental website.

Intimation to the declarant in respect of declaration made under section 59 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax, 2015

Office of the Principal Commissioner/Commissioner of Income-tax,

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To,
(Name and address of the declarant)

With reference to your declaration filed under section 59 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax, 2015 on _____ (date) vide receipt number _____, the following may be informed,-

(1) *The competent authority has received an information, on or before 30th June 2015, under an agreement entered into by central Government under section 90 or section 90A of the Income-tax Act in respect of the following asset declared:-

- (a) _____
- (b) _____

In view of provisions of section 71(d)(iii), these assets are not eligible for declaration under section 59 of the Act.

(2) *As item (1) is applicable to the declaration filed by you, a revised declaration, if applicable, may be filed within 15 days of the receipt of this intimation.

(3) *Items (1) above is not applicable to the declaration and you are eligible for declaration under section 59 of the Act on the total fair market value of Rs. _____.

Date:

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(Principal Commissioner/Commissioner of Income-tax)

* Strike out if not applicable