

The Deloitte logo is displayed in a bold, blue, sans-serif font. The word "Deloitte" is followed by a small blue period. The background of the entire page is a photograph of a woman in a dark blazer sitting at a podium, smiling at an audience. In the foreground, the back of a person's head with long, dark, wavy hair is visible, and their right hand is raised, pointing towards the speaker. The setting appears to be a conference or a meeting room with a light-colored wall in the background.

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FAQs

BMA

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Frequently Asked Questions
on Unreported foreign
income and assets – “The
Black Money (Undisclosed
Foreign Income and Assets)
And Imposition of Tax Act,
2015 (‘BMA’)”

General

1. Who is covered under BMA?

Individuals and Hindu Undivided Families (HUF) who qualify as a Resident and Ordinarily Resident (ROR). Further, Partnership firms, LLPs, Companies or any other persons who qualify as Resident during a financial year for income tax purposes, are covered under BMA.

2. Since when is it effective?

BMA came into effect from 1st July 2015.

3. Is BMA applicable to returns filed in the past?

Yes. There is no limitation period mentioned in BMA and it is applicable to all earlier years as well.

4. When will BMA be triggered?

UFI pertaining to the period 01 July 2015 onwards will be taxed in the relevant financial year to which it pertains. In case of UFA, it would be charged to tax when such asset comes to the notice of the Assessing Officer.

5. Will BMA apply to a foreign national?

Yes, BMA is applicable to all individuals who qualify as ROR's irrespective of their nationality.

6. For an expatriate coming to India, are his/her dependent family members covered under BMA?

Dependent family members who qualify as ROR are covered under BMA.

7. Is there any threshold limit for applicability of BMA?

There is no threshold limit on income or asset for BMA to apply.

8. What are the caution points to be kept in mind while filing my income tax return in India from a BMA perspective?

If you qualify to be ROR in India, you should keep the following points in mind:

- Furnish the details of assets located outside India in the Foreign Asset schedule (FA schedule) of the Indian income tax return form.
- Ensure that the source of funds used to acquire a foreign asset, if chargeable to tax in India, has been rightfully offered to tax in the income tax return.
- Ensure that income from any foreign asset is offered to tax in the income tax return.

Further, all the past tax filings should also to be reviewed to check whether there are any undisclosed foreign income and assets.

Applicability

9. What is BMA applicable to?

BMA is applicable in respect of Undisclosed Foreign Assets (UFA) and Undisclosed Foreign Income (UFI).

UFA is any asset (including financial interest in any entity) held by a person in his name or in someone else's name (such person is a beneficial owner) for which he has no explanation about the source of investment in the asset or the explanation is unsatisfactory in the tax officer's opinion.

UFI is any income from a source located outside India after 1st July 2015 which is not reported in the tax return already filed or there was no tax return filed to report such income.

10. What are the assets covered under BMA?

Though there is neither a definition of the term 'asset' nor an exhaustive list of assets mentioned under BMA, one could refer to the FA schedule of income tax return forms for a sample list of assets.

Asset under BMA would include any kind of asset – tangible or intangible, movable or immovable, personal, any rights, interest etc. which has value. Accordingly, it would include even personal assets such as cars, furniture, designer wearing apparel, etc.

Balances held in overseas retirement or pension plans need to be analyzed before reporting in the FA Schedule.

11. A foreign asset was reported in the FA schedule of the income tax return form in the past. Would such asset qualify to be a UFA?

Reporting of overseas assets in India tax return does not exempt the assets from being covered under BMA. The assets may still qualify to be UFA, if the source of investment, rightfully taxable in India was not offered to tax in India. Mere reporting of assets in the FA schedule does not make the source explained.

12. Would a foreign asset not reported in the India tax return qualify as an UFA?

Whether a foreign asset qualifies as an UFA or not, would depend on whether the source of investment is taxable in India and tax, if any, due thereon has been paid in India.

13. A foreign asset acquired from tax-paid income was not disclosed in the FA schedule in the past. Would such asset qualify as UFA?

Such asset should not qualify as UFA. However, non-disclosure of the same in India tax return from financial year 2015-16 may trigger a penalty of INR 1 million. The

penalty is not applicable if the asset is a bank account and does not have an aggregate balance exceeding an amount equivalent to INR 500,000 at any time during the financial year.

14. Is there a need to report the options / units granted under stock award program of overseas employer in the tax return form?

The taxability and reporting of the options / units under a stock award program would depend upon the features of the stock award program. Generally, options / units granted under stock award program of overseas employer need not be reported. However, shares allotted under the stock award plan or stock awards vested but not exercised, need to be reported as assets under FA Schedule of the income tax return.

15. Would contributions made to a pension plan/ social security scheme outside India qualify as an 'asset' under BMA?

Overseas pension plans / social security to qualify as an 'asset' would need to be analyzed on the basis of the terms of the plan and the vesting criteria. Therefore, this would vary on a case to case basis depending on the scheme of the plan.

Valuation of Assets

16. What is the value of a UFA under BMA?

Valuation methodology has been prescribed under BMA Rules for various categories of assets such as house property, quoted shares and securities, bank account, etc. The fair market value (FMV) of a UFA in general is the cost of acquisition or the price of asset as on valuation date, whichever is higher.

The value of a foreign bank account is to be determined as per the prescribed valuation rules i.e. by adding all deposits from the date of opening of bank account (other than deposits made out of earlier withdrawals) and not as per the balance held in the account on declaration date.

17. Which is the date to be considered for UFA valuation purposes?

The valuation date to determine FMV is 1st April of the relevant financial year. In case of voluntary declaration under Tax Compliance Scheme, the valuation date to be considered is 1st July 2015.

18. How would an asset which is partly acquired from income already taxed in the past, be valued?

Where an asset has been acquired partly from tax paid income / exempt income and partly from undisclosed income, the income already assessed to tax only, would be reduced from the FMV of such asset.

Tax, Penalty and Prosecution

19. What is the rate of tax under BMA?

Tax is payable @ 30% of the UFI or the FMV of the UFA as determined under the Rules without giving any credit for foreign taxes paid.

20. What are the penalty and prosecution provisions under BMA?

BMA provides for penalty and prosecution for various types of default. The penalty that may be levied and the prosecution in respect of few relevant defaults have been given below:

Sr.	Default	Penalty
1	Concealment of foreign asset or income	Three times the amount of tax payable
2	Failure to furnish return of income within prescribed time limits, disclosing foreign assets and income*#	INR 1 million
3	Furnishing inaccurate or inadequate particulars regarding foreign assets and income in the return of income*#	INR 1 million

*No penalty will be applicable in cases where foreign asset comprises of bank account(s) only and the aggregate peak balance at any time during the financial year is less than INR 500,000.

#Penalty will be applicable to a person, who at any time during the year, held any asset located outside India as a beneficial owner or otherwise, or was a beneficiary of any asset located outside India, or had income from sources outside India.

Sr.	Offence	Punishment
1	Wilful failure to furnish return of income / furnishing inaccurate particulars regarding foreign assets and income	Rigorous imprisonment of 6 months to 7 years, plus fine
2	Wilful attempt by an ROR to evade any tax, interest or penalty	Rigorous imprisonment of 3 to 10 years, plus fine

The assessing officer or tax recovery officer ('officer') may recover the tax and penalty by requesting the employer to deduct it from salary payments made to such employee. Further, under certain circumstances the officer may recover the tax and penalty by way of attachment and sale of any property of the assessee in default.

Tax Compliance Scheme

21. What is the one-time Tax Compliance (TC) Scheme in respect of BMA?

A voluntary declaration can be made in respect of any UFA and acquired from income chargeable to tax under the Income-tax Act, 1961 (ITA) for any financial year prior to financial year 2015-16. The person making the declaration would be liable to pay tax at the rate of 30% of the value of such UFA. In addition, he will also be liable to pay penalty at the rate of 100% of such tax. Therefore, the declarant would be liable to pay 60% of the value of the UFA declared by him. The time limits for declaration and making the payment is given in the schedule below:

Particulars	Date
Last date for making the declaration	30th September 2015
Last date for making payment for the tax and penalty (60%) mentioned in the declaration	31st December 2015

22. Is there any immunity available under TC Scheme?

In case of a valid declaration, the following immunity would be available:

- No prosecution under BMA
- Amount declared not to be included in total income under ITA for any year
- No wealth tax is payable (even though applicable) for any years in respect of the declared UFA
- Declaration not admissible as evidence against declarant under other laws specified such as: ITA, Wealth Tax Act, Foreign Exchange Management Act, Companies Act and Customs Act.

23. Can a Non-resident in India make a declaration under TC Scheme?

BMA allows any person (irrespective of their residential status) to file a declaration under TC Scheme. Hence an individual qualifying as a Non-resident (at the time of making declaration) can also file a declaration in respect of any UFA acquired when he was ROR in India, and which was not declared in the ROI or no return was filed in respect of that income.

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