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Global Tax Update

India

Deloitte Tohmatsu Tax Co.

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Law to tax black money[1]

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (BMA) received the assent of the President on 26 May 2015. With this, BMA has become applicable from 1 July 2015. Besides BMA, government has provided one time opportunity to persons having undisclosed foreign assets and income to declare the same by 30 September 2015 and pay taxes thereon by 31 December 2015. This one time opportunity is provided by way of Tax Compliance Scheme (TC Scheme).

In this issue of the new alert we have discussed the salient features of the BMA, rules notified thereunder and the TC Scheme.

- BMA will levy tax on the undisclosed assets (including financial interest) and income earned outside India by persons qualifying as “Residents”. However, individuals qualifying as “Resident but Not Ordinary Resident” will be excluded. Citizenship of the person is not relevant here.
- Tax shall be levied on undisclosed assets and income earned outside India at 30% without allowing any deductions, exemptions or set-off of losses.
- BMA provides for stringent penalties and prosecution for defaults.
- Any income from a source located outside India, which is not reported in the tax return already filed (whether original, belated or revised) or where no such return has been filed to report such income, will be considered as Undisclosed Foreign Income.
- Undisclosed foreign asset means “an asset (including financial interest in any entity) located outside India, which is held by a person in his name or in someone else’s name (such person is a beneficial owner), and he has no explanation about the source of investment in the asset or the explanation is unsatisfactory in the tax officer’s opinion”.
- The taxable value of such undisclosed foreign asset will be based on the fair market value (FMV). In general, the FMV of the foreign assets has been prescribed as higher of the cost of acquisition and the price of the asset on valuation date. Different methodologies prescribed for determining the FMV of different assets.
- The valuation date for the purpose of determining FMV and for the purpose of conversion into Indian Rupees shall be as under:
  - For assets declared under TC Scheme - 1 July 2015; and

1 Source: Notification No. 56/2015, F. No. 133/33/2015-TPL dated 1 July 2015, Notification No. 57/2015, F. No. 133/33/2015-TPL dated 1 July 2015, Notification No. 58/2015/F. No. 133/33/2015-TPL dated 2 July 2015, Circular No. 12/2015 dated 2 July 2015 and Circular No. 13/2015 dated 6 July 2015.

- For any other assets - 1 April of the relevant year.

- Under the TC Scheme, by 31 December 2015 a person should pay tax on undisclosed foreign assets and income @30% and an equal amount as penalty otherwise, the declaration will be considered as void.
- The amount declared under TC Scheme shall not be included in the total income of the declarant under the Income-tax Act. Such person shall not be liable to pay any wealth tax (even though otherwise payable) for any prior years in respect of such foreign assets. Further, the declaration shall not be admissible as evidence against the declarant for the purpose of any proceedings relating to penalty or prosecution under the Income-tax Act, Wealth-tax Act, Foreign Exchange Management Act, Companies Act or the Customs Act.

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