

OVERVIEW OF THE BLACK MONEY & IMPOSITION OF TAX LAW.

Basics of Act.

- This new law has been formulated to act as a strong deterrent and curb the menace of black money stashed away abroad by Indians
- Law formulated under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and the related rules].
- Passed on 26.5.2015, provides for stringent taxation of any undisclosed income in relation to **foreign income and assets**. This law would be effective from **A.Y.2016-17**.
- It extends to the whole of India.

Basics of charge Sec.3 to 5

- ❖ Every **assessee** would be liable to tax @**30%** in respect of his **undisclosed foreign income and asset** of the **previous year**.
- ❖ an **undisclosed asset located outside India** shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer.
- ❖ Undisclosed asset located outside India to be charged to tax on its value in the previous year in which the asset comes to the notice of the Assessing Officer.
Proviso to section 3(1)

Definition's

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| Sec. 2(2) | Assessee | A person, being ROR within the meaning of section 6(6) of the Income-tax Act, 1961, by whom tax in respect of undisclosed foreign income and assets, or any other sum of money, is payable under this Act. Every person who is deemed to be an assessee-in-default under this Act is also included in the definition of "Assessee". | |
| Sec.2(12) | Undisclosed foreign income and asset | The total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India, referred to in section 4, and computed in the manner laid down in section 5 | |
| Sec.2(11) | Undisclosed asset located outside India | An asset (including financial interest in an entity) located outside India, - held by the assessee in his name or - in respect of which he is a beneficial owner, and - he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory. | |
| Sec.2(9) | Previous year | PY in the Following cases is an under: | |
| | | Situations | PY |
| | | In case of a newly set up business | The date of setting up of a business to The date of |

| | | | |
|--|--|---|--|
| | | | closure of business or 31 st March following the date of setting up of business, whichever is earlier |
| | | Where a new source of income comes into existence | The date on which the new source comes into existence to The date of closure of business or 31 st March following the date on which such new source comes into existence, whichever is earlier. |
| | | In case of discontinuance of business or dissolution/ liquidation | 1 st day of the FY to The date of discontinuance of business [other than business referred to in (b) above] or dissolution of an unincorporated body or liquidation of a company, as the case may be. |
| | | In any other case | 1 st April of the relevant year to 31 st March following. (i.e., a period of 12 months commencing from 1 st April and ending on 31 st March) |

| Meaning of certain terms | |
|--|--|
| Established securities market | An exchange that is officially recognised and supervised by a Governmental entity in which the market is located and that has a meaningful annual value of shares traded on the exchange |
| Meaningful annual value of shares traded on the exchange | With respect to an exchange, it means it has an annual value of shares traded on the exchange (or a predecessor exchange) exceeding one billion United States Dollar during each of the three calendar years immediately preceding the calendar year in which the determination is being made |
| Meaningful volume of trading on an on-going basis | With respect to each class of shares, it means,- (i) trades in each such class are effected, other than in <i>de minimis</i> quantities, on one or more established securities markets on at least 60 business days during the prior calendar year; and (ii) the aggregate number of shares in each such class that are traded on such market or markets during the prior year are at least 10% of the average number of shares outstanding in that class during the prior calendar year |
| Quoted share or security | The share or security which has a meaningful volume of trading on an ongoing basis on an established securities market and is regularly quoted by dealers where they actively do offer to, and in fact do, purchase the share from, and sell the share to, customers who are not related to the dealer in the ordinary course of a business. |
| Unquoted share and security | In relation to share or security, means share or security which is not a quoted share or security. |

Sec-3[2] value of Undisclosed Assets

The **fair market value** of an asset (including financial interest in any entity) determined in the prescribed manner as laid down in Rule 3 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015.

| | | | | | | | |
|--|--|----------|--|----------|---|----------|---|
| Bullion, jewellery or precious stone | <p>Higher of</p> <ol style="list-style-type: none"> 1. cost of acquisition 2. FMV/NRV on valuation date <p># The assessee may obtain a report from a valuer recognised by the Government</p> | | | | | | |
| Archaeological collections, drawings, paintings, sculptures or any work of art (artistic work) | <p>Higher of</p> <ol style="list-style-type: none"> 1. cost of acquisition 2. FMV/NRV on valuation date <p># The assessee may obtain a report from a valuer recognised by the Government</p> | | | | | | |
| Quoted Shares and securities | <p>Higher of</p> <ol style="list-style-type: none"> 1. cost of acquisition 2. Avg of lowest & highest price on valuation date in established security market <p># where on the valuation date there is no trading in such shares and securities on any established securities market, average of the lowest and highest price of such shares and securities on any established securities market on a date immediately preceding the valuation date</p> | | | | | | |
| Unquoted shares and securities | <p>Higher of</p> <ol style="list-style-type: none"> 1. cost of acquisition 2. The value, on the valuation date, of such equity shares as determined in the following manner, namely: <p>The fair market value of unquoted equity shares = $\frac{(A+B -L) \times PV}{PE}$</p> <table border="1" data-bbox="560 1373 1449 2024"> <tr> <td data-bbox="560 1373 632 1709">A</td> <td data-bbox="632 1373 1449 1709"> <p>book value of all the assets (other than bullion, jewellery, precious stone, artistic work, shares, securities and immovable property)</p> <p style="text-align: center;"><i>minus</i></p> <ol style="list-style-type: none"> 1) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any, and 2) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset; </td> </tr> <tr> <td data-bbox="560 1709 632 1816">B</td> <td data-bbox="632 1709 1449 1816"> <p>FMV of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in this rule</p> </td> </tr> <tr> <td data-bbox="560 1816 632 2024">L</td> <td data-bbox="632 1816 1449 2024"> <p>book value of liabilities, but not including the following amounts, namely</p> <ol style="list-style-type: none"> 1. the PUC in respect of equity shares; 2. the amount set apart for payment of dividends on preference shares and equity shares [Reserve] 3. reserves and surplus, by whatever name called, even </td> </tr> </table> | A | <p>book value of all the assets (other than bullion, jewellery, precious stone, artistic work, shares, securities and immovable property)</p> <p style="text-align: center;"><i>minus</i></p> <ol style="list-style-type: none"> 1) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any, and 2) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset; | B | <p>FMV of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in this rule</p> | L | <p>book value of liabilities, but not including the following amounts, namely</p> <ol style="list-style-type: none"> 1. the PUC in respect of equity shares; 2. the amount set apart for payment of dividends on preference shares and equity shares [Reserve] 3. reserves and surplus, by whatever name called, even |
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| | | | <p>if the resulting figure is negative, other than those set apart towards depreciation</p> <p>4. any amount representing provision for taxation, other than amount of income tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;</p> <p>5. any amount representing provisions made for meeting liabilities, other than ascertained liabilities;</p> <p>6. any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;</p> | | | | | | |
|--|---|---|---|-----------|----------------------|--|---|--|--|
| | PE | Total amount of PUC share capital as shown in the balance sheet | | | | | | | |
| | PV | The paid up value of such equity shares | | | | | | | |
| Unquoted share and security other than equity share in a company | <p>Higher of</p> <ol style="list-style-type: none"> 1. cost of acquisition 2. FMV/NRV on valuation date | | | | | | | | |
| Immovable property | <p>Higher of</p> <ol style="list-style-type: none"> 1. cost of acquisition 2. FMV/NRV on valuation date | | | | | | | | |
| Bank Account | <ol style="list-style-type: none"> 1. The sum of all the deposits made in the account with the bank since the date of opening of the account; or 2. where a declaration of such account has been made under Chapter VI and the value of the account as computed under sub-clause (I) has been charged to tax and penalty under that Chapter, the sum of all the deposits made in the account with the bank since the date of such declaration. 3. However, where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account | | | | | | | | |
| value of an interest of a person in a partnership firm or in an AOP or a LLP of which he is a member | <p>Step 1: The net asset of the firm, AOP or LLP on the valuation date.</p> <p>Step 2: Thereafter, the portion of the net wealth of the firm, AOP or LLP as is equal to the amount of its capital shall be allocated among its partners or members in the proportion in which capital has been contributed by them.</p> <p>Step 3 The residue of the net asset shall be allocated among the partners or members in the following manner:</p> <table border="1"> <thead> <tr> <th>Situation</th> <th>Manner of allocation</th> </tr> </thead> <tbody> <tr> <td>In the event of dissolution of the firm or AOP</td> <td>In accordance with the agreement of partnership or association for distribution of assets</td> </tr> <tr> <td>In the absence of such agreement for distribution of assets on dissolution</td> <td>in the proportion in which the partners or members are entitled to</td> </tr> </tbody> </table> | | | Situation | Manner of allocation | In the event of dissolution of the firm or AOP | In accordance with the agreement of partnership or association for distribution of assets | In the absence of such agreement for distribution of assets on dissolution | in the proportion in which the partners or members are entitled to |
| Situation | Manner of allocation | | | | | | | | |
| In the event of dissolution of the firm or AOP | In accordance with the agreement of partnership or association for distribution of assets | | | | | | | | |
| In the absence of such agreement for distribution of assets on dissolution | in the proportion in which the partners or members are entitled to | | | | | | | | |

| | |
|-----------------|---|
| | share profits |
| | <p>Step 4: The sum total of the amount so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the partnership or association.</p> <p>Step 5: Net asset of the firm, AOP or LLP shall be $(A + B - L)$, determined in the manner specified above.</p> |
| Any other asset | <p>Higher of</p> <ol style="list-style-type: none"> 1. cost of acquisition 2. FMV/NRV on valuation date |

FMV of an asset (other than bank account) transferred before the valuation date [Rule 3(2)]:

Where an asset (other than a bank account) was transferred before the valuation date, the **FMV of such asset shall be higher**

- 1) cost of acquisition and
- 2) the sale price. This is notwithstanding the valuation rules given in Rule 3(1),

However, where such asset was transferred without consideration or for inadequate consideration before the valuation date, the FMV of the asset shall be higher of its cost of acquisition and the FMV on the date of transfer.

Transfer of an old asset or withdrawal from a bank account [Rule 3(3)]:

In such a case, FMV of such old Assets or bank account shall not be considered.

Example

House A located in a country outside India was bought in 1995 for Rs15 lakh. It was sold in 2000 for Rs 22 lakh. This amount was deposited in a bank account in that country. In the year 2001 another House B was purchased for Rs35 lakh. The investment in House B was made through withdrawal from the bank account in the foreign country. House B has not been transferred before the valuation date and its value on the valuation date is Rs48 lakh. Assuming that the value of foreign bank account as computed under Rule 3(1)(e) is Rs60 lakh, the fair market value (FMV) of the assets would be computed in the following manner:

FMV of House A = Rs 22 lakh (being higher of Rs15 lakh and Rs 22 lakh) - Rs22 lakh (invested in foreign bank account) = Nil

FMV of Foreign Bank account = Rs60 lakh - Rs35 lakh (invested in House B) = Rs25 lakh
 FMV of House B = Higher of Rs35 lakh and 48 lakh = Rs48 lakh

Rate of conversion of currency used to determine FMV of an asset [Rule 3(4) & 3(5)]

- Use RBI reference rate as on the date of valuation.
- Where the RBI reference rate is not available FMV of such Assets shall convert in US\$ from foreign currency & thereafter the Indian currency by RBI reference.
- However, where the Central Bank of the country or jurisdiction in which the asset is located does not specify the rate of conversion from its local currency to United States Dollar, then, such rate shall be the one as specified by any other bank regulated under the laws of that country or jurisdiction.

Relevant Date for determination of market value and conversion of currency

[Explanation 2 to Rule 3]

- IF Assets declared u/s 59: - 1st July 2015
- In other case: - 1st april of PY

Scope of total undisclosed foreign income and asset [Section 4]

Total undisclosed foreign income and asset of any previous year would be

- (1) The income from a source located outside India **which has not been disclosed in the return of income** filed under the Income-tax Act, 1961 on or before the due date under section 139(1) or in the belated return of income under section 139(4) or in the revised return of income under section 139(5).
- (2) the income from a source located outside India in respect of which a return is required to be filed under section 139 of the Income-tax Act, 1961, but **no return, belated return or revised return has been filed under section 139(1)/(4)/(5) of that Act.**
- (3) the value of any **undisclosed asset located outside India.**

Where income from a source outside India is already included in any assessment or reassessment in Income Tax u/s 29/43C/57/59/92C then such income shall not be included in total undisclosed foreign income.

In Income or Assets is included in undisclosed foreign Income/Assets under this act then such income or assets shall not be included in IT Act.

Computation of total undisclosed foreign income and asset [Section 5]

- ▲ **No deduction in respect of any expenditure or allowance or set off of any loss would be allowed** in computing the total undisclosed foreign income and asset of any previous year of an assessee, irrespective of whether the same is allowable under the Income-tax Act, 1961.
- ▲ If any assets is acquired out of any income which was already assessed earlier under income tax act (before this act) then such income shall be reduced.
- ▲ Eg: A house property located in a country outside India was acquired by Mr. A, an assessee in the previous year 2009-10 for Rs 60 lakh. Out of the investment of Rs 60 lakh, Rs 35 lakh was assessed to tax in the total income of the previous year 2009-10 and earlier years. Such undisclosed asset comes to the notice of the Assessing Officer in the year 2018-19. If the value of the house property in the year 2018-19 is Rs120 lakh, the amount chargeable to tax shall be $X-Y=Z$ where,

$X = \text{Rs } 120 \text{ lakh,}$

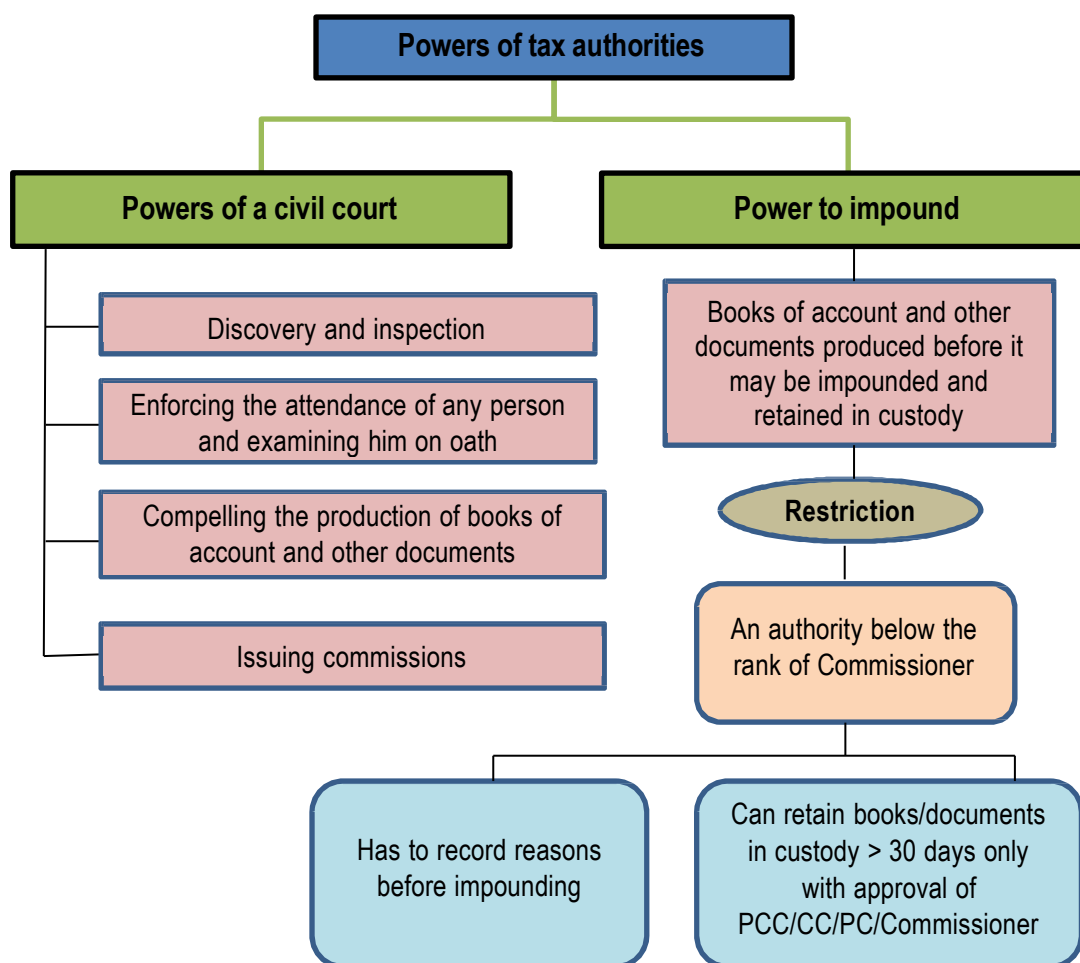
$Y = \text{Rs } 120 \text{ lakh} \times \frac{35}{60} = \text{Rs } 70 \text{ lakh,}$

$Z = \text{Rs } 120 \text{ lakh} - \text{Rs } 70 \text{ lakh} = \text{Rs } 50 \text{ lakh.}$

TAX MANAGEMENT [CHAPTER III – SECTIONS 6 TO 40]

| | | |
|-------|---------------------|---|
| Sec.6 | Tax Authorities | <ul style="list-style-type: none"> ✪ Income-tax authorities specified under section 116 of the Income-tax Act, 1961 would be the tax authorities for the purpose of this Act. ✪ Jurisdiction of a tax authority under this Act to be the same as he has under the Income- tax Act, 1961 by virtue of the orders or directions issued under section 120 of that Act or any other provision of that Act. ✪ Jurisdiction of a tax authority in case of an assessee having no income assessable under the Income-tax Act, 1961 – The tax authority having jurisdiction in his case under this Act to be the tax authority having jurisdiction in respect of the area in which the assessee resides or carries on its business or has its principal place of business. |
| Sec.7 | Change in incumbent | <p>(a) The tax authority who succeeds another authority as a result of change in jurisdiction or for any other reason, has to continue the proceedings from the stage at which it was left by his predecessor.</p> <p>(b) If the assessee makes a written requirement, he may be given an opportunity of being heard, before passing any order in his case.</p> |

Sec.8 Power of Authorities:



Proceedings before tax authorities to be judicial proceedings [Section 9]

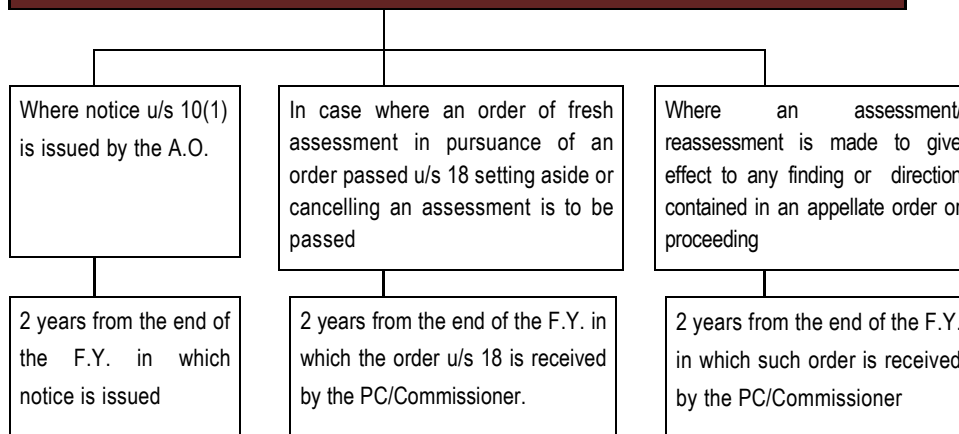
Any proceeding under this Act before a tax authority to be deemed as a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code &

A tax authority shall be deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973, which provides for prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

Assessment [Section 10]

1. **Service of Notice** - Where the Assessing Officer receives information from an income- tax authority or any other authority under any other law or any information comes to his notice, he may, for the purpose making an assessment or reassessment under this Act, **serve a notice** on any person requiring him to produce, or cause to be produced, on the date to be specified, **such accounts or documents or evidence** which he may require for the purposes of this Act.
2. **Service of further notices** - He may also serve further notices from time to time requiring production of such other accounts or documents or evidence as he may require.
3. **Making inquiry** - The Assessing Officer may, for the purpose of obtaining full information in respect of undisclosed foreign income and asset of any person for the relevant financial year(s), **make such inquiry** as he considers necessary.
4. **Passing an Assessment Order** - After considering the accounts, documents or evidence produced by the assessee, and any relevant material which he has gathered, the Assessing Officer has to **pass an order in writing assessing the undisclosed foreign income and asset and determining the sum payable by the assessee.**
5. **Best Judgement Assessment** - Where any person fails to comply with all the terms of the notice issued, the Assessing Officer shall, after giving the assessee an **opportunity of being heard** and after taking into consideration all the relevant material, make the assessment of undisclosed foreign income and asset to the **best of his judgment** and determine the sum payable by the assessee.

Time limit for completion of assessment or reassessment [Section 11]



Exclusion of specified time period - The time taken in reopening the whole or any part of the proceeding, the period during which the assessment proceeding is stayed by an order or injunction of any court or the period commencing from the date on which a reference or the first of the references for exchange of information is made by the competent authority (with reference to section 90/90A of the Income-tax Act, 1961 or under section 73 of this Act) and ending with the date on which the information requested is

last received or a period of one year, whichever is less, shall be excluded in computing the period of limitation.

If, after exclusion of such time period, the period of limitation available to the Assessing Officer for making an assessment order is less than 60 days, **the period of limitation shall be deemed to be extended to 60 days.**

Rectification of mistake [Section 12]

- (a) **Rectification of a mistake apparent from the record** – Any order passed by the tax authority can be amended by it to rectify any mistake apparent from the record.
- (b) **Time period for rectification** – A **four year time period** has been prescribed and the same has to be reckoned from the end of the financial year in which the order sought to be amended was passed.
- (c) **Opportunity of being heard** – Any amendment which has the effect of enhancing the undisclosed foreign income and asset or reducing a refund or otherwise increasing the liability of the assessee cannot be made without giving the assessee an opportunity of being heard.
- (d) **Time limit for deciding an application** – Where a tax authority receives an application from the assessee or the Assessing Officer for amendment of an order, the time limit within which such application has to be decided is **six months from the end of the month in which the application is received by it.** The tax authority may also make an amendment on its own motion.
- (e) **Rectification of an order which is a subject matter of appeal or revision** – In such a case, the power of the tax authority to amend the order would be restricted to matters other than those decided in appeal or revision

Notice of Demand [Section 13]

- (a) Service of notice of demand upon the assessee in the prescribed form and manner would be mandatory for a tax authority to demand any sum payable in consequence of an order made under this Act.
- (b) Rule 5 provides that where any tax, interest or penalty is payable in consequence of any order passed under the provisions of the Act, the Assessing Officer shall serve upon the assessee a notice of demand in Form 1 specifying the sum so payable

No bar on Direct Assessment or Recovery [Section 14]

The following are not barred by any provision in Chapter III of this Act:

1. Direct assessment of the person on whose behalf or for whose benefit the undisclosed income from a source located outside India is receivable or undisclosed asset located outside India is held.
2. Recovery of the tax or any other sum of money payable in respect of such income and asset from such person.

Appeal to Commissioner (Appeals) [Section 15]

Who can file an appeal? - The Act provides for appeal to Commissioner (Appeals) in the prescribed form [Form 2] and manner by any person who -

- (1) objects to the amount of tax on undisclosed foreign income and asset for

- which he is assessed by the Assessing Officer; or
- (2) denies his liability to be assessed under this Act; or
 - (3) objects to any penalty imposed by the Assessing Officer; or
 - (4) objects to a rectification order enhancing the assessment or reducing the refund; or
 - (5) objects to an order refusing to allow the rectification claim made by the assessee.

Manner of filing appeal - Form 2, the grounds of appeal and the form of verification appended thereto relating to an assessee has to be signed and verified by the person who is authorised to sign the return of income under section 140 of the Income-tax Act, 1961, as applicable to the assessee.

Fees - Every appeal filed under section 15 shall be accompanied by a fee of Rs10,000.

Payment of tax, interest and penalty: Pre-condition for filing appeal - No appeal under section 15(1) shall be admitted unless, at the time of filing of the appeal, the assessee has paid the tax along with penalty and interest thereon on the amount of liability which has not been objected to by the assessee.

Time limit for filing appeal to Commissioner (Appeals) – 30 days from:

| Circumstance | Date |
|---|--|
| Where notice of demand relating to an assessment or penalty is served | the date of service of the notice of demand |
| In any other case | the date on which the intimation of the order sought to be appealed against is served. |

Extension of time period for filing appeal – The Commissioner (Appeals) may admit an appeal after the expiry of the 30 day period:

- (1) if he is satisfied that the appellant had sufficient cause for not presenting it within that period; and
- (2) the delay in preferring the appeal does not exceed one year.

Passing an order - The Commissioner (Appeals) has to hear and determine the appeal. He may pass such orders as he thinks fit and such orders may include an order enhancing the assessment or penalty. However, an order enhancing the assessment or penalty cannot be made unless the assessee has been given a reasonable opportunity of being heard.

Appeal to Appellate Tribunal [Section 18]

Who can file an appeal? - The following persons can make an appeal to the Appellate Tribunal -

- (1) Any assessee who is aggrieved by an order passed by the Commissioner (Appeals);
- (2) Any assessee who is aggrieved by an order passed by the Principal Commissioner or Commissioner under any provision of the Act;
- (3) The Assessing Officer, on a direction received from the Principal Commissioner or Commissioner objecting to any order passed by the Commissioner (Appeals).

Time limit for filing an appeal - The appeal has to be filed within 60 days from the date on which the order sought to be appealed against is communicated to the assessee or the Principal Commissioner or the

Commissioner, as the case may be.

Memorandum of Cross Objections The Assessing Officer or the assessee can file a memorandum of cross objections within 30 days of receipt of notice that an appeal against the order of Commissioner (Appeals) has been preferred by the other party. The memorandum can be filed against any part of the order of the Commissioner (Appeals). Such memorandum has to be disposed of by the Appellate Tribunal as if it were an appeal presented within the 60 day time period.

Extension of time period for filing an appeal or Memorandum of Cross Objections – The Appellate Tribunal may admit an appeal or permit the filing of memorandum of cross objections after the expiry of the prescribed period mentioned in (b) and (c) above if –

- (1) it is satisfied that there was sufficient cause for not presenting it within that period; and
- (2) the delay in filing the appeal does not exceed a period of one year.

Form for appeal: An appeal to the Appellate Tribunal has to be made in form 3 where the appeal is made by the assessee, the form of appeal, the grounds of appeal and the form of verification appended thereto shall be signed by the person who is authorised to sign the return of income under section 140 of the Income-tax Act, 1961, as applicable to the assessee

Form of Memorandum of Cross Objections[Rule 7(2)] The memorandum of cross- objections to the Appellate Tribunal has to be made in form 4. Where the memorandum of cross objection is made by the assessee, the form of memorandum of cross-objections, the grounds of cross- objections and the form of verification appended thereto shall be signed by the person who is authorised to sign the return of income under section 140 of the Income-tax Act, 1961, as applicable to the assessee.

Fees [Rule 7(3)] - Every appeal filed by the assessee to the Appellate Tribunal has to be accompanied by a fee of Rs25,000.

Sec-19 & 21 Appeal to High Court & Appeal to Supreme Court

- Appeal can be filled if there is question of law framed by ITAT.
- The provisions of the **Code of Civil Procedure, 1908 shall apply.**
- The High Court may admit an appeal after the expiry of the 120 day period,if it is satisfied that there was sufficient cause for not filing an appeal within that period.

Revision of orders prejudicial to revenue [Section 23]

The Principal Commissioner/Commissioner may call for and examine all available records for the purpose of revising any order passed in any proceeding under this Act by a tax authority subordinate to him. For this purpose, "record" shall include all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or the Commissioner.

If he is satisfied that the order sought to be revised is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard, pass a revision order.

The Principal Commissioner or the Commissioner may make, or cause to be made, such inquiry as he considers necessary for the purposes of passing the order.

The revision order passed by the Principal Commissioner or Commissioner may have the effect of enhancing or modifying the assessment but shall not be an order cancelling the assessment and directing a fresh assessment.

A revision order cannot be made after the expiry of a period of two years from the end of the financial year in which the order sought to be revised was passed.

Circumstances when an order shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue - Without prejudice to the generality of the foregoing provisions, an order passed by a tax authority shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if in the opinion of the Principal Commissioner or the Commissioner—

1. the order is passed without making inquiries or verification which should have been made; or
2. the order has not been made in accordance with any order, direction or instruction issued by the Board; or
3. the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or the Supreme Court in the case of the assessee or any other person under this Act or the Income-tax Act.

Revision of other orders [Section 24]

Similar to sec.264 of Income tax act:

- **Revision of other orders suo motu by the Principal Commissioner/Commissioner or on an application made by the assessee**
- **Revision Order not to be prejudicial to assessee**
 - (1) against which an appeal has not been filed but the time for filing an appeal before the Commissioner (Appeals) has not expired;
 - (2) against which an appeal is pending before the Commissioner (Appeals); or
 - (3) which has been considered and decided in any appeal
- **Time limit for application for revision by assessee: 1 year from the date on which order sought to be revised was passed.**
- Every application by an assessee for revision under this section shall be accompanied by such fees as may be prescribed.

Recovery of Tax Dues [Sections 30 to 40]

- (a) **Recovery of tax dues by Assessing Officer [Section 30]** – The time period of payment of dues specified in the notice of demand to the credit of the Central Government is 30 days from the service of notice of demand. The period may be reduced by the Assessing Officer, with the previous approval of

the Joint Commissioner, if he has reason to believe that allowing 30 day period is detrimental to the interests of revenue. An application for extension of time period or allowing payment by installments may be entertained by the Assessing Officer before the expiry of the 30 day period or the period reduced, subject to such conditions as he may think fit to impose. An assessee shall be deemed as an assessee-in-default for failure to pay tax arrears within such specified period.

- (b) **Recovery of tax dues by Tax Recovery Officer [Section 31]** - The Tax Recovery Officer may draw up under his signature a statement of tax arrears of the assessee in the prescribed form [Form 5]. He has the power to rectify any mistake apparent from the record and the power to extend the time for payment or allow payment by installments, subject to such conditions as he may think fit to impose.
- (c) **Modes of recovery of tax dues [Section 32]** – The modes of recovery of tax arrears, such as deduction by employer from payment to the assessee, recovery from the debtor of the assessee have been provided.
- (d) **Tax Recovery Officer by whom recovery of tax dues is to be effected [Section 33]** – The Tax Recovery Officer, within whose jurisdiction the assessee carries on business or the principal place of business of the assessee is situated or the assessee resides or any movable or immovable property of the assessee is situated would be the Tax Recovery Officer competent to recover tax dues of the assessee.
- (e) **Recovery of tax dues in case of a company in liquidation [Section 34]** – The liquidator has to inform the Assessing Officer, who has jurisdiction to assess the undisclosed foreign income and asset of the company, of his appointment within a period of thirty days of his becoming the liquidator. Within a period of three months from the date of receipt of such information, the Assessing Officer has to intimate to the liquidator the amount which, in his opinion, would be sufficient to provide for any tax arrears or any amount which is likely to become payable thereafter, by the company under this Act.
- (f) **Liability of manager of a company [Section 35]** – Every person being a manager at any time during the financial year would be jointly and severally liable for the payment of any amount due under this Act in respect of the company for the financial year, if the amount cannot be recovered from the company. However, if the manager proves that non-recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the company, he would not be so liable.
- (g) **Joint and several liability of participants [Section 36]** – Every person, being a participant in an unincorporated body at any time during the financial year, or the representative assessee of the deceased participant, shall be jointly and severally liable, along with the unincorporated body, for payment of any amount payable by the unincorporated body under this Act. In case of a limited liability partnership, if the partner proves that non-recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the partnership, he would not be so liable.
- (h) **Recovery through State Government [Section 37]** – If the recovery of tax in any area has been entrusted to a State Government under clause (1) of article 258 of the Constitution, the State Government may direct, with respect to that area or any part thereof, that tax has to be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the manner as the municipal tax or local rate is recovered.
- (i) Recovery of tax dues in pursuance of agreements with foreign countries or specified territory [Section 38]
- (j) The Tax Recovery Officer may, in a case where an assessee has property in a country or a specified territory outside India, forward a certificate to the CBDT for recovery of the tax arrears from the assessee, where the Central Government or any specified association in India has entered into an agreement with that country or territory under section 90 or section 90A of the Income-tax Act or under section 73(1)/(2)/(4) of this Act, as the case may be, for the purposes of recovery of tax.

The CBDT may, on receipt of the certificate from the Tax Recovery Officer, take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country or a specified territory

- (k) **Recovery by suit or under other law not affected [Section 39]** – The modes of recovery in this Chapter would not affect in any manner any other law for the time being in force relating to the recovery of debts due to the Government or the right of the Government to institute a suit for the recovery of the tax arrears from the assessee.

The Assessing Officer or the Government shall have recourse to any such law or suit, notwithstanding that the tax arrears are being recovered from the assessee by any mode specified in this Chapter.

- (l) **Interest for default in furnishing return and payment or deferment of advance tax [Section 40]**

Interest under section 234A of the Income-tax Act, 1961 would be attracted for failure to disclose income from a source outside India in the return filed under section 139(1) or failure to furnish return of income under section 139(1) of the Income-tax Act, 1961.

Interest under sections 234B and 234C of the Income-tax Act, 1961 would be attracted for failure to pay advance tax on undisclosed income from a source outside India in accordance with Part C of Chapter XVII of the Income-tax Act, 1961.

PENALTIES [CHAPTER IV – SECTIONS 40 TO 47]

| Section | Default | penalty |
|---------|---|--|
| 41 | Penalty in relation to undisclosed foreign income and asset | In addition to tax, a sum equal to 3 times the tax so computed |
| 42 | Penalty for failure to furnish return in relation to foreign income and asset [Section 42] | Rs.10 lakh. |
| 43 | Penalty for failure to furnish information in the return of income or for furnishing inaccurate particulars about an asset located outside India [Section 43] | Rs.10 Lakh |
| 44 | Penalty for default in payment of tax arrear [Section 44] | Amount = tax payable |
| 45 | Penalty for other defaults [Section 45] | Rs.50000 to 2L |

Notes:

Such penalty under sections 42 and 43 would, however, not apply in respect of an asset, being one or more bank accounts having an aggregate balance which does not exceed a value equivalent to Rs5 lakh at any time during the previous year

For determining the value equivalent in rupees of the balance in an account maintained in foreign currency, the rate of exchange for calculation of the value in rupees shall be the telegraphic transfer buying rate of such currency as on the date for which the value is to be determined as adopted by the State Bank of India constituted under the SBI Act, 1955.

Procedure u/s 46

Procedure [Section 46]

- (a) **Issue of show cause notice** - For the purposes of imposing any penalty under Chapter IV, the tax authority has to issue a notice to an assessee requiring him to show cause why the penalty should not be imposed on him

- (b) **Time limit for issue of show cause notice [Section 46(2)]** - The show cause notice (SCN) has to be issued—
- (1) during the pendency of any proceedings under this Act for the relevant previous year, in respect of penalty referred to in section 41;
 - (2) within a period of 3 years from the end of the financial year in which the default is committed, in respect of penalties referred to in section 45.
- (c) An order imposing a penalty under this Chapter can be made only after giving the assessee an opportunity of being heard
- (d) **Prior approval of Joint Commissioner or Joint Director** - An order imposing a penalty under this Chapter shall be made with the approval of the Joint Commissioner **or Joint Director**, if –
- (1) the penalty exceeds Rs1 lakh and the tax authority levying the penalty is in the rank of Income-tax Officer; or
 - (2) the penalty exceeds Rs 5 lakhs and the tax authority levying the penalty is in the rank of Assistant Commissioner or Deputy Commissioner **or Assistant Director or Deputy Director**.

OFFENCES AND PROSECUTION [CHAPTER]

| Section | Offence | Punishment |
|---------|--|---|
| 49 | Willful failure to furnish return required to be furnished under section 139(1) of the Income- tax Act, 1961 in due time, by a person, being a resident other than not ordinarily resident in India, | Rigorous imprisonment for a term which would not be less than 6 months but which may extend to 7 years + fine. However, prosecution would not be attracted if he furnishes such return before the expiry of the assessment year. |
| 50 | Failure in relation to an asset (including financial interest in any entity) held by a person, being a resident other than not ordinarily resident in India | Rigorous imprisonment for a term which would not be less than 6 months but which may extend to 7 years + fine. |
| 51 | Willful attempt to evade any tax, penalty or interest under this Act by a person, being a resident other than not ordinarily resident in India | Rigorous imprisonment for a term not less than 3 years but extending to 10 years + fine. |
| 51[2] | Willful attempt to evade payment of any tax, penalty or interest under the Act, | Rigorous imprisonment for a term not less than 3 months but extending upto 3 years + a fine , in the discretion of the Court. |
| 52 | Punishment for false statement in verification | term not less than 6 months but extending to 7 years + with fine. |
| 53 | for abetment to make and deliver an account or statement or declaration relating to tax payable under this Act which is false or to commit an offence under section 51(1). | Rigorous imprisonment for a term not less than 6 months but extending to 7 years + fine |
| 58 | Second and subsequent offence | Rigorous Imprisonment: 3 to 10 years |

| | | |
|--|--|------------------------------------|
| | | (+) Fine: ` 5 lakh to `1 crore. |
|--|--|------------------------------------|

Sec.55 prosecution at the instance of PCIT

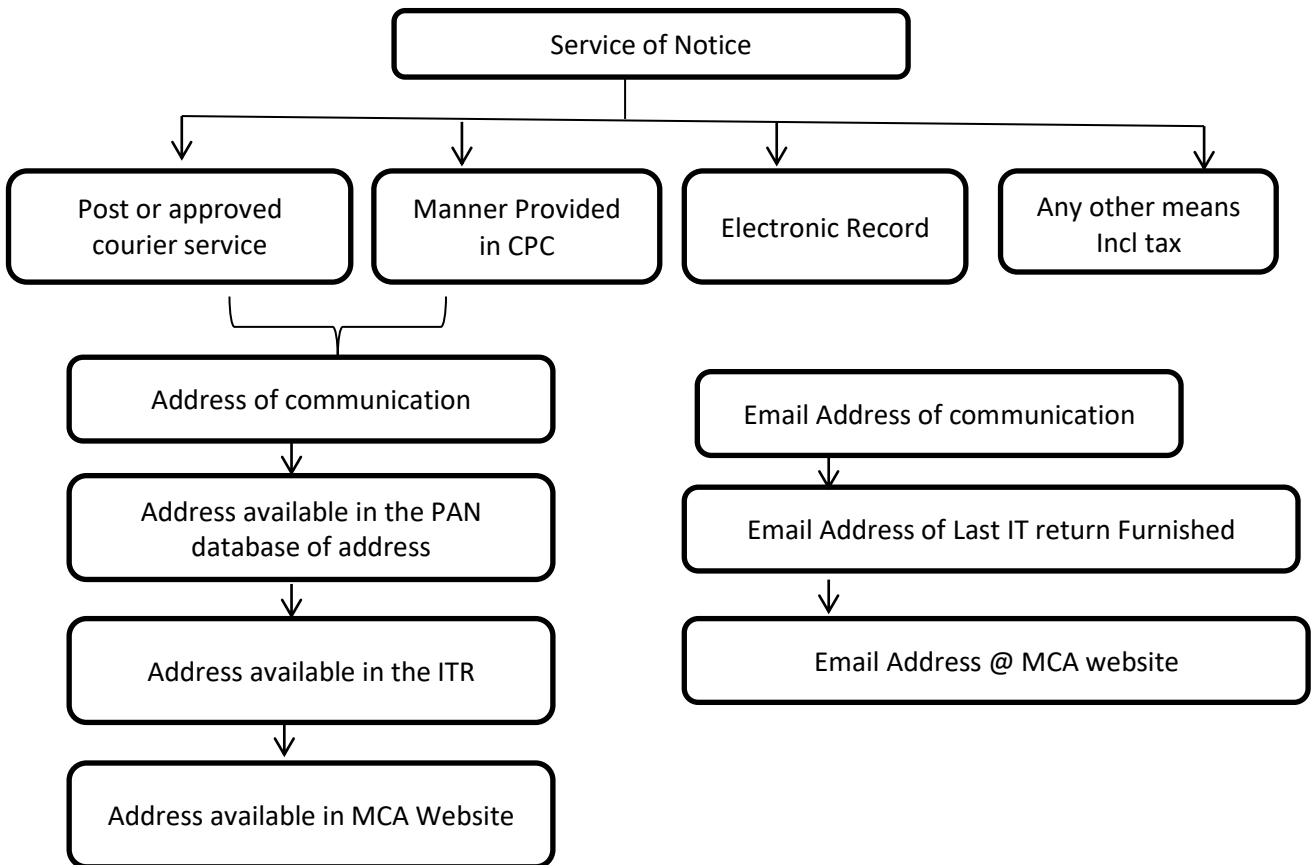
A person shall not be proceeded against for an offence under section 49 to section 53 except with the sanction of the Principal Commissioner or Commissioner or the Commissioner (Appeals), as the case may be. The Principal Chief Commissioner or the Chief Commissioner or **the Principal Director General or the Director General** may issue such instructions, or directions, to the tax authorities as he may think fit for the institution of proceedings under this section

GENERAL PROVISIONS [CHAPTER VII]

Sec.73 Agreement with foreign country or specified territory

Like sec.90 & 90A CG specified association may enter into DTAA with foreign country or specified territory

Sec.74 service of notice



Authentication of notices and other documents [Section 75] - Every notice or other document required to be issued, served or given for the purposes of this Act by any tax authority shall be authenticated by that tax authority and the same shall be deemed to be authenticated, if the name and office of a designated tax authority is printed, stamped and otherwise written thereon.

Notice deemed to be valid in certain circumstances [Section 76] - The notice shall be deemed to be duly served upon a person, if the person has appeared in any proceeding or co-operated in any enquiry relating to assessment. Such person cannot take any objection in any proceeding or inquiry under

the Act that the notice was not served upon him or was not served upon him in time or was served upon him in an improper manner. Notice shall, however, not be deemed to have been served if the person has raised the objection before the completion of an assessment.

Appearance by approved valuer in certain matters or authorized representative [Sections 77 & 78]

- Any assessee who is entitled or required to attend before any tax authority or Appellate Tribunal in connection with any proceeding under this Act may do so through an authorised representative. In the case of any matter relating to valuation of any asset, he may attend through a valuer as approved by Principal Commissioner or Commissioner in accordance with the prescribed Rules. However, the said provision would not apply in a case, where assessee is required to attend personally for examination on oath or affirmation under section 8.

Meaning of Authorised Representative:

- (a) a person related to the assessee in any manner, or a person regularly employed by the assessee;
- (b) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings;
- (c) any legal practitioner who is entitled to practice in any civil court in India;
- (d) an accountant;
- (e) any person who has passed any accountancy examination recognised in this behalf by the CBDT;
- (f) any person who has acquired a degree in Commerce or Law conferred by any Indian University incorporated by any law for the time being in force or certain prescribed foreign universities.

#Rounding off of income, value of asset and tax [Section 79] - The amount of undisclosed foreign income and assets shall be rounded off to the nearest multiple of one hundred rupees. The amount payable or receivable by the assessee under this Act shall be rounded off to the nearest multiple of ten rupees. For this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored

#Cognizance of offences [Section 80] - A court inferior to that of a metropolitan magistrate or a magistrate of First Class cannot try any offence under this Act.

Assessment not to be invalid on certain grounds [Section 81] - An assessment, notice, summons or other proceeding under this Act shall not be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such assessment, notice, summons or other proceedings if such assessment, notice, summons or other proceeding is in substance and effect, in conformity with the intent and purpose of this Act.

Bar of suits in civil courts [Section 82] – No suit shall be brought in any civil court to set aside or modify any proceeding or order under this Act. Further, no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government, for anything done or intended to be done in good faith under this Act.

Income-tax papers to be available for the purposes of this Act [Section 83] – All information contained in any statement or return furnished under Income-tax Act or obtained or collected for the purposes of that Act may be used for the purpose of this Act.

Certain provisions of the Income-tax Act to apply to this Act [Section 84] – The same will apply with necessary modifications as if the said provisions refer to undisclosed foreign income and asset instead of to income-tax.

| Section | Provision |
|------------|--|
| 119 | Instructions to subordinate authorities |
| 133 | Power to call for information |
| 134 | Power to inspect registers of companies |
| 135 | Power of Principal Director General or Director General or Principal Director or Director, Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Joint Commissioner to make an enquiry |
| 138 | Disclosure of information respecting assesseees |
| 237 | Refunds |
| 240 | Refund on appeal, etc. |
| 245 | Set off of refunds against tax remaining payable |
| 280 | Disclosure of particulars by public servants |
| 280A | Special Courts |
| 280B | Offences triable by Special Court |
| 280D | Application of Code of Criminal Procedure, 1973 to proceedings before Special Court |
| 281 | Certain transfers to be void |
| 281B | Provisional attachment to protect revenue in certain cases |
| 284 | Service of notice in the case of discontinued business |
| Chapter XV | Liability in special cases – Firms, AOPs and BOIs. |

Power to make Rules [Section 86] – The CBDT may, with the approval of the Central Government, notify Rules to carry out the provisions of this Act. The power to make rules conferred by this section includes the power to give retrospective effect to the rules or any of them from a date not earlier than the date of commencement of this Act. However, a retrospective effect should not be given to any rule so as to prejudicially affect the interest of assesseees

Every rule made under this Act has to be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of 30 days which may be comprised in one session or in two or more successive sessions

Power to remove difficulties [Section 86] – The Central Government may, by order not inconsistent with the provisions of the Act, remove any difficulty arising in giving effect to the provisions of this Act. However, no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Act came into force. Every such order shall be laid before each House of the Parliament

Amendment of PMLA [Section 88] – The Prevention of Money Laundering Act (PMLA), 2002 has been amended to include offence of willful attempt to evade any tax, penalty or interest referred to in section 51 under this legislation as a scheduled offence under PMLA.