

Various issues related to the Black Money (Undisclosed Foreign Income and Assets) and Imposition of the Tax Act, 2015 (hereinafter the Act) have been raised by various stakeholders. The concerns raised along-with the comments are as under-

| S.No. | From | Issues | Comments |
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| 1. | The Chamber of Tax Consultants (From page No.1 to 3) | Section 67 of the Act states that the declaration filed under section 59 cannot be used against the assessee under the five laws stated in section 67. However, if a regulator receives any information independently about foreign assets held abroad, there is strictly no immunity from action being taken. | Since the asset is the subject matter of declaration under section 59, no penalty/ prosecution proceedings under the specified 5 enactments shall be applicable in relation to the asset declared. |
| 2. | | Under FEMA, an Indian resident is required to bring back foreign assets. If a person declares his foreign assets under section 59, can he keep the assets so declared abroad/ continue to operate the bank account abroad. | RBI Press Release 2015-2016/754 dated 24 th September, 2015 addresses the said query (placed at Flag/A). |
| 3. | | The compliance window under section 59 be extended by atleast 3 months. | Due dates for filing a declaration under compliance window have already been notified which has been further affirmed by Press Release of CBDT dated 21 st September, 2015 (placed at Flag/B). |
| 4. | | A clarification be issued as to whether only those assets which exist on 01.07.2015 can be brought to tax. If a person has spent away the asset or the asset does not exist on 01.07.2015, it is to be taxed under the Act or under the Income-tax Act. | Already clarified in Question No.29, 19 and 20 of Circular No.13 of 2015. |

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| 5. | | The time limit for operation of the Act may be amended so as not to go beyond 16 years. | The provisions of the Act are clear in this respect and call for no clarification. |
| 6. | | Credit of Foreign Tax paid should be provided under the Act. | The provisions of the Act are clear in this respect and call for no clarification. |
| 7. | N.D. Gupta, Past President, ICAI (At page No.5) | How to find present net-worth or market value of contributions made to a foreign pension funds as there are no valuers available in that country. | The value of contributions to pension funds shall be the higher of the total contributions made to the pension fund or the net asset value of total contributions. Further, valuation report is not mandatory for making a declaration. |
| 8. | Taranjeet Singh (At page No.7) | The condition of 'higher of acquisition price and current market price as stated under rule 3(c)(I)' be modified to the 'current market price as of valuation date'. | The rules prescribing the fair market value to be higher of the cost or sale price has been recently notified with due deliberations and do not call for any change. |
| 9. | Akash Jain (At page No.8) | If an Indian resident has given a loan to a foreign trust and the trust has bought a property from that loan and the property now is valued less than the original price, should the Indian resident declare the loan to the trust as the asset or does it need to declare the property as the asset. | The provisions of the Act are very clear that the declaration has to be made by the legal or beneficial owner of the asset. Further, this has also been clarified in question No.4 of circular No.15 of 2015. |
| 10. | S R Wadhwa (At page No.9) | Where the money was withdrawn from the undisclosed bank account or the undisclosed foreign asset was disposed-off and money kept in liquid form abroad, what will be the view of RBI under FEMA in bringing the proceeds of undisclosed asset to India? | RBI Press Release 2015-2016/754 dated 24 th September, 2015 addresses the said query. |

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| 11. | Rashmin Sanghvi & Associates (At page No.10) | Clarification on FEMA. | RBI Press Release 2015-2016/754 dated 24 th September, 2015 addresses the said query. |
| 12. | Kirti Kumara J (At page No.11) | Cases where asset base is legal money but profit earned is black money (generally in cases of OCI/ PIO/ Foreigners who are living and working in India) deserve a lenient treatment and should be made to pay maximum slab rate of 30% as penalty on value of their asset as they only fail to report their profit/ income from a legally earned asset base. | There is no ambiguity in the provisions of the Act. The request is to amend the law. The suggestion is not acceptable as it is contrary to the purpose for which the Black Money Law has been enacted. |
| 13. | R M Narayanan (At page No.12) | Where the declarant had a foreign bank account that has been repatriated into India in earlier years, is it in order to value the asset and offer the income based on the actual amounts credited into the Indian bank account. Since the money has already been converted into Indian rupees in earlier years at lower exchange rate then prevailing, adopting higher conversion rate as on 01.07.2015 will result in taxing the income that was never realised by the declarant. | There is no ambiguity in the rule regarding the conversion rate to be adopted. Rule 3(4) of the Black Money Rules and query 21 of CBDT's Circular 15 of 2015 covers the issue. |
| 14. | Ravi Agrawal (At page No.13) | What is the tax implication if an original tax- paid asset is left in the US and allowed to get only interest and dividend. Is it sufficient to include such interest and dividend and current foreign | Covered in question number 1 and 2 of circular 15 of 2015. |

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| | | asset details such as bank account etc. under Schedule FA. | |
| 15. | M B Nayak & Co. (From page No.14 to 16) | <p>The Act does not provide for regularisation of any contraventions under FEMA, 1999. The law is also silent in respect of immunity of continuing offences.</p> <p>In such a case, should the individual discontinue the business assuming the entity has been set up in contravention to the provisions of FEMA.</p> <p>How does one regularise the offence under FEMA?</p> <p>What declarations a person would be required to make under FEMA for acquisition of assets abroad in violation of FEMA?</p> <p>Can a person who is opted for one time compliance scheme and what immunity under FEMA continue to hold such asset?</p> <p>Once a person declares such account whether he is required to close such account and bring the money to India or continue to hold such account.</p> | RBI has issued a Press Release 2015-2016/754 dated 24 th September, 2015 on regularisation of assets held abroad and declared under the compliance window of the Act in respect of a person resident in India under FEMA. |
| 16. | Hemant Joshi (At page No.17) | Whether a resident who owns 100% equity share capital of unlisted foreign company which have been received by him purely as gift from his non- | Under section 2(11) of the Act, an undisclosed foreign asset is defined as an asset located outside India which is held by a person for which he has no |

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| | | resident cousin, who desires to disclose his foreign dividend income from such shares is required to disclose the underlying equity shares of the foreign company under the compliance window. | satisfactory explanation about the source of investment. Therefore, where a satisfactory explanation for the asset exists, the same shall not constitute undisclosed foreign asset under the Act. The issue has been further clarified by question No. 18 of circular No.13 of 2015. |
| 17. | Rashmin Sanghvi & Associates (From page No.21 to 23) | The letter is addressed to Executive Director, RBI dated 19.09.2015 seeking clarification on the permission under FEMA to hold the asset abroad, immunity from FEMA on the asset disclosed under the Act. Whether all past transactions in violation of FEMA culminating into the last asset which is disclosed under the compliance window are regularised. | RBI Press Release 2015-2016/754 dated 24 th September, 2015 addresses the said query. The Act specifically provides in section 67 that any declaration made under section 59 shall not be admissible against the declarant for penalty/prosecution under the FEMA. |
| 18. | Ajay Wadhwa (At page No.24) | Can the persons having bank accounts abroad in which the money still exists make a declaration of the credit in the account and bring the balance in India and pay taxes from the remittances? | Declaration of credits in the bank account is already covered. RBI Press Release 2015-2016/754 dated 24 th September, 2015 addresses the issue of remittance. |
| 19. | Neha Malhotra (At page No.25) | The press release of RBI states that "No permission under FEMA will be required to dispose of the asset so declared and bring back the proceeds to India through banking channels within 180 days from the date of declaration. The RBI will deal with such applications as per extant regulations. In case such permission is not | Does not pertain to CBDT, falls under the purview of RBI. The reference has originally been made by the applicant to RBI. However, the same has again been forwarded by CBDT to RBI for necessary action. |

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| | | <p>regulations. In case such permission is not granted, the asset will have to be disposed off and proceeds brought back to India.”</p> <p>In view of the above, there is a flutter amongst the declarants as to what will happen where the permission is not granted by the RBI.</p> | |