SYNOPSIS OF THE UNDISCLOSED FOREIGN INCOME AND ASSETS (IMPOSITION OF TAX) BILL, 2015

(84 of 2015)

[Personal & Private Circulation bearing no opinion or advice]

Contents:

Disclaimer:

This document contains the views of the author on the analysis of the Bill, which should not be relied upon for decision making and for giving advices. Though due care has been taken in the preparation however, the observations and comments are the personal opinion of the author.

The document captures the provisions which are of interest to a larger group of persons and do not cover all the Provisions of the Bill.

The author has taken the initiative to document the Act and seeks suggestions or feedback. These suggestions / feedback will encourage the author.

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Preamble:

- A bill to make provisions for undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto.

CHAPTER I (Preliminary)

Section 1, Extent and Commencement:

- This act extends to the whole of India and it shall come into force on the 1st day of April, 2016 i.e. from Financial Year 2015-16/ Assessment Year 2016-17.

Section 2, Definitions:

Most of the definitions are same as defined in the Income tax Act, 1961, but certain definitions given in the act are as below:

- "Participant" means:
  I. A partner in relation to a firm; or
  II. A member in relation to an association of persons or body of individuals;

- "previous year" means:
  i. the period beginning with the date of setting up of a business and ending with date of the closure of the business or the 31st day of March following the date of setting up of such business, whichever is earlier;

  ii. the period beginning with the date on which a new source of income comes into existence and ending with the date of closure of the business or the 31st day of March following the date on which such new source comes into existence, whichever is earlier;

  iii. the period beginning with the 1st day of the financial year and ending with the date of discontinuance of the business other than business referred to in clause (b) or dissolution of an unincorporated body or liquidation of a company, as the case may be; or

  iv. The period of twelve months commencing on the 1st day of April of the relevant year in any other case, and which immediately precedes the assessment year.

- "undisclosed asset located outside India" means an asset (including financial interest in any 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;

- "undisclosed foreign income and asset" means 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;

➢ "Unincorporated body" means:

I. a firm;

II. an association of persons; or

III. a body of individuals;

CHAPTER II (Basis of Charge)

Section 3:

From AY 2016-17, on every assessee, tax @ 30% of such undisclosed foreign income and asset of the previous year.

Provided that 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.

Further, "value of an undisclosed asset" means the fair market value of an asset (including financial interest in any entity) determined in such manner as may be prescribed in future in rules.

Section 4:

➢ The total undisclosed foreign income and asset of any previous year of an assessee shall be:
   (a) income from a source located outside India, which has not been disclosed in the return of income furnished under section 139 of the Income-tax Act;
   (b) the income, from a source located outside India, in respect of which no return is furnished under section 139 of the Income-tax Act; and
   (c) The value of an undisclosed asset located outside India.

➢ Subject to above explained provision, any variation in the foreign income of any assessee in the income tax assessment or reassessment shall not be included in the total undisclosed foreign income.

➢ The income included in the total undisclosed foreign income and asset under this Act shall not form part of the total income under the Income-tax Act.

Section 5:

In computing the total undisclosed foreign income and asset of any previous year of an assessee:

(i) no deduction of any expenditure / allowance / set off of any loss shall be allowed to the assessee, whether allowable under the Income-tax Act;

(ii) any income:

(a) Which has been assessed to tax for any assessment year under the Income-tax Act prior to the assessment year to which this Act applies; or

(b) Which is assessable or has been assessed to tax for any assessment year under this Act,

shall be reduced from the value of the undisclosed asset located outside India, if, the assessee furnishes evidence that the asset has been acquired from the income which has been assessed or is assessable to tax.

➢ The amount of deduction referred to in clause (ii) above, in case of an immovable property shall be the amount which bears to the value of the asset as on the first day of the financial year in which it comes to the notice of the Assessing Officer, the same proportion as the assessable or assessed foreign income bears to the total cost of the asset.

Illustration:

A house property located outside India was acquired by an assessee in the previous year 2009-10 for Rs. 50 lakh. Out of the investment of Rs. 50 lakh, Rs. 20 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 2017-18. If the value of the asset in the year 2017-18 is Rs. 1crore, the amount chargeable to tax shall be A-B=C, where:

A=Rs.1 crore,

B=Rs. (100 x 20/50) lakh= Rs.40 lakh,

C=Rs. (100-40) lakh=Rs.60 lakh.

CHAPTER III (Tax Management)

Section 6, 7, 8 and 9:

- The tax authority having jurisdiction in relation to an assessee who has no income under income tax act shall be in respect of the area in which the assessee resides or carries on its business or has its principal place of business.

- The meaning of tax authorities is same as given under income tax act.

- The prescribed tax authorities shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908, for discovery and inspection, enforcing the attendance of any person, production of books of account and other documents and issuing commissions.

- Further any officer can impound any books of account or other documents produced and retain them in custody with the approval of commissioner or above rank officer.

- Any proceeding under this Act before a tax authority shall be deemed to be a judicial proceeding.

- Every tax authority shall be deemed to be a civil court.

Section 10 (Assessment):

- For the purposes of making an assessment or reassessment, the Assessing Officer may serve a notice to any person, requiring him to produce such accounts or documents or evidence as require and may serve further notices requiring the production of such other accounts or documents or evidence as he may require.

- The Assessing Officer may make such inquiry for the purpose of obtaining full information in respect of undisclosed foreign income and asset of any person for the relevant financial year or years.

- The Assessing Officer, after considering such accounts, documents or evidence and after taking into account any relevant material which he has gathered and any other evidence produced by the assessee, shall by an order in writing, assess the undisclosed foreign income and asset and determine the sum payable by the assessee.

- If any person fails to comply with the terms of the notice, the Assessing Officer shall give the assessee an opportunity of being heard and will make best judgment assessment.

Section 11 (Time Limit for Completion of Assessment/Re assessment):

- The order of assessment or reassessment shall be made within two years from the end of the financial year in which the notice was issued.

Section 12 (Rectification of Mistake):

- Any mistake apparent from record in the order may be rectified within 4 years from the end of financial year in which order is passed.

- Further without giving any opportunity of being heard, no undisclosed foreign income and asset can be enhanced or reduced a refund or otherwise increasing the liability of the assessee.

- The rectification can be made by the tax authority suo moto or at the request of the assessee.

- Any application received by the tax authority for amendment of an order shall be decided within a period of six months from the end of the month in which such application is received by it.

Section 13 (Notice of Demand):

- Any sum payable in consequence of any order made under this Act shall be demanded by a tax authority by serving upon the assessee a notice of demand in such form and manner as may be prescribed.

Section 15, 16 and 17 (Appeal to CIT (A)):

- An appeal shall be presented within a period of thirty days from:
  - the date of service of the notice of demand relating to the assessment or penalty, or
  - the date on which the intimation of the order sought to be appealed against is served in any other case.

- The Commissioner (Appeals) may admit an appeal after the expiration of the period:
  - if he is satisfied that the appellant had sufficient cause for not presenting it within that period; and
  - the delay in preferring the appeal does not exceed a period of one year.

- In an appeal, the Commissioner (Appeals) shall have the following powers:
  - he may confirm, reduce, enhance or annul the assessment order;
  - he may confirm or cancel penalty order;
  - he may determine the issues arising in the appeal and pass such orders thereon, as he thinks fit.

- The Commissioner (Appeals) may consider and decide any matter which was not considered by the Assessing Officer.

- The Commissioner (Appeals) shall not enhance an assessment or a penalty unless the appellant has had an opportunity of being heard.

Section 18 (Appeal to ITAT):

- Appeal can be filed to ITAT by any assessee or the Assessing Officer against the order passed by the Commissioner (Appeals).

- The appeal shall be filed within a period of sixty days from the date of communication of order.

- Once the appealed is filed by one party, a notice will be sent to the other party and within thirty days of the receipt of the notice, he has to file a memorandum of cross-objections.

- The Appellate Tribunal may admit an appeal or memorandum of cross-objections after the expiry of the period if:
  - it is satisfied that there was sufficient cause for not presenting it within that period; and
  - the delay in filing the appeal does not exceed a period of one year.

- Subject to the provisions of this Act, the Appellate Tribunal shall exercise the same powers and follow the procedure as it exercises and follows under the Income-tax Act.

Section 19 and 20 (Appeal to High Court):

- If the case involves a substantial question of law, appeal shall lie to the High Court against the order of ITAT.

- Income Tax Department or an assessee can file an appeal to the High Court against the order of ITAT and such appeal shall be:
  - Filed within a period of 120 days from the date of communication of order;
  - In the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

- The High Court may admit an appeal after the expiry of 120 days if it is satisfied that there was sufficient cause for not filing the appeal within that period.

- If the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

- The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

- Further the High Court may exercise its power to hear the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question of law.

- The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

- When the High Court delivers a judgment in an appeal filed, effect shall be given to the order passed on the appeal by the Assessing Officer on the basis of a certified copy of the judgment.

- The High Court may determine any issue which:
  - has not been determined by the Appellate Tribunal; or

- has been wrongly determined by the Appellate Tribunal, by reason of a decision on the question of law.

- An appeal filed before the High Court shall be heard by a Bench of not less than two Judges of the High Court.

- Where there is no majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

Section 21 and 22 (Appeal to Supreme Court):

- An appeal shall lie to the Supreme Court from any judgment of the High Court delivered under section 19 which the High Court certifies to be a fit case for appeal to the Supreme Court.

- Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order passed on the appeal by the Assessing Officer on the basis of a certified copy of the judgment.

Section 23 (Revision of Orders Prejudicial to Department):

- The Principal Commissioner or the Commissioner may call for and examine all available records for revising any order passed in any proceeding under this Act.

- The Principal Commissioner or the Commissioner may, after giving the assessee an opportunity of being heard and after doing such inquiry as he considers necessary, pass revised order 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.

- The revision order may have the effect of enhancing or modifying the assessment but not for cancelling the assessment and directing a fresh assessment.

- No revision of order shall be made after the expiry of a period of two years from the end of the financial year in which the order was passed.

- An order in revision under this section may be passed in respect of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

- 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:
  - The order is passed without making inquiries or verification which, should have been made; or
  - The order has not been made in accordance with any order, direction or instruction issued by the Board; or
  - 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.

Section 24 (Revision of other Orders):

- The Principal Commissioner or the Commissioner may, either suo motu or on an application made by the assessee, for the purposes of revising any order passed by an authority subordinate to him, other than an order to which section 23 applies, call for and examine all available records relating thereto.

- The Principal Commissioner or the Commissioner may pass an order, as he considers necessary, which is not prejudicial to the assessee.

- No revision can be done for the order:
  - Against which an appeal has not been filed but the time for filing an appeal before the Commissioner (Appeals) has not expired;
  - Against which an appeal is pending before the Commissioner (Appeals); or
  - Which has been considered and decided in any appeal.

- The assessee shall make the application for revision of any order within a period of one year from the date on which the order sought to be revised was communicated to him, or the date, on which he otherwise came to know of it, whichever is earlier.

- The delayed revision application can be accepted if there is sufficient cause from delay in making application but before expiry of two years.

- No order shall be made after the expiry of:
  - A period of one year from the end of the financial year in which an application is made by the assessee; or
  - A period of one year from the date of the order sought to be revised, if the order is revised suo motu by the Commissioner.

Section 29 (Filing of appeal by tax authorities):

- The Board may, from time to time, issue orders, instructions or directions to other tax authorities, fixing such monetary limits as it may deem fit, for the purpose of regulating the filing of appeal by any tax authority under this Chapter.

- Where, in pursuance of the orders, instructions or directions issued as mentioned above, a tax authority has not filed any appeal on any issue in the case of an assessee for any financial year; it shall not preclude such authority from filing an appeal on the same issue in the case of:
  - the same assessee for any other financial year; or
  - any other assessee for the same or any other financial year.

- Notwithstanding that no appeal has been filed by a tax authority pursuant to the orders or instructions or directions issued as mentioned above, it shall not be lawful for an assessee, being a party in any appeal, to contend that the tax authority has acquiesced in the decision on the disputed issue by not filing an appeal in any case.

Section 30 (Recovery of Tax Dues of AO):

- Any amount specified as payable in a notice of demand under section 13 shall be paid within a period of thirty days of the service of the notice.

- The Assessing Officer can reduce such period as he deems fit with the previous approval of the Joint Commissioner.

- The Assessing Officer can extend the time for payment, or allow payment by instalments, on an application made by the assessee.

- An assessee shall be deemed to be an assessee in default, if the tax arrears is not paid within the time allowed.

Section 31 (Recovery of Tax Dues by TRO):

- The Tax Recovery Officer may draw up under his signature a statement (certificate) of tax arrears of any assessee referred in section 30.

- The certificate shall stand amended from time to time consequent to any proceeding under this Act and the Tax Recovery Officer shall recover the amount so modified.

- The Tax Recovery Officer may rectify any mistake apparent from the record.

- The Tax Recovery Officer shall have the power to extend the time for payment, or allow payment by instalments.

- The Tax Recovery Officer shall proceed to recover from the assessee the amount specified in the certificate by one or more of the modes referred to in section 32 or in the Second Schedule to the Income-tax Act.

Section 33 (Modes of Recovery of Tax Dues):

- The Assessing Officer or the Tax Recovery Officer can get the tax arrears deducted from the salary through employer of the assessee.

- The salary which is exempt from attachment under section 60 of the Code of Civil Procedure, 1908, shall be exempt from above.

- The Assessing Officer or the Tax Recovery Officer can get recover the tax arrears from the debtor of the assessee not exceeding the amount of debt.

- Any claim in respect of any property arising after the date of the notice shall be void as against any demand contained in the notice.

- A person to whom a notice has been issued, shall not be required to pay the amount of tax arrears specified therein if he objects to it and stated that no amount is due to the assessee or that he does not hold any money for, or on account of, the assessee.

- The Assessing Officer or the Tax Recovery Officer may amend or revoke any notice issued or extend the time for making any payment in pursuance of such notice.

- The Assessing Officer or the Tax Recovery Officer shall grant a receipt for any amount paid in compliance with notice and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

- Any person discharging any liability to the assessee after receipt of a notice shall be personally liable to the Assessing Officer or the Tax Recovery Officer to the extent of his own liability to the assessee so discharged or to the extent of the liability of the assessee for any sum due under this Act, whichever is less.

- The debtor to whom a notice is sent shall be deemed to be an assessee in default, if he fails to make such payment.

- The Assessing Officer or the Tax Recovery Officer may apply to the court, in whose custody there is money belonging to the assessee for payment of tax arrears.

Section 34 (Recovery of Tax Dues in case of liquidation of Company):

- The liquidator shall inform the Assessing Officer of his appointment within thirty days of his becoming the liquidator.
- Within three months, the Assessing Officer shall intimate the amount of tax arrears to the liquidator.
- The liquidator shall not dispose any assets of the company until he got the information of tax arrears and on being so intimated, shall set aside the amount.
- The tax arrears will have first preference after payment of the workmen's dues and debts due to secured creditors under proviso to section 325 of the Companies Act, 2013.
- The liquidator shall be personally liable for the payment of the amount payable by the company, if he fails to inform the AO or fails to set aside the amount as required.
- The obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally in a case where there is more than one liquidator.

Section 35 (Liability of the Manager of the Company):

- Every person being a manager of the company shall have personal liability if the amount cannot be recovered from the company.
- If the manager proves that non recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part then he shall not be liable.

Section 37 (Recovery through state government):

- 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 shall 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.

Section 38 (Recovery in pursuance of agreement with Foreign Countries):

- In a case where an assesse has property outside India, the TRO may forward a certificate to the Board for recovery of the tax arrears from the assesse where the Central Government has entered DTAA with that country.

Section 39 (Recovery under other law not affected):

The several modes of recovery specified in this Chapter shall not affect in any way:

- 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 assesse.

Section 40 (Interest for default in furnishing return and payment of advance tax):

- Where the income from outside India has not been disclosed in the income tax return or the return of income is not filed, the interest shall be chargeable as per section 234A of the Income-tax Act.

- Where the assessee has not paid the advance tax then interest shall be chargeable in accordance with the provisions of section 234B and 234C of the Income-tax Act.

CHAPTER IV (PENALTIES)

Section 41 (Penalty for Undisclosed Income):

- The Assessing Officer may impose penalty of 3 times of tax computed under Section 10 in respect of undisclosed foreign income and asset.

Section 42 and 43 (Penalty for Non Filing of Return):

- If a person, being ROR (Resident and Ordinarily Resident) within the meaning of section 6 (6) of the Income-tax Act and required to furnish a return of his income under section 139 of the Income-tax Act and who at any time during such previous 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 any income from a source located outside India,

and fails to furnish such return before the end of the relevant assessment year, penalty of Rs. 10 lakh rupees can be imposed, provided that in respect of an asset, being bank accounts having an aggregate balance less than Rs 5 Lacs at any time during the previous year.

Section 44 (Penalty for default in payment of tax arrears):

- Every person who is an assessee in default in making payment of tax and in case of continuing default, he shall be liable to a penalty of an amount, equal to the amount of tax arrears. Further, an assessee shall not cease to be liable to any penalty merely by reason of the fact that before the levy of such penalty he has paid the tax.

Section 45 (Penalty for other defaults):

- A person shall be liable to a penalty if he has, without reasonable cause, failed to:
  - answer any question put to him by a tax authority;
  - sign any statement made by him in the course of any proceedings under this Act;
  - attend or produce books of account or documents at the place or time in response to summons issued under section 8.

- The penalty shall be a sum which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.

Section 46 (Penalty Procedure):

- The tax authority shall issue a notice to an assessee requiring him to show cause why the penalty should not be imposed on him.

- The notice shall be issued:
  - during the pendency of any proceedings under this Act in respect of penalty referred to in section 41;
  - within a period of three years from the end of the financial year in which the default is committed, in respect of penalties referred to in section 45.

Section 47 (Limitation for Imposing Penalty):

- Order imposing a penalty need to be passed within one year from the end of the financial year in which the notice is issued under section 46.

- An order imposing, or dropping the proceedings for imposition of, penalty under this Chapter may be revised, or revived, as the case may be, on the basis of assessment of the undisclosed foreign income and asset as revised after giving effect to the order of the Commissioner (Appeals), the Appellate Tribunal, the High Court or the Supreme Court or order of revision under section 23 or section 24.

- An order revising or reviving the penalty shall not be passed after the expiry of a period of six months from the end of the month in which order of the Commissioner (Appeals), the Appellate Tribunal, the High Court or the Supreme Court is received or the order of revision under section 23 or section 24 is passed.

CHAPTER V
OFFENCES AND PROSECUTIONS

Section 48:

- The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of any other law providing for prosecution for offences there under.

- The provisions of this Chapter shall be independent of any order under this Act that may be made, or has not been made, on any person and it shall be no defence that the order has not been made on account of time limitation or for any other reason.

Section 49 and 50 (Punishment for failure to furnish return):

- If a person, being a ROR as per section 6 (6) of the Income-tax Act, who at any time during the previous year, held any asset (including financial interest in any entity) located outside India as a beneficial owner or otherwise, or was a beneficiary of such asset or had income from a source outside India and *wilfully fails to furnish* before the expiry of the assessment year, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

Section 51 (Punishment for willful attempt to evade tax):

- If a person, being a ROR as per section 6 (6) of the Income-tax Act, wilfully attempts to evade any tax, penalty or interest, he shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine.

- If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

Section 52 and 53 (Punishment for false statement in verification and abetment):

- If a person makes a false statement in any verification under this Act and abets or induces in any manner another person to make and deliver a false account or a false statement or false declaration and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

Section 54 (Presumption as to Culpable Mental State):

- In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

- Explanation: In this sub-section, “culpable mental state” includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

- For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Section 56 (Offence by Companies):

- Where an offence has been committed by a company, every person who was in charge of and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- where an offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence.

- Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then such company shall be punished with fine and every director, manager, secretary or other officer of the company, shall be liable to be proceeded against and punished in accordance with the provisions of this Act.

Section 57 (Proof of entries in records):

- The entries in the records, or other documents, in the custody of a tax authority shall be admitted in evidence in any proceeding for the prosecution.

- The entries may be proved by the production of:
  - the records or other documents (containing such entries) in the custody of the tax authority; or
  - a copy of the entries certified by that authority under its signature, as true copy of the original entries contained in the records or other documents in its custody.

Section 58 (Punishment of Subsequent offences):

- If any person is convicted of an offence under section 49 to section 53 more than once, he shall be punishable with rigorous imprisonment for a term which shall not be less than three years, but which may extend to ten years and with fine which shall not be less than five lakh rupees, but which may extend to one crore rupees.

CHAPTER VI
TAX COMPLIANCE FOR UNDISCLOSED FOREIGN INCOME AND ASSETS

Section 59, 60 and 61 (Declaration of Undisclosed foreign assets, charge of tax and penalty):

- Subject to the provisions of this Chapter, any person may make, on or after the date of commencement of this Act but on or before a date to be notified by the Central Government in the Official Gazette, a declaration 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 beginning on 1st day of April, 2016:
  - for which he has failed to furnish a return;
  - which he has failed to disclose in a return of income;
  - which has escaped assessment by reason of the omission or failure or to disclose fully and truly all material facts.

- The undisclosed asset located outside India and declared under section 59 shall be chargeable to tax at the rate of 30% of value of such undisclosed asset.

- The person making a declaration of undisclosed asset located outside India shall, in addition to tax be liable to penalty @ 100% of such tax.

Section 62 (Manner of Declaration):

- A declaration under section 59 shall be made to the Principal Commissioner or the Commissioner.

- The declaration shall be signed:
  - where the declarant is an individual, by the individual or by some person duly authorised by him and where the individual is mentally incapacitated, by his guardian or by any other person competent to act on his behalf;

  - where the declarant is a HUF, by the karta, and where the karta is absent from India or is mentally incapacitated, by any other adult member of such family;

  - where the declarant is a company, by the managing director, or where such managing director is not able to sign the declaration, by any director thereof;

  - where the declarant is a firm, by the managing partner, or where such managing partner is not able to sign, by any partner thereof, not being a minor;

- where the declarant is any other association, by any member of the association or the principal officer thereof; and

- where the declarant is any other person, by that person or by some other person competent to act on his behalf.

➢ Any person, who has made a declaration in respect of his asset or as a representative assessee in respect of the asset of any other person, shall not be entitled to make any other declaration, under that sub-section in respect of his asset or the asset of such other person, and any such other declaration, if made, shall be deemed to be void.

Section 63 (Time for payment of tax):

➢ The tax payable under section 60 and penalty payable under section 61 in respect of the undisclosed asset located outside India, shall be paid on or before a date to be notified by the Central Government in the Official Gazette.

➢ The declarant shall file the proof of payment of tax and penalty with the Principal Commissioner or the Commissioner before whom the declaration under section 59 was made.

➢ If the declarant fails to pay the tax in respect of the declaration made or before the date notified, the declaration filed by him shall be deemed never to have been made under this Chapter.

Section 64 (Undisclosed foreign assets declared not to include in total income):

➢ The amount of asset declared in section 59 shall not be included in the total income of the declarant for any assessment year, if the declarant makes the payment in section 60 and the penalty referred to in section 61 by the date notified under section 63.

Section 65 (Undisclosed foreign asset declared not to affect finality of completed assessments):

➢ The declarant shall not be entitled, in respect of undisclosed asset located outside India declared or any amount of tax paid thereon, to reopen any assessment or reassessment made under the Income-tax Act or the Wealth-tax Act, 1957 or claim any set off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment.

Section 66 (Tax in respect of voluntarily disclosed asset not refundable):

➢ Any amount of tax paid under section 60 or penalty paid under section 61 in pursuance of a declaration made under section 59 shall not be refundable.

Section 67 (Declaration not admissible in evidence against declarant):

➢ Nothing contained in any declaration made under section 59 shall be admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty, other than the penalty leviable under section 61, or for the purposes of prosecution under the Income-tax Act, 1957 or the Wealth-tax Act or the Foreign Exchange Management Act, 1999 or the Companies Act, 2013 or the Customs Act, 1962.

Section 68 (Declaration by misrepresentation of facts to be void):

➢ Notwithstanding anything contained in this Chapter, where a declaration has been made by misrepresentation or suppression of facts, such declaration shall be void and shall be deemed never to have been made under this Chapter.

Section 69 (Exemption of Wealth Tax):

- Where the undisclosed asset located outside India specified in the declaration made under section 59 in respect of which wealth tax is not paid in the said AY, then the wealth tax shall not be be charged if the taxes had been paid as per the declaration u/s 59.

Section 70 (Applicability of Income tax and Wealth Tax):

- The provisions of Chapter XV of the Income-tax Act relating to liability in special cases and of section 189 of that Act or of Chapter V of the Wealth-tax Act relating to liability to assessment in special cases shall apply in relation to proceedings under this Chapter.

Section 71 (Chapter not to apply to certain persons):

- The provisions of this Chapter shall not apply:

    - to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

    - in relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988;

    - to any person notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

    - in relation to any undisclosed asset located outside India which has been acquired from income chargeable to tax under the Income-tax Act for any previous year relevant to an assessment year prior to the assessment year beginning on the 1st day of April, 2016.

Section 72 (Removal of Doubts):

- For the removal of doubts, it is hereby declared that:
    - Nothing contained in this Chapter shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Chapter;

    - Where any declaration has been made under section 59 but no tax and penalty has been paid within the time specified under section 60 and section 61, the value of such asset shall be chargeable to tax under this Act in the previous year in which such declaration is made;

    - Where any asset has been acquired or made prior to commencement of this Act, and no declaration in respect of such asset is made under this Chapter, such asset shall be deemed to have been acquired or made in the year in which a notice under section 10 is issued by the Assessing Officer and the provisions of this Act shall apply accordingly.

CHAPTER VII
GENERAL PROVISIONS

Section 73 (Agreement with Foreign Countries):

- The Central Government may enter into an agreement with the Government of any other country:
  - for the granting of relief in respect of income on which tax has been paid in both countries; or
  - for the avoidance of double taxation;
  - for exchange of information for the prevention of evasion or avoidance of tax on undisclosed foreign income or investigation of cases of such evasion or avoidance;
  - for recovery of tax; or
  - for any other purpose of this Act.

- Any specified association in India may enter into an agreement with any specified association in the specified territory outside India for the above stated purposes and the Central Government may adopt and implement such agreement.

Section 74 (Service of Notice):

- The service of any notice, summons, requisition, order or any other communication may be made to the person named therein:
  - by post or by such courier service as may be approved by the Board;
  - in such manner as provided under the Code of Civil Procedure, 1908 for the purposes of service of summons;
  - in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or
  - by any other means of transmission of documents, including fax message or electronic mail message, as may be prescribed.

Section 75 (Authentication of Notice and other documents):

- Every notice or any other document required to be issued, served or given under this Act shall be authenticated by concern authority. Further it shall be deemed to be authenticated if the name and office of a designated tax authority is printed, stamped or otherwise written thereon.

Section 76 (Notice deemed to be valid):

- A notice shall be considered as deemed served if the person has appeared in any proceeding or co-operated in any inquiry relating to an assessment.

- The person referred above shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was:
  - not served upon him;
  - not served upon him in time; or
  - served upon him in an improper manner.

- The provisions of this section shall not apply, if the person has raised the objection before the completion of the assessment.

Section 77 (Absence of approved valuer in certain matters):

- Any assessee who is entitled or required to attend before any tax authority or Tribunal relating to the valuation of any asset, may attend through an approved valuer in accordance with rules as may be prescribed.

Section 78 (Appearance by Approved Representative):

- Any assessee who is required to attend before any authority may attend through an authorised representative except where the assessee is required to attend personally for examination on oath under section 8.

- In this section, "authorised representative" means a person authorised by the assessee in writing to appear on his behalf, being:
    - a person regularly employed by the assessee;
    - any officer of a scheduled bank with which the assessee maintains a current account;
    - any legal practitioner who is entitled to practice in any civil court in India;
    - an accountant (as defined in income tax);
    - any person who has acquired such educational qualifications as may be prescribed.

- The following persons shall not be qualified to represent an assessee:
    - a person who has been dismissed or removed from Government service;
    - a legal practitioner, or an accountant, who is found guilty of misconduct in his professional capacity;

- A person shall not be allowed to appear as an authorised representative, if he has committed any fraud or misrepresented the facts which resulted in loss to the revenue and that person has been declared as such by an order of the Principal Chief Commissioner or the Chief Commissioner.

Section 79 (Rounding off of Income, Assets and Tax):

- The amount of income and asset shall be rounded off to the nearest multiple of one hundred rupees and any amount payable or receivable by the assessee under this Act shall be rounded off to the nearest multiple of ten rupees.

Section 80 (Cognizance of offences):

- No court inferior to that of a metropolitan magistrate or a magistrate of the First Class shall try any offence under this Act.

Section 81 (Assessment not to be invalid on certain grounds):

- Any assessment, notice, summons or other proceedings, made or issued shall not be invalid merely by reason of any mistake, defect or omission if such assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Section 82 (Bar of Suits in civil Courts):

- No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act.

Section 83 (Income tax papers are available under this act):

- All information furnished or obtained or collected under Income tax act may be used for the purposes of this Act.

Section 84:

- This section relates to application of certain sections and provisions of the Income-tax Act under this act.

Section 85:

- This section relates to power to make rules. The said clause seeks to empower the Board to make rules for carrying out the provisions of this Act, subject to the approval of the Central Government. The said clause seeks to provide, inter alia, the form in which appeals under clause 15 or clause 18 may be filed and the manner in which they may be verified; the procedure to be followed on applications for rectification of mistakes and application for refunds; the fee payable in respect of any reference or appeal; and any other matter which by this Act is to be, or may be, prescribed. Further seeks to provide that the power to make rules shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act. This also specifies the time and consequence of lying of every rule made under this Act before each House of Parliament.

Section 86:

- This section relates to power to remove difficulties. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by an order, remove the difficulty. 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 come into force. The said clause further provides that every order made under this clause shall be laid before each House of Parliament.

Section 87:

- This section relates to amendment of section 2 of Central Board of Revenue Act to include the Undisclosed Foreign Income and Assets (Imposition of Tax) Act, 2015 within the purview of Central Board of Direct Taxes.

Section 88:

- This section relates to amendment in Prevention of Money Laundering Act. This seeks to include wilful attempt to evade tax in relation to undisclosed foreign income and asset referred to in clause 51 of the Undisclosed Foreign Income and Assets (Imposition of Tax) Act, 2015 in Part C of the Prevention of Money Laundering Act, 2002.