

Bill on Undisclosed Foreign Income and Assets introduced in Lok Sabha

03 April 2015



Background

The issue of bringing to tax undisclosed moneys held abroad has been one of the most widely debated topics in India's fiscal history. In addition to steps being taken in this regard by the Tax Administration, the Supreme Court of India is also seized of this matter, which led to the appointment of a Special Investigation Team chaired by a retired Supreme Court judge.

During his Budget Speech, the Finance Minister reiterated his commitment to tracking down undisclosed moneys abroad and announced the Government's decision to enact a comprehensive law to specifically deal with such undisclosed moneys. Accordingly, the Undisclosed Foreign

Income and Assets (Imposition of Tax) Bill, 2015 was introduced in the Lok Sabha on 20 March 2015.

The key highlights of the Bill are set out below:

Applicability

The Bill applies to all persons who are resident and ordinarily resident in India. It is proposed to apply with effect from Financial Year 2015-16.

Treatment of Undisclosed Foreign Income and Assets

Income from a source located outside India, which has not been disclosed in the return of income filed under the Income-tax Act, 1961 is considered to be 'Undisclosed Foreign Income'.

Undisclosed asset located outside India is defined to mean an asset (including financial interest in any entity) located outside India, held by the assessee 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 unsatisfactory.

The Bill proposes to levy tax at the rate of 30% on the undisclosed foreign income and the fair market value of undisclosed foreign assets. It is also provided that no exemption or deduction or set off of any carried forward will be allowed in respect of such income or assets.

It is also clarified that the amounts proposed to be taxed under this Bill will be excluded from the total income under the Income-tax Act, 1961.

Administration

Authorities under the Income-tax Act, 1961 have been charged with the administration of the proposed law. Appellate remedies, including to the Appellate Tribunal and the High Courts as well as Revisionary powers akin to those under the Income-tax Act are also provided for.

It is also expressly provided that recovery of arrears under the law can be made by the Tax Recovery Officer requiring the employer of the assessee to deduct sums out of payments to the assessee.

Penalties and Prosecution

The proposed law provides for stringent penalties for various offences. These include:

- a. A penalty of 3 times the amount of tax computed in respect of undisclosed foreign income and assets
- b. A penalty of INR 1 million for failure to file returns in respect of foreign income and assets
- c. A penalty of INR 1 million for failure to furnish information or for furnishing inaccurate particulars in a return

In addition to the above, the law also provides for prosecution for various offences, which entail rigorous imprisonment. These include:

- a. A wilful failure to furnish returns in respect of foreign income and assets (or a failure to furnish information about foreign assets therein) could render the assessee liable for rigorous imprisonment for a period ranging from 6 months to 7 years and a fine
- b. A wilful attempt to evade tax under the proposed legislation could render the assessee liable for rigorous imprisonment for a period ranging from 3 to 10 years and a fine
- c. The making of false statements in verifications under the law could render the assessee liable for rigorous imprisonment for a period ranging from 6 months to 7 years and a fine

One-time Compliance Opportunity

The proposed law also envisages a one-time compliance opportunity in respect of undisclosed foreign income and assets subject to certain conditions. A specified time limit to enable such voluntary declarations will be set out once the law is enacted. A voluntary compliance under these rules will entail payment of tax at the 30% rate as well as payment of penalty equal to the amount of tax. It has been stated that persons availing of this opportunity will not be prosecuted under the proposed legislation.

Our comments

Given the wide consensus in Parliament on the need to take urgent action to tackle the issue of undisclosed foreign incomes and assets, it is likely that this Bill will be enacted in short order.

It is also relevant to note that the law will apply to the current financial year 2015-16. Hence, it is important for taxpayers to take due cognizance of their foreign assets and incomes to ensure timely and accurate reporting. This assumes increased significance, particularly, in view of the significant penalties and the risk of prosecution for non-compliance contemplated under the proposed law.

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[Court rules in favour of Shell in \\$3bn India tax battle](#) [The Financial Times – 18 November 2014 – Subscription required]

[Indian court rules in favor of Royal Dutch Shell over tax dispute](#) [The Energy Business Review– 20 November 2014]

[Towards a friendly tax regime](#) [The Financial Express – 21 November 2014]

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