
India: Undisclosed foreign income and assets bill introduced

March 24, 2015

In brief

The Finance Minister of India (FM) presented the Union Budget for the fiscal year 2015-16 on February 28, 2015. In his budget speech, the FM acknowledged limitations under existing law and conveyed the considered decision of the current government to enact a comprehensive new law to deal specifically with undisclosed money held abroad. He also promised to introduce a new bill in the current session of parliament. In fulfillment of that commitment, the Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 (hereinafter the 'Bill') was introduced in Parliament on March 20, 2015.

Apart from stringent penalties and prosecution, the Bill provides for separate taxation of undisclosed income in relation to foreign income and assets. Such income will henceforth not be taxed under the Income-tax Act, 1961 but under the provisions of the proposed new legislation.

The most important highlight of the Bill is the provision of a one-time compliance opportunity to those who have undisclosed foreign income and assets. If such persons file a declaration with the specific authority and pay the tax and penalty thereon, no prosecution will be launched against them.

In detail

The key features of the Bill are summarized below:

Scope

- The Bill extends to the whole of India and is proposed to be effective financial year 2015-16.
- The Bill provides for separate taxation in respect of undisclosed foreign income and assets (including financial interest in any entity). Such income will no longer be taxed under the Income Tax Act, 1961.

- An undisclosed asset located outside India (including a financial interest in any entity) will be valued at its fair market value in the year of detection and in the manner to be prescribed.
- The Bill covers all persons who are resident in India in accordance with the provisions of the Income Tax Act, 1961. However, individuals qualifying as resident but not ordinarily resident (RNOR) in India are excluded from the scope of the Bill.

Rate of tax

- Undisclosed foreign income or assets will be taxed at the flat rate of 30%.
- No exemption or deduction or set off of any carried forward will be allowed.

Penalties

In addition to the tax payable, the following penalties will be levied.

Nature of default	Quantum of penalty
Non-disclosure of foreign income and assets	300% of the tax payable
Failure to furnish a return of income before the end of the relevant assessment year in respect of foreign income or assets (including financial interest in any entity)	INR 1 million
If a return of income is filed but the assessee fails to disclose foreign income or assets (including financial interest in any entity) or furnishes inaccurate particulars of the same	INR 1 million
Other defaults such as failure to answer queries, sign statements, attend required meetings or produce books of accounts, etc.	INR 50,000 to INR 200,000
Continuing default in payment of tax (<i>this penalty will be levied irrespective of whether the assessee voluntarily paid the required taxes before the levy of the penalty</i>)	An amount equal to tax payable

Prosecution

Prosecution will also be initiated as outlined below for non-compliance:

Nature of offense	Punishment
Willful attempt to evade tax, penalty or interest, chargeable or impossible under the proposed legislation	Rigorous imprisonment - 3 years to 10 years (with a fine)
Willful failure to furnish a return of income before the end of the relevant assessment year in respect of foreign income or assets (including financial interest in any entity)	Rigorous imprisonment - 6 months to 7 years (with a fine)
If a return of income is filed but the assessee fails to disclose foreign income or assets (including a financial interest in any entity) or furnishes inaccurate particulars of the same	Rigorous imprisonment - 6 months to 7 years (with a fine)
Repetition of an earlier convicted offense	Rigorous imprisonment - 3 years to 10 years (with a fine)
Willful attempt to evade payment of tax, interest or penalties	Rigorous imprisonment - 3 months to 3 years (in addition, a fine may be imposed)

One-time compliance opportunity

The Bill provides for a one-time compliance opportunity for a limited period to persons who have undisclosed foreign assets that to date have not been disclosed for income tax purposes. Such persons may file a declaration before the specified tax authority within a specified period, followed by payment of tax at the rate of 30% and an equal amount by way of penalty. Such persons will not be prosecuted under the stringent provisions of the proposed legislation.

This provision is not an amnesty scheme as no immunity from penalties is being offered. It is merely an opportunity for persons to confess and ensure compliance before the stringent provisions of the new legislation come into force.

Other related rules

- The provisions related to penalties and prosecution will also apply to the beneficial owners or beneficiaries of such undisclosed foreign income and assets.
- To protect persons holding foreign accounts with minor balances which may not have been reported in tax returns due to oversight or ignorance, it has been proposed that failure to report bank accounts with a maximum balance of up to INR 5 lakh (in aggregate) at any time during the year will not entail a penalty or prosecution under the proposed legislation.
- The Bill provides for the levying of interest where a return of income has not been filed or there is a default in payment of advance tax by an assessee under the provisions of Income Tax Act, 1961.
- The principles of natural justice and due process of law have been upheld by laying down a

requirement for the mandatory issue of notices to all persons against whom proceedings are being initiated. All such persons will be granted an opportunity to be heard, their evidence will be taken into account, their reasons will be recorded, all orders will be in writing, and there will be a statute of time limitations for investigations/ various actions by the tax authority, among other things.

- The right of appeal has been protected by providing for appeals to the Income Tax Appellate Tribunal, and to the jurisdictional High Court and the Supreme Court on substantial questions of law.
- The Bill also proposes to amend the Prevention of Money Laundering Act (PMLA), 2002 to include tax evasion under the proposed legislation as a scheduled offence under PMLA.

The takeaway

Returning undisclosed money from overseas was one of the key election

promises of this new government. This is an important step towards that goal and the government has already introduced this Bill in the lower house of the Parliament for discussion. Once the Bill is passed by both houses of the Parliament it will be then sent to the Honorable President of India for his assent before it becomes law.

Under the existing provisions of Income Tax Act, 1961, an individual qualifying to be resident and ordinarily resident (ROR) of India is under an obligation to report details of foreign assets (including financial interest in any entity) in his or her income tax return (applicable with effect from financial year 2012-13). Now is the time to review overseas bank accounts and assets and ensure that they were properly reported in past returns. If not, now is also the time to correct the reporting because once the proposed legislation comes into force, there could be severe consequences.

Expatriate employees who may become ROR in India in the near future should keep track of their overseas bank accounts and other assets so that once the obligation of reporting of such overseas

income/assets arises, the details may be reported accurately.

It is also pertinent to note that under the existing provisions, ROR individuals with bank accounts and/or assets in a foreign country are required to file a return in India even if they do not have any taxable income. If an expatriate employee is accompanied by a spouse with assets in his or her home country, then the spouse is under the obligation to file a tax return in India once he or she becomes ROR in India. Such individuals should also review their financial affairs to ensure that they are not caught inadvertently under the new proposed law if they have not filed an Indian tax return.

Companies should share this information with their expatriate employees that are ordinarily resident in India or are to be assigned to India so that such employees are aware of their tax obligations in India.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your regular PwC Global Mobility Services engagement team or one of the following professionals from PwC India:

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