Circular No. 15 of 2015

F. No. 142/18/2015-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)
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Dated 3rd September, 2015

Clarifications on Tax Compliance for Undisclosed Foreign Income and Assets

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as 'the Act') has introduced a tax compliance provision under Chapter VI of the Act. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 (hereinafter referred to as 'the Rules') have been notified. In this regard, circular No. 13 of 2015 dated 6th July, 2015 issued by the Board provided clarifications to 32 queries. Subsequently, further queries have been received from the public about the tax compliance provisions under Chapter VI of the Act. The Board has considered the same and the following clarifications are issued.-

Question No.1: ***A person, while being a non-resident, earned foreign income, not chargeable to tax in India, (exempt income) which was deposited in a foreign bank account. The person became resident in India in F.Y. 2013-14 and since then only interest is being credited to the account. Such income including interest income has not been offered to tax in India. In such case what should be the disclosure under the tax compliance?***

Answer: As stated the person was non-resident for the year F.Y. 2012-13 and earlier years, and the foreign income for such years was not chargeable to tax in India. For the F.Y. 2013-14 and subsequent years, while he is resident in India, the person's global income is taxable in India. Accordingly, the declaration of foreign bank account in this case, which has been made partially out of undisclosed income chargeable to tax, may be made. In this case, the value of undisclosed foreign bank account shall be computed as per rule 3(1)(e) of the Rules and a deduction as per section 5 of the Act shall be allowable. Therefore, the value of such account shall be the sum of all credits in the bank account as reduced by income not chargeable to tax in India (exempt

income), which has been credited into such account. In this case, exempt income would be the foreign income deposited in the bank account upto the F.Y. 2012-13. Therefore, in effect the value of bank account in this case would be the sum of interest credits into the account since 01.04.2013.

Question No.2: ***A person was a non-resident from F.Y. 1996-97 to 2010-11 during which he was employed in a foreign country. The person received salary which was taxable in the foreign country and credited into a foreign bank account. The person also received contributions to his pension account from his employer. The person became a resident in India in F.Y. 2011-12. Whether the person is required to declare his pension account under the tax compliance?***

Answer: As stated, the salary and pension received before F.Y. 2011-12 was not chargeable to tax in India. However, on or after 01.04.2011 when the person became resident in India any accretion to the pension account (in the form of interest, dividend, capital gain or any other sum) is chargeable to tax in India. Therefore, declaration of such account may be made under Chapter VI of the Act. The value of such account shall be the accretions to the account since 01.04.2011.

Further, the details of such account are required to be reported in Schedule FA of the return of income and from assessment year 2016-17 onwards non-declaration of such account may attract penalty under the Act.

Question No.3: ***A person was employed in a foreign country during the F.Y. 1996-97 to 2010-11 in which he received salary which was taxable in the foreign country. From F.Y. 2011-12 onwards he is receiving pension from his ex-employer. The person became a resident in India from F.Y. 2014-15 onwards. The salary and pension was deposited in his foreign bank account. Due taxes have been deducted on the salary and pension by the ex-employer in the foreign country. No taxes have been paid in India on pension received. Whether the person is required to disclose such bank account and if yes, what should be its valuation?***

Answer: As stated the person was non-resident upto the F.Y. 2013-14 and the salary and pension received for services rendered outside India was not chargeable to tax in India. However, from F.Y. 2014-15 onwards, the pension received is chargeable to tax in India. In this case, the person may declare his foreign bank account under Chapter VI of the Act. The valuation for the purpose of declaration shall be the sum of credits into the account from 01.04.2014 onwards. The person is not entitled for any credit of taxes paid, if any, in the foreign country.

Question No.4: ***A private trust was created outside India by a settlor out of undisclosed income chargeable to tax in India. The trust has set up a company holding 100% shares. What are the options for declaration under Chapter VI of the Act in such case?***

Answer: In this case, the settlor is the beneficial owner of the assets held under the trust. Therefore, declaration under Chapter VI of the Act may be made by such settlor in the capacity of a beneficial owner in respect of the assets of the trust. Alternatively, the trustee of the trust holding assets on behalf of beneficiaries may make the declaration of the assets of the trust in the capacity of a representative assessee. The trustee is eligible for declaration even where he is a non-resident. In respect of the assets declared under Chapter VI of the Act, immunity shall be available to the settlor, trustee and the beneficiary.

Further, where the settlor of the trust has passed away, the beneficiary of the trust may make a declaration in respect of his share in the assets of the trust. In case the beneficiary is a minor, his guardian may file the declaration on behalf of the minor.

The assets of the trust shall be valued as per the Rule 3(1)(g) as in the case of AOP. In this case first the valuation of shares of the company is to be made as per rule 3(1)(c) and then the value of net assets of the trust shall be determined.

Where the assets of the trust have been declared under Chapter VI of the Act and tax alongwith penalty has been paid, the value of the asset so declared shall not be chargeable to tax in the event of distribution of such assets to the beneficiaries.

Question No.5: ***A person has a foreign bank account since year 2000 made out of undisclosed income chargeable to tax in India. However, he does not have the bank statement prior to year 2011. The bank has also not provided the bank statement to him despite all attempts made by him. In such case how will the value of the account be computed for the purpose of declaration under Chapter VI of the Act?***

Answer: For the purpose of declaration under Chapter VI of the Act, the person may compute the value of the bank account for which the statement is available as per rule 3 of the Rules. For the period prior to year 2011 for which the statement is not available, the person may compute the value for such period on best estimate basis. However, he has to furnish a certificate of the bank or any other evidence to the effect that the details are not available with or obtainable from the bank. Further, in such case, later if it is found that the value of the bank account is different from what has been declared, the immunity under the Act shall be available only upto the extent of declaration made under Chapter VI of the Act. Moreover, any excess payment of tax under the declaration on the basis of determination of the value of asset on a higher side shall not be refundable.

It may also be mentioned that in an event it is found that the person has filed a declaration of a foreign bank account on an estimate basis despite the fact that he had a bank statement and the value of such declaration is lower than the value as per the bank account, it will amount to misrepresentation of facts under section 68 of the Act and such declaration shall be void.

Question No.6: ***A person was a resident in India as well as a foreign country in F.Y. 2011-12. However, after applying the provisions of the Double Taxation Avoidance Agreement (DTAA) under the tie breaker rules the person became resident of the foreign country. Whether such person needs to file a declaration under Chapter VI of the Act in respect of assets acquired/ made out of foreign income earned during F.Y. 2011-12 in which he was non-resident in India as per the DTAA?***

Answer: As per section 59 of the Act, a declaration may be made 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 assessment year beginning on 01.04.2016. In this case, since the foreign income of F.Y. 2011-12 was not chargeable to tax in India under the Income-tax Act as the assessee was a non-resident as per DTAA, the same is not required to be declared under Chapter VI of the Act.

Question No.7: ***A person has a foreign bank account made out of undisclosed income chargeable to tax in India. Over a past several years, the person invested in securities which were funded from such account. Some of the securities were sold and the proceeds were deposited into the same account. Some expenditure has also been made from the bank account. What would be the declaration in such case under Chapter VI of the Act?***

Answer: In this case, the valuation of bank account (BA1) and securities (say, S1, S2 etc.) is to be made separately and it is to be computed as per rule 3(1)(e), 3(2) and 3(3) of the Rules. The valuation of the assets in such case will be as per the illustration below.-

Bank Statement of BA1 USD

Debit	Credit	Balance
	By clearing/transfer 10,000	10,000
To clearing/transfer 4000 (purchase of 1000 shares of S1)		6000
To clearing/transfer 5000 (purchase of 500 bonds of S2)		1000
	By clearing/transfer 2500 (sale of 500 shares of S1)	3500
To clearing/transfer 3000 (purchase of 100 shares of S3)		500
	By clearing/transfer 50 (interest on bonds)	550
	By clearing/transfer 7000 (sale of 500 bonds of S2)	7550
To clearing/transfer 4000 (purchase of 400 shares of S4)		3550
	By clearing/transfer 3000 (sale of 400 shares of S4)	6550
To credit card 1000 (payment of credit card bill)		5550

To clearing/transfer 500 (purchase from store)		5000
To clearing/transfer 1500 (transfer to other bank account BA2)		3500
To Bank Charges 10		3490

Valuation of assets for the purpose of declaration shall be as follows.-

Value of 500 shares of S1 sold	=	(higher of 2000 and 2500) - 2500 [amount deposited in the bank account; refer rule 3(3)] = Nil
Value of 500 shares of S1 held as on valuation date	=	Fair market value of 500 shares of S1 as on valuation date i.e. 01.07.2015
Value of 500 bonds of S2 sold	=	(Higher of 5000 and 7000) - 7000 [amount deposited in bank account; refer rule 3(3)] = Nil
Value of 100 shares of S3 held as on valuation date	=	Fair market value of 100 shares of S3 as on valuation date i.e. 01.07.2015
Value of 400 shares of S4 sold	=	(Higher of 4000 and 3000) - 3000 [amount deposited in bank account (new asset); refer rule 3(3)] = 1000
Value^ of bank account (BA1)	=	{10000 + 2500 + 50 + 7000 + 3000} - {4000 + 5000 + 3000 + 4000} [acquisition of new asset; refer rule 3(3)] - 1500* [transferred to another bank account BA2 (new asset); refer rule 3(3)] = 5050

^The reduction from the gross deposits in the bank account is available in respect of those withdrawals which have been made for acquisition of a new asset or deposit in another bank account as that new asset/bank account is being separately declared under Chapter VI of the Act.

*The amount of 1500 USD transferred to bank account (BA2) shall be considered (while adding credits) in the valuation of BA2.

Question No.8: ***A person holds an undisclosed brokerage account in a foreign country which holds within itself shares, mutual funds as well as cash. The shares and mutual funds in the brokerage account have had multiple trades over a period of time. Further, dividend and interest has been credited to the account. Whether the brokerage account can be declared as one asset under Chapter VI of the Act or separate disclosure in respect of shares, mutual funds and cash is required to be made?***

Answer: The rules read with the Act provides for different computational mechanism for valuing shares, mutual funds and cash holding in a bank account. Therefore, a composite valuation of brokerage account cannot be made and separate valuation of shares, mutual funds and cash holding is required to be made. Further, the declaration shall consist of different assets with different valuations. The valuation of such assets shall be similar to what has been explained in answer to Question No. 7.

Question No.9: ***A person has declared an undisclosed foreign bank account after computing its value as per the Rules. At the time of declaration, will the declarant be expected to explain the basis of working of the value of the account or required to explain the details of entries in the account?***

Answer: While filing the declaration in respect of a bank account, the declarant is expected to provide a broad computation where the value of the account is different from the sum of all credits in the account. For example - if the person has purchased 50 shares over past several years out of funds in the account which is represented by debits to the account, the person is expected to provide a computation in the declaration showing the amount of reduction in respect of cost of such 50 shares from the value of account as per rule 3(3) of the Rules as mentioned in Form 6. Further, he has to compute the value of shares. Apart from this, the declarant will not be required to explain the details of entries in the account at the time of declaration.

Question No.10: ***A resident has an immovable property in a foreign country out of which rental income is received. As per the DTAA, the taxation right on such rental income is exclusively with such foreign country in which the property is situated. The rentals were deposited in an undisclosed foreign bank account. For the purpose of declaration under Chapter VI of the Act, will the value of the bank account include such rental income deposited in the account?***

Answer: If the DTAA entered with any country provides that the rental income 'shall' be taxed only in the country in which the property is situated, then the taxation right in this respect will exclusively be with that country. In such case where property is outside India, the rental income is not chargeable to tax in India as per the Income-tax Act read with DTAA. Thus while working the value of undisclosed foreign bank account the deduction of rental income (in this case it is exempt income) will be made from the value of foreign bank account computed as per rule 3 of the Rules.

Question No.11: ***A person has an undisclosed property situated outside India in the name of his spouse. The funds for acquisition of the property were provided by such person. In this case, whether the person can make a declaration under Chapter VI of the Act in his own name?***

Answer: In this case, the person is treated as a beneficial owner of the property and he may file a declaration of the undisclosed asset in his name, being a beneficial owner. The immunity in respect of the asset declared shall be available to both the person and his spouse.

Question No.12: ***Where a partner of partnership firm files a declaration in respect of undisclosed foreign assets held by the firm, then whether immunity would be available to partners of the firm?***

Answer: Yes, the partners of the partnership firm shall not be liable for any offence under the Income-tax Act, Wealth-tax Act, FEMA, Companies Act and the Customs Act in respect of the declaration made in the name of the partnership firm.

Question No.13: ***An undisclosed foreign asset was acquired in F.Y. 2012-13 relating to A.Y. 2013-14. The assessment order for A.Y. 2013-14 has been passed on 10th August, 2015 in which such undisclosed foreign asset was not examined and consequently went untaxed. Can a declaration of such asset be made under Chapter VI of the Act?***

Answer: Yes, declaration of such undisclosed foreign asset can be made under the Chapter VI of the Act.

Question No.14: ***Will the declarations made under Chapter VI of the Act be kept confidential?***

Answer: The Act incorporates the provisions of section 138 of the Income-tax Act relating to disclosure of information in respect of assessees. Therefore, the information in respect of declaration made is confidential as in the case of return of income filed by assessees.

Question No.15: ***A person received salary in a foreign country from his employer who is a resident in India. The salary was deposited in a foreign bank account and was chargeable to tax in India. If a declaration of the foreign bank account is made by the person, which includes salary deposited in the account, will the employer be liable for consequences under the Income-tax Act for non-deduction of tax at source on the salary paid by the employee?***

Answer: Where the employee has declared an undisclosed asset made out of income received from his employer, the employer shall not be deemed to be an assessee in default under section 201(1) of the Income-tax Act for non-deduction of TDS on such income. However, the employer shall be liable for other consequences under the provisions of the Income-tax Act, such as payment of interest under the provisions of section 201(1A) of the Income-tax Act from the date on which the tax was deductible on such income upto the date of payment of tax by the declarant. Penalty under section 271C of the Income-tax Act will also be attracted unless he proves that there was a reasonable cause for such failure as per the provisions of section 273B of that Act.

Question No.16: ***A person (say, A) has an undisclosed foreign bank account made out of income chargeable to tax in India. From such account he has transferred money to his spouse's/child's (say, B) account from time to time. There are no independent credits into the spouse's account except for such transfers. Whether in this case both the person and the spouse need to declare the undisclosed foreign bank account under Chapter VI of the Act?***

Answer: In a case where there is only transfer of money from the account of the individual to his spouse or child and there are no independent credits in the account of the spouse or child and the individual has declared the undisclosed foreign bank account under Chapter VI of the Act, the spouse and the child are not required to make any separate declaration in respect of the account in their names. However, if the transfer of money is made as a consideration for supply of goods, services etc. and tax has not been paid on such income by the spouse/child, the bank account with such balance needs to be declared by the spouse/child. Besides, any accretion to the account of the spouse/child in the nature of interest etc. may also be required to be declared by the spouse/child.

Question No.17: ***In respect of undisclosed foreign asset declared under Chapter VI of the Act, is it mandatory to include such asset in the books of account of the person?***

Answer: It is expected/required that the declarant will show the asset so declared in his books of accounts and if he is not required to maintain books of account, he shall maintain the record of such asset. Further, if he continues to hold such asset he shall be required to report such asset in schedule FA of the return of income.

Question No.18: ***As per rule 3(1)(e), for the purpose of valuation of bank account, any deposit made from the proceeds of any withdrawal from the account shall not be taken into consideration while computing the value of the account. Does this mean that only redeposit of cash withdrawn is covered for this purpose or it would cover withdrawal used for funding cost of investment where proceeds are subsequently deposited on sale of investments?***

Answer: The proviso to rule 3(1)(e) in respect of valuation of bank account covers only amount withdrawn in cash and redeposited into the same bank account. In case amount is transferred from first bank account and deposited into second bank account then provisions of rule 3(3) shall apply and the value of first bank account shall be reduced by the amount deposited in the second bank account and the value of second bank account shall be in accordance with rule 3(1)(e).

Question No.19: ***Is it necessary to file a valuation report of an undisclosed foreign asset along with the declaration under Chapter VI of the Act?***

Answer: It is not mandatory to file the valuation report of the undisclosed foreign asset along with the declaration. However, the declarant should have either the valuation report or any other document for arriving at the value of the asset. While e-filing the declaration on the departmental website a facility for uploading the documents is available.

Question No.20: ***If a query has been sent by the competent authority in respect of a foreign asset of a person to a Government of any country or territory outside India but no information has been received upto 30.06.2015 can such asset be declared under Chapter VI of the Act?***

Answer: Such asset shall not be hit by section 71(d)(iii) of the Act and can be declared if other provisions contained in section 71 are not applicable.

Question No.21: ***What shall be the exchange rate for the purpose of conversion of foreign currency into Indian currency?***

Answer: As per rule 3(4) of the Rules, the value of the undisclosed foreign asset may be determined in the foreign currency in accordance with rule 3 of the Rules and the same is to be converted into Indian currency as per the reference rate of RBI for 01.07.2015.

Question No.22: ***A person maintains an e-wallet/virtual card account online on a website hosted in a foreign country which was initially funded by income chargeable to tax in India on which tax has***

not been paid. The person plays online games/ poker through the funds lying in the e-wallet/virtual card and has earned some money which was credited to the e-wallet/virtual card account. Can a declaration be made in respect of e-wallet/virtual card? If yes, what shall be the valuation of the e-wallet/virtual card?

Answer: The e-wallet/virtual card account is similar to a bank account where inward and outward cash movement takes place from the account. Therefore, the valuation and declaration of an e-wallet account may be made as in the case of a bank account.

Question No.23: ***Where a public limited company makes a disclosure under Chapter VI of the Act then whether the Directors of the company be granted immunity against prosecution launched by shareholders under the SEBI Act/ Regulations or Indian Penal Code (IPC)?***

Answer: The Act does not provide immunity against offence punishable under the SEBI Act/Regulations or under IPC.

Question No. 24 **A person acquired an immovable property in a foreign country for USD 50,000 out of which investment of USD 10,000 was made out of his own undisclosed income chargeable to tax in India and balance USD 40,000 was made out of loan acquired from a bank. The fair market value of the property as on 01-07-2015 is USD 100,000. Whether the property can be declared under Chapter VI of the Act and if yes, what would be the value of declaration in such case?**

Answer: The property was partially acquired from undisclosed income and partially from amount not chargeable to tax. The property can be declared under Chapter VI of the Act and in such case while computing the value of the undisclosed asset, deduction as per section 5(2) of the Act in respect of income not chargeable to tax shall be available from the fair market value of the property. The value of such immovable property shall be,-

FMV as on 01-07-15:	USD 100,000
Deduction under section 5(2):	USD(100,000 x $\frac{40,000}{50,000}$)=USD 80,000

Value of the undisclosed asset to be declared under Chapter VI : USD (100,000 -80,000) = USD 20,000

Since the declaration is in respect of 20% of the value of the property, the declarant shall be issued an acknowledgement in Form 7 only in respect of such portion of the immovable property.

Further, in such case it may be ensured that the mortgage payments to the bank have not been/are not being paid out of undisclosed income chargeable to tax in India. However, if the mortgage payments are made out of a foreign bank account made out of undisclosed income chargeable to tax in India then such account is also required to be declared under Chapter VI of the Act.

Question No. 25: **A person has an undisclosed foreign asset, being a bank account in joint names, say A and B. Should the disclosure of such account is to be made by both A and B or anyone can make the declaration?**

Answer: Where the funds in the bank account have been contributed only by A the disclosure is to be made by A. However, where the funds have been contributed by both A and B independently, the declaration is to be made by both A and B in respect of the funds contributed by them into the bank account.

Question No.26: **As per answer to question no. 23 of Circular No. 13 dated 06-07-2015, a person being a non-resident can file a declaration under Chapter VI of the Act in respect of asset acquired out of income chargeable to tax earned when he was resident in India in the past. However, para 3 of the Explanatory Circular No. 12 dated 02-07-2015 states that a declaration may be filed by a person, being a resident in India. Are these positions contradictory?**

Answer: Para 3 of the Explanatory Circular No. 12 dated 02-07-2015 provides that a resident may file a declaration under Chapter VI of the Act. It does not say that a non-resident who was earlier resident in India cannot file a declaration in respect of asset

acquired out of income chargeable to tax in India earned when he was a resident. Answer to question no. 23 of Circular No. 13 dated 06-07-2015 says that a person may make a declaration under section 59 of the Act in respect of an undisclosed foreign asset acquired by him in the year in which he was resident in India. Thus a specific situation has been dealt in answer to question no. 23 of Circular No. 13 dated 06-07-2015 which answers the query clearly.

Question No.27: **A person acquired an immovable house property in the year 2012-13 located outside India out of undisclosed income chargeable to tax in India. A notice under section 143(2) for assessment year 2013-14 (relevant to previous year 2012-13) has been issued prior to 30-06-2015 and the assessment proceeding is pending before the assessing officer. As clarified in Question No. 8 of Circular dated 06-07-15 the assessee is not eligible for declaration under Chapter VI of the Act in respect of this asset, however, he shall inform the assessing officer about the acquisition of such asset in the assessment proceedings and the same shall be assessable under the provisions of the Income-tax Act. Whether the provisions of section 72(c) of the Act will apply in this case and the Assessing Officer may proceed to assess the undisclosed asset under the Act?**

Answer: Section 72(c) is applicable where any undisclosed foreign asset has been acquired prior to commencement of the Act and no declaration in respect of such asset has been made. In such case the same shall be assessable under the Act. In the present case since scrutiny proceedings under the Income-tax Act are pending, the person is not eligible to declare such asset under Chapter VI of the Act. Therefore, it is hereby clarified that where the undisclosed foreign asset has been acquired during the previous year for which scrutiny assessment proceedings are pending as on 30-06-2015 and the assessing officer has been informed during the assessment proceedings about the investment made in such undisclosed foreign asset, the same shall be assessable under the provisions of the Income-tax Act. However, where the assessing officer has not been informed in the pending scrutiny assessment proceedings under the Income-tax Act about such undisclosed foreign asset and it is not

assessed under that Act, the same shall be liable for assessment under the provisions of the new Act when it comes to the notice of the Assessing Officer.

3/9/15

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Copy to:-

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2. PS to Secretary (Revenue).
3. The Chairperson, Members and all other officers in CBDT of the rank of Under Secretary and above.
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