Disclosure of Overseas Wealth & Income by Resident Indians

Introduction:

We are all aware that ignorance of law is no excuse.

Resident and Ordinarily Resident Indians as per the provisions of the Income Tax Act,1961 are those who have stayed in India for more than 182 days in the previous year. They are liable to pay income tax not only on the income earned in India, but also on the global income.

Taxmen across the world trust that their taxpayers have truthfully disclosed their foreign assets and the global income thereof and have also paid the entire tax.

When there is a breach of this trust by the taxpayers and payment of tax is evaded, taxmen across the world have no choice but to tighten the taxation rules. Taxmen exchange information on the various assets held and the income earned on it by the taxpayers in their country with the taxmen of taxpayers' resident country.

Reporting framework:

Common Reporting Standard (CRS) of Organization of Economic Cooperation and Development (OECD) and Foreign Account Tax Compliance Act (FATCA) of USA are the global reporting frameworks. India joined the CRS on June 3, 2015, both as a G-20 member and as an early adopter of the standard. India and the United States signed a FATCA IGA on July 9, 2015.

The Common Reporting Standard (CRS) is an internationally agreed standard for the automatic exchange of financial account information between tax jurisdictions to combat tax evasion and ensure tax compliance. Under CRS and FATCA, Indian taxmen receive detailed information about financial accounts held by its residents in foreign jurisdictions.

This includes account holder's name, address, and tax identification number (TIN), account number and balance held, Income details such as interest, dividends, and other financial proceeds. This information helps the taxmen to know global income of its resident taxpayers and to identify taxpayers who may not have disclosed their foreign assets and income.

Indian taxmen regularly receive information on FA and income from more than 100 Tax jurisdictions. Taxmen compare the data shared under Automatic Exchange of Information from various tax jurisdictions with the ITR filed by the taxpayers.

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What is a Foreign Asset?

Foreign assets include:
· Bank accounts (savings, current, or fixed deposits) held outside India.
· Financial assets (stocks, shares, bonds, or certificate of deposits) held in foreign companies.
· Immovable property (real estate) located outside India.
· Other assets like trust, partnership interests, etc., held abroad.
Virtual Digital Assets & movable assets like yachts, boats, Jewellery, Aircrafts etc.,

Benefit of Disclosure of Foreign Assets and Exchange of information:
It helps the government by reducing tax evasion and generation of black money.

Benefit for taxpayers' disclosing foreign assets is avoiding double taxation:
By disclosing all foreign assets and income generated thereon by the residents, it is properly accounted and taxed. Taxpayers can also claim relief under the Double Taxation Avoidance Agreement (DTAA) with other countries. This prevents them from paying tax twice on the same income.
Taxpayers will have peace of mind; they enjoy good night sleep since they have not hidden anything to the taxmen, and they need not pay penalties or undergo rigorous imprisonment thereby lose their reputation.

Who should report foreign assets?
The reporting requirement of foreign assets in Schedule FA in the Income Tax Return (ITR) applies to:

Resident individuals and HUFs (Hindu Undivided Families) who are residents and ordinarily resident (R&OR) under the Income Tax Act,1961.

Beneficial owners are also required to report foreign assets in ITR.
Beneficial ownership refers to the situation where any person derives benefits from the assets held by someone else.

If taxpayer holds as a beneficial owner/beneficiary/settlor or otherwise, any asset (including any bank account or financial interest in any entity) located outside India, or have signing authority in any account located outside India, please list details of such assets or accounts located outside India along with supporting documents. Financial interest includes: shareholding, directorship, beneficial ownership, Dividend or other forms of pecuniary (monetary)interest, directly or indirectly.

Where to report foreign assets and foreign income?
Income-tax Act, 1961 require residents to disclose their foreign assets and income in their Income Tax Returns (ITR). Specifically, Schedule FA (Foreign Assets) in the ITR form is meant for reporting foreign assets, and Schedule FSI (Foreign Source Income) is for reporting income from foreign sources. Additionally, taxpayers can claim tax relief on taxes paid abroad by filing Schedule TR (Tax Relief).

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What is the Reporting Period?

Individuals must report the details of any foreign assets held and income earned from January 1, 2024, to December 31, 2024, in Schedule FA while submitting the Income Tax Return for the Financial Year 2024-25.

What are the consequences of failure to Report Foreign Assets?

Failure to report these assets in Schedule FA of ITR could lead to penalties under "The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015" (BM Act,2015)
As per Section 41 of the BM Act,2015, on the undisclosed foreign income and asset, taxpayer shall pay by way of penalty, in addition to tax, if any, payable, a sum equal to three times the tax computed. Undisclosed foreign income and asset will be taxed at a flat rate of 30%.
As per Section 42 of the BM Act,2015 failure to furnish such return before the end of the relevant assessment year, taxman may levy a penalty of ten lakh rupees:

[**Provided** *that this section 42 shall not apply in respect of assets (other than immovable property) where the total value of such asset or assets does not exceed 20 lakh rupees.*]

As per Section 43 of the BM Act,2015 penalty for failure to furnish in return of income an information or furnishes inaccurate particulars about an asset (including financial interest in any entity) located outside India, taxman may levy a penalty of 10 lakh rupees.

[**Provided** *that this section shall not apply in respect of assets (other than immovable property), where the aggregate value of such assets does not exceed 20 lakh rupees.*]

Penalty for other defaults:

As per Section 45 of the BM Act, 2015, taxpayer shall be liable to a penalty of not less than Rs.50,000/- but which may extend to Rs.2 lakhs if he has, without reasonable cause, failed to—

(a) answer any question put to him by a tax authority.
(b) sign any statement made by him during any proceedings under this Act which a taxman may legally require him to sign.
(c) attend or produce books of account or documents at the place or time, if he is required to attend or to give evidence or produce books of account or other documents, at certain place and time in response to summons issued.

Punishment for wilful failure to furnish return in relation to foreign income and asset and/or punishment for wilful failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India.

In both the cases, taxpayer shall be punishable with rigorous imprisonment for a term not less than six months but may extend to seven years and with fine.

If a taxpayer wilfully attempts in any manner to evade any tax, penalty or interest chargeable or imposable under this Act, he shall be punishable with rigorous imprisonment for a term not less than three years but which may extend to ten years and with fine.

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Punishment for false statement in verification:

If a taxpayer, makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, 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 not less than six months but which may extend to seven years and with fine.

Punishment for abetment:

If a taxpayer abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to tax payable under this Act which is false and which he either knows to be false or does not believe to be true or to commit an offence he shall be punishable with rigorous imprisonment for a term not less than six months but may extend to seven years and with fine.

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.

Summons:

Sec 131 (1A) of the Income Tax Act,1961 empowers taxmen to issue notices seeking information from taxpayers, even when no formal proceedings are pending.

Conclusion:

In view of the above, it is better to play safe than feel sorry on a later date and get into an awkward situation by not disclosing either inadvertently or deliberately foreign assets and foreign income in the ITR by getting summons from the tax authorities.

Taxmen as a part of summons asks point- blank questions when they have in their possession foreign assets and the foreign income earned by the taxpayers. Taxman asks the taxpayers to submit necessary documentary evidence and prove that foreign assets and foreign income have been disclosed in their ITR.
