

Recently, we came across cases wherein the Resident Assessee have received notices for not declaring a Foreign Asset (FA) in the Income Tax Returns. These notices underline one factor that the Government Authorities have a gold mine of data, collected / pushed by various agencies, e.g. Banker, Tax Treaties, FATCA, Data Sharing Agreements between other countries etc.

With the introduction of "***The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015***", disclosure of Foreign Asset has become mandatory.

## Summary

1. The disclosure is applicable w.e.f. AY 2012-13 but became more effective with the introduction of Black Money Act, 2015.
2. It is applicable to **Resident and Ordinary Resident** (R and OR) Assessee.
3. Foreign Assets and Income which are to be disclosed in ITR
  - a. Shares, ESOP Rights, Debentures, Mutual Funds, Insurance Contracts, Annuity Contracts, Immovable Property located outside India or any other capital asset like Loans given to entities located outside India.
  - b. Financial or Beneficial Interest in any overseas entity.
  - c. Any bank account held outside India, to which Assessee is a signing authority.
  - d. Income from Source outside India – Dividend, Interest, rent, Royalty, Capital Gain on sale of foreign asset.
4. Irrespective, whether the FA is generating income or not and whether that income is taxable or tax exempt in India, disclosure is mandatory.
5. Even if one is a beneficial owner, he/she needs to disclose that foreign asset.
6. FA reported in "Schedule FA" shall also need to be reported again in Schedule AL.
7. Period of disclosure - India follows financial year for income tax purpose, i.e. April to March, whereas most of the other countries follow calendar year. For purpose of disclosure for FY 2023-24, relevant to Income Tax Assessment Year 2024-25, one need to report data of Calendar Year 2023, i.e. January 2023 to December 2023.
8. Conversion Rate –
  - Foreign Assets – TTBR – on the date of investment
  - Income – TTBR of the closing day. e.g. for FY 2023-24, 31<sup>st</sup> December 2023.
  - Peak Balance – TTBR on the date of peak balance.**TTBR- Telegraphic Transfer Buying Rate of SBI.**
9. As per Section 42, 43, 49 & 50 of the Black Money Act, penalty for mis-reporting, incorrect or non-reporting of data in ITR is Rs.10,00,000 and may also result in Imprisonment of 6 months to 7 years.
10. If the non-disclosure continues for more than a year, penal consequences may lead for all such years.



11. One should possess the following for the purpose of reporting –
  - a. Source of such investment at the time of investment with documentary evidence and whether this investment was made out of tax paid money.
  - b. If investment was made when the Assessee was NR, then source thereof with documentary evidences.
  - c. Income arising therefrom and its treatment in ITR
12. If the data is on cloud or website or any login, it advisable to download the data and saved, so that it can be retrieved anytime, whenever required.
13. Foreign Assets needs to be disclosed in FA Schedule of ITR. Disclosure of Foreign Assets, in financials or in financials entered in ITR Form, may not be sufficient.
14. Matching of FA Schedule data with financial data, is not necessary, however making of a reconciliation statement of differences, is advisable.
15. FA Schedule becomes applicable to a Non-Resident once he becomes **“R and OR”** on returning to India permanently.
16. In case of a minor, who holds or is a beneficial owner of FA, he/she needs to disclose the FA.
17. E-wallet / Virtual Card maintained on a website hosted in a foreign country, also needs to be disclosed similar to bank account. Any accretion to such e-wallet also needs to be offered to tax in India.
18. In the case of the Overseas Bank Account held in Joint Names, declaration is to be made in the ITR of the person, who contributed money. If both have contributed money, the declaration shall be made by both, based on contributions made.
19. Son/Daughter is a Non-Resident. He/she acquires an immovable property outside India, out of his own income but adds parent’s name in the property. The Parent, who is **“R and OR”** in India, needs to declare the said immovable property in his/her ITR as FA.
20. In case of an insurance policy where a **“R and OR”** is a **“Nominee”**, such insurance policy need not be reported in ITR under FA.
21. Disclosure of Foreign Retirement Account like Social Security Benefit Account, is necessary in FA, once an Assessee become **“R and OR”**.

## Takeaway

If one hold any of the FA referred above, ensue that the same is disclosed properly, regularly and diligently in every year’s income tax return, to avoid any penal consequences.