BLACK MONEY LAWS IN INDIA

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BY

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INDEX

1. INTRODUCTION

"Money has never made man happy, nor will it; there is nothing in its nature to produce happiness. The more of it one has the more one wants." – Benjamin Franklin

Money is an object or record that is generally accepted as payment for goods and services and repayment of debts in a given country or socio-economic context. In fact, money has been the root cause of all the problems in the world. Everyone is driven by the greed and desire for money and power. This obsession for money has also been the driving cause of downfall of the mankind. Money is present in two forms – visible and hidden. The money that is visible is legal and subject to taxation. The money that is hidden is illegal and is not open to taxation. This money that is hidden and acquired illegally is known as black money and is the result of dishonest activities of greedy people. In other words, it can also be termed as evaded money or unaccounted money.

Black money has been a cause of concern for the Indian economy and has resulted in huge losses in tax revenues for the government. In fact, the massive amount of black money in our country has created a parallel economy.

2. WHAT IS BLACK MONEY?

There is no uniform or specific definition of black money. Even under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, black money has not been defined!

Black money is the money that is unaccounted for, wherein taxes have not been paid on that money. If a person earns income, that is not illegal. But if it is not included in his tax returns, then it becomes black money.

- NIPFP (National Institute of Public Finance and Policy) in its report of 1985 defined 'black income' as 'the aggregates of incomes which are taxable but not reported to the tax authorities'. Further, black incomes or unaccounted incomes are 'the extent to which estimates of national income and output are biased downwards because of deliberate, false reporting of incomes, output and transactions for reasons of tax evasion, flouting of other economic controls and relative motives'.

- Further the white paper on 'black money' published by the Ministry of Finance states that in addition to wealth earned through illegal means, the term black money would also include legal income that is concealed from public authorities:-
    - to evade payment of taxes (income tax, excise duty, sales tax, stamp duty, etc.);
    - to evade payment of other statutory contributions;
    - to evade compliance with the provisions of industrial laws such as the Industrial Dispute Act 1947, Minimum Wages Act 1948, Payment of Bonus Act 1936, Factories Act 1948, and Contract Labour (Regulation and Abolition) Act 1970; and / or
    - to evade compliance with other laws and administrative procedures.

- According to the Wanchoo committee report, "Black Money is an elusive term". It is tainted money. It is the money which is not clean or which has a stigma attached to it. It is the money earned by violating or evading and avoiding of lawfully imposed

taxes. It is also called the money which is earned by violating legal provisions even social conscience and also that money which is kept secret and not accounted for.

The term black money is generally used to denote unaccounted money or concealed income or undisclosed wealth, as well as money involved in transactions wholly or partly suppressed. Black money had its origin in clandestine transactions and is currently in circulations. In narrower sense the term black money denotes not only unaccounted currency which is either hoarded or is in circulation outside the disclosed trading channels, but also its investment in gold, jewellery and precious stones made secretly and even investments in lands buildings and buildings assets over and above the amounts shown in the books of account.

Several terms are in use – such as 'black money', 'black income', 'dirty money', 'black wealth', 'underground wealth', 'black economy', 'parallel economy', 'shadow economy', 'underground' or 'unofficial' economy, illicit financial flow etc. If money breaks laws in its origin, movement or use, and is not reported for tax purposes, then it would fall within the meaning of black money.

A. MENACE OF BLACK MONEY

Black money is a menace to the society. The three main sources of black money are crime, corruption and business. The 'criminal' component of black money normally includes proceeds from a range of activities including racketeering, trafficking in counterfeit and contraband goods, forgery, securities fraud, embezzlement, sexual exploitation and prostitution, drug money, bank frauds and illegal trade in arms. The 'corrupt' component of such money stems from bribery and theft by those holding public office – such as by grant of business, bribes to alter land use or to regularize unauthorized construction, leakages from government social spending programmes, speed money to circumvent or fast-track procedures, black marketing of price controlled services, etc.

The 'commercial' aspect of black money usually results from tax evasion by attempting to hide transactions and any audit trail relating thereto, leading to evasion of one or more taxes. The main reason for such black economy is underreporting revenues / receipts / production, inflating expenses, not correctly reporting workers employed to avoid statutory obligations for their welfare. Opening of the economy permits contracts of all kinds – particularly for

allocation of scarce resources such as mineral and spectrum – which, in the absence of transparent rules and procedures for licenses and non-compliance of contractual obligations of the persons concerned, leads to increased generation of black money. In all the three forms of black money – 'criminal', 'corrupt' and 'commercial' – ploys are created which include false documentation, sham transactions, benami entities, mispricing and collusion. This is often done by layering transactions to hide their origin.

Studies indicate that countries with relatively poor regulation of their economies tend to have a higher share of unofficial economy in the GDP, while countries with proper regulations have smaller 'black' economies. Developing countries generally have higher levels of controls, leading to significantly higher effective taxes on official activities, a large discretionary framework of regulations and, consequently, a higher 'black' economy. Developed countries tend to have better enforcement of laws, balanced regulatory burden, better tax to GDP ratio resulting in sizeable revenue mobilization and, therefore, relatively smaller 'black' economies.

While in developed countries / areas like USA, Canada and Europe black money is generated primarily through illegal activities such as drug trade, illegal migration, etc., in the developing countries in Asia and Africa, generation of black money is from all conceivable sources – corruption and siphoning of public resources, trade-based black money due to non-reporting of incomes or profits and inflation of expenses, and through a host of criminal activities such as illicit manufacturing of counterfeit goods, smuggling, extortion, cheating and financial frauds, illicit narcotics trade, printing and circulation of fake currency, illicit manufacturing / trade in arms, ammunition and explosives, etc. Thus, the fight against generation and accumulation of black money is likely to be far more complex requiring stronger intervention of the state in developing countries like India, than in the developed countries. This needs stronger legal framework and commensurate administrative measures, and still stronger resolve to fight the menace.

B. GENERATION OF BLACK MONEY

Various types of modus operandi are involved in the generation of black money. One approach is not declaring or reporting the whole of the income or the activities leading to it.

This is the likely approach in all cases of criminal, illegal, and impermissible activities. Another approach is manipulation of financial records and accounting. Some of the common forms of generation of black money are as follows –

1) Misreporting or non-reporting of the transactions in the books of account. Different kinds of manipulations of financial statements result in tax evasion and the generation of black money.

2) Out of book transactions like not maintaining books of account or maintains two sets or records partial receipts only is one of the most widely adopted methods of tax evasion and generation of black money.

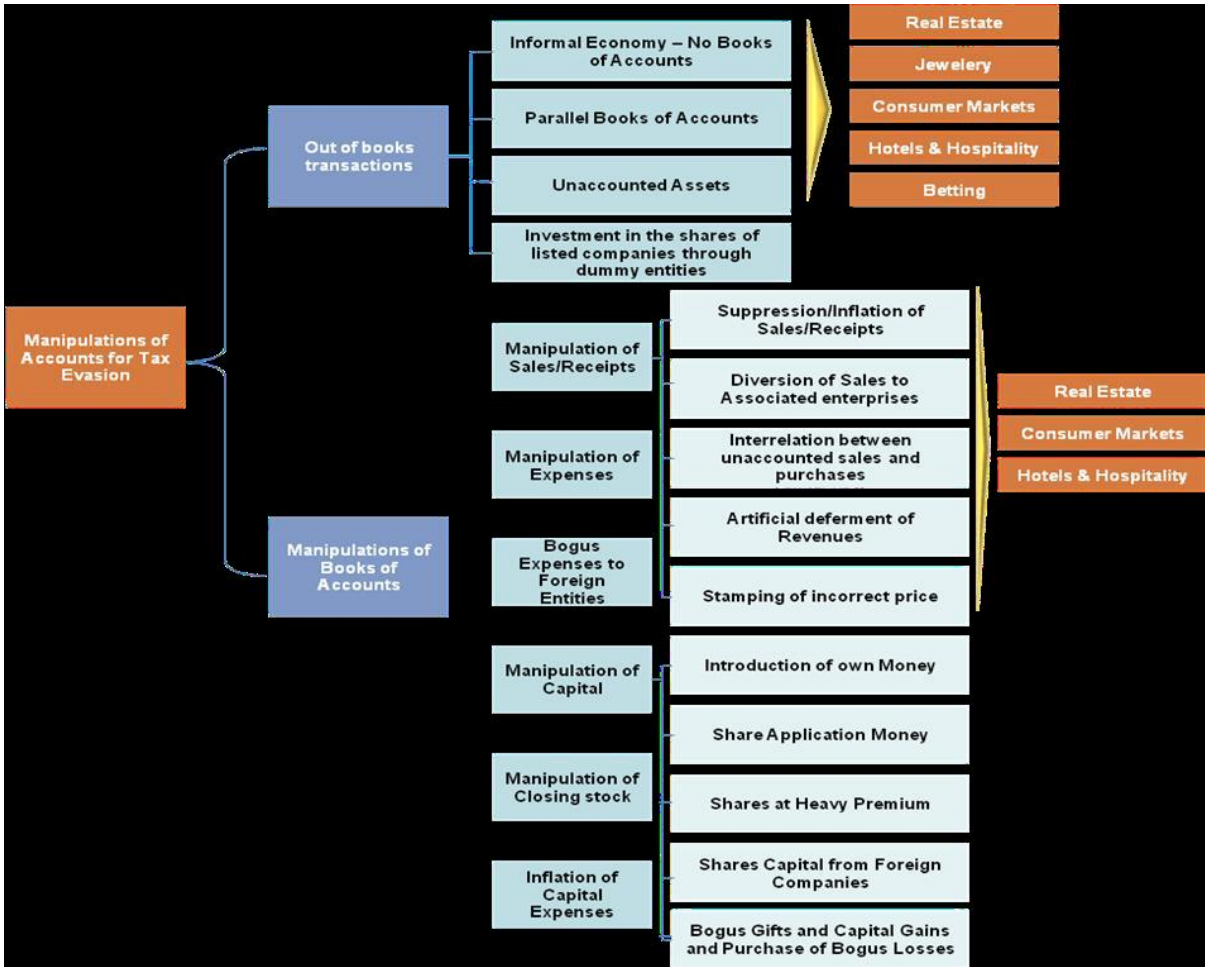
3) Maintaining parallel books of accounts is another practice adopted by those who are obliged under the law to maintain books of accounts.

4) Manipulation of books of accounts to evade taxes.

5) Manipulation of sales/receipts is another easy method.

6) Manipulation of production figure is another means of artificially reducing tax liability.

7) Since the income on which taxes are payable is arrived at after deducting the expenses of the business from the receipts, manipulation of expenses is a commonly adopted method of tax evasion.



(Source: "White paper on Black Money", Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, May 2012)

Some sections of the economy are vulnerable to generation of black money –

1) Due to rising prices of real estate, the tax incidence applicable on real estate transactions in the form of stamp duty and capital gains tax can create incentives for tax evasion through under-reporting of transaction price. This can lead to both generation and investment of black money.
2) In bullion and jewellery transactions, the purchase allows the buyer the option of converting black money into gold and bullion, while it gives the trader the option of keeping his unaccounted wealth in the form of stock, not disclosed in the books or valued at less than market price.
3) Initial public offers (IPOs) offering equity shares to the public at large are also vulnerable to various manipulations that can generate black money for the promoters or operators.

4) Taxation laws allow certain privileges and incentives for promoting charitable activities. Misuse of such benefits and manipulations through entities claimed to be constituted for non-profit motive are among possible sources of generation of black money.
5) The issue of black money is related to the magnitude of cash transactions in the informal economy. Factors like dependence on agriculture, existence of a large informal sector, and insufficient banking infrastructure with large un-banked and under-banked areas contribute to the large cash economy in India.
6) Differing tax rates in different tax jurisdictions can create perverse incentives for corporations to shift taxable income from jurisdictions with relatively high tax rates to jurisdictions with relatively low tax rates as a means of minimising their tax liability.
7) Tax evasion through transfer pricing is largely invisible to the public and difficult and expensive for tax officers to detect.
8) Money coming into the market via Participatory Notes (PNs) could be the unaccounted wealth camouflaged under the guise of FII investment.
9) With increasing sophistication of derivative instruments, new opportunities for investing and making profits without being subjected to taxes and regulations are also opening up.

C. WHITE MONEY, BLACK MONEY & MONEY LAUNDERING

Money that is earned legally or on which necessary tax is paid is White Money. Money that is earned through illegal activity and has not been subject to taxation is Black Money. The various differences between white money, black money and money laundering is given hereunder –

White money	**Black money**	**Money laundering**
Money earned legally.	Money earned through illegal activity.	Transfer or movement of black money.
Necessary tax has been paid.	Money that has not been subjected to taxation.	Away from the aspect of taxation.

No need to hide the money.	Recipient of black money needs to hide the money.	Money is spent in the underground economy and given the appearance of legitimacy.
Positive effect on the economy.	Adversely affects the economy.	Gives a misrepresented status of the economy.

3. BLACK MONEY – INTERNATIONAL SCENARIO

Black money in the international scenario is known as Illicit Financial Flows (IFFs).

The most common definition of Illicit Financial Flows is "money illegally earned, transferred or used," with money understood as funds or assets. This covers two main areas:

- Proceeds of criminal activities (for example, corruption, abuse of power or organized crime)
- Legally generated revenue and income that become illegal either because of their use (for example, terrorism financing) or illicit transfer (for example, breaches of tax laws or trade mispricing)

Illicit financial flows, in economics, refer to a form of illegal capital flight and occur when money is illegally earned, transferred, or spent. This money is intended to disappear from any record in the country of origin, and earnings on the stock of illicit financial flows outside of a country generally do not return to the country of origin.

A 2013 paper, authorized by Raymond W. Baker, Director of the Global Financial Integrity estimated illicit financial flows "out of developing countries are approximately $1 trillion a year". This study also found that China, Russia, and Mexico accounted for the three largest shares of worldwide illicit financial flows.

- ✓ Nominal illicit outflows from developing countries amounted to US$946.7 billion in 2011, up 13.7 percent from US$832.4 in 2010.
- ✓ Asia accounts for 39.6 percent of total illicit outflows from developing countries compared to 61.2 percent of such outflows in the 2012 IFF Update. Six of the top 15 exporters of illicit capital are Asian countries - China, Malaysia, India, Indonesia, Thailand, and the Philippines.
- ✓ Developing Europe (21.5 percent) and the Western Hemisphere (19.6 percent) contribute almost equally to total illicit outflows. While outflows from Europe are mainly driven by Russia, those from the Western Hemisphere are driven by Mexico and Brazil.

- ✓ The Middle East and North Africa (MENA) region accounts for 11.2 percent of total outflows on average.
- ✓ Trade misinvoicing comprises the major portion of illicit flows (roughly 80 percent on average).

As per GFI's (Global Financial Integrity) 2014 Annual Global Update on Illicit Financial Flows report, that the cumulative illicit outflows from developing economies for ten years between 2003 and 2012 stands at USD 6.6 trillion. This includes USD 439.59 billion worth illicit money that has moved out of India in these ten years, putting the country at fourth position in overall ranking for a decade, after China (USD 1.25 trillion), Russia (973.86 billion) and Mexico (USD514.26 billion). In these ten years, an average of USD 43.96 billion of black money is being sent out of India every year, GFI said.

IFFs are growing at a rate well in excess of economic growth. They also pose a huge challenge to political and economic security around the world, particularly to developing countries. Illicit flows constitute a major source of domestic resource leakage, which drains foreign exchange, reduces tax collections, restricts foreign investments, and worsens poverty in the poorest developing countries. Illicit flows are all unrecorded private financial outflows involving capital that is illegally earned, transferred, or utilized, generally used by residents to accumulate foreign assets in contravention of applicable capital controls and regulatory frameworks. Thus, even if the funds earned are legitimate, such as the profits of a legitimate business, their transfer abroad in violation of exchange control regulations or corporate tax laws would render the capital illicit.

IFFs are difficult to estimate statistically due to the fact that many illicit transactions tend to be settled in cash, as parties involved in such transactions take great pains to ensure that there is no incriminating paper trail. Hence, economic methods and data sources tend to significantly understate IFFs.

U.S.A

The Foreign Account Tax Compliance Act (FATCA) is specific United States (US) legislation that aims to reduce tax evasion by US citizens, tax residents, and entities. US

citizens and tax residents are required to report their worldwide income to the Internal Revenue Service (IRS) whether they live in the US or not.

FATCA is a reporting regime that ensures US citizens meet their tax obligations. It requires all foreign financial institutions that are not exempt, to register with the IRS. They must report on US citizens and tax residents who have specified foreign financial assets that exceed certain thresholds.

Unless the US exempts them from FATCA reporting, this includes foreign financial institutions such as:

- banks
- insurance companies
- custodial institutions
- hedge funds
- mutual funds
- superannuation funds, and
- private equity firms.

These financial institutions are required to report to the IRS on details of financial account held by:

- US citizens
- US tax residents
- US entities that are specified US persons
- certain non-US entities that are controlled by US tax residents or US citizens, and
- certain "non-participating" financial institutions.

4. BLACK MONEY – INDIAN SCENARIO

There are no reliable estimates of black money generation or accumulation neither is there an accurate well-accepted methodology for making such estimation. By its very definition, black money is not accounted for, thus all attempts at its estimation depend upon the underlying assumptions made and the sophistication of adjustments incorporated.
In 2011 the government had commissioned a joint study by three think-tanks - NIPFP, NIFM and NCAER - to estimate Indian entities' unaccounted wealth both at home and abroad. The final report has not yet been submitted.

Some of the estimates available -

- India ranked fifth largest exporter of illicit money between 2002-2011, with a total of $343.04 billion, and in 2011 it was placed third when $84.93 billion was sent abroad, according to a 2013 report titled 'Illicit Financial Flows from Developing Countries: 2002-2011'.

- According to Global Financial Integrity (GFI), a Washington-based think-tank, Indians salted away $462 billion (about Rs. 28 lakh crore in current exchange rates) in overseas tax havens between 1948 and 2008.

- $500 billion (about Rs 31.4 lakh crore) is the money stashed away in tax havens by Indians, according to former CBI director AP Singh.

- $500 billion (Rs 31.4 lakh crore) and $1.4 trillion (Rs 86.8 lakh crore) is parked in undisclosed overseas accounts, according to a BJP task force report of 2011.

- Rs 14,000 crore is the money held by Indians in Swiss banks as of December 2013, a jump of over 42% from 2012.

In 1972, the Wanchoo Committee cautioned: “black money is a cancerous growth in the countries’ economy which if not checked in time, will surely lead to its ruination; and the situation has been worsened by years”. Moreover, in 1985, the National Institute of Public Finance and Planning (NIPFP) estimated the size of the black economy at 20% of the legitimate economy for 1980-81. Later, economist G.B Gupta reckoned the black economy to

be worth 42% of GDP for 1980-81, and 51% for 1987-88. Economist Arunkumar estimated the black economy in 1995 at 40% of GDP . However, KPMG estimated it to be nearly 30 per cent of the GDP and stated that a part of that money could be getting laundered. At the economic summit in 2000, the then Central Vigilance Commissioner (CVC) estimated that black money accounted for 40% of GDP.

The main causes of black money in India are –

- ✓ High rates of taxes
- ✓ Control policies of the government
- ✓ Different rate of duties
- ✓ Quota system of import quota, export quota and foreign exchange quota
- ✓ Defective public distribution system
- ✓ Inflation
- ✓ Elections and political funding
- ✓ Real estate transactions
- ✓ Privatisation
- ✓ Non taxing of agricultural income
- ✓ Deteriorated public morality

A. COMMITTEES / REPORTS ON BLACK MONEY

The Government of India has set up about 40 committees at different levels to look into the issue of black money. Some of the major committees on black money are -

1. Corruption Committee - Chairman K. Santhanam (1964)
2. Study team on Leakages of Foreign Exchange through Invoice Manipulation - Chairman M.G. Kaul (1971)

3. Wanchoo Committee also known as the Direct Taxes Enquiry Committee (DTEC) – report on tax evasion and black money (1971)
4. Committee on Agricultural Wealth and Income - Chairman Dr K.N. Raj (1972)
5. Indirect Taxation Enquiry Committee - Chairman L.K. Jha (1978)
6. Economic Administration Reforms Commission: Reports on Tax Administration - Chairman L.K. Jha (1983)
7. National Institute of Public Finance and Policy report (Aspects of the Black Economy in India) - Shankar Acharya (1985)
8. Tax Reforms Committee - Chairman R.J. Chelliah (1992)
9. Measures to tackle Black Money in India and abroad – Report of the Committee headed by Chairman, CBDT (2012)
10. White Paper on Black Money (2012)

As far back as 1936, the Ayers Committee, while reviewing the income tax administration in India suggested large-scale amendments to secure the interests of the honest taxpayer and effectively deal with fraudulent evasion. An Income-tax Investigation Commission was appointed in 1947 to investigate tax evasion and suggest measures for preventing it in future. A Taxation Enquiry Commission (1935-54) also went into the question of tax evasion and recommended several legal and procedural changes. In 1956, Nicholas Kaldor made a specialized study of the Indian tax system, that also included prevalence of tax evasion, and his recommendations resulted in several amendments and new legislations like the Wealth Tax Act. A Direct Taxes Administration Enquiry Committee formed in 1958 suggested an integrated scheme of taxation for facilitating compliance and preventing tax evasion. It also made substantial contribution to the reorganization of tax administration. Important reforms based on the reports of various committees as well as the Administrative Reforms Commission have been made from time to time to strengthen tax compliance and plug tax evasion.

Wanchoo Committee

The Direct Taxes Enquiry Committee (DTEC), generally called the Wanchoo Committee setup by the Government of India in 1970 with Shri K.N. Wanchoo retired Chief Justice of the Supreme Court of India, as chairman, submitted its report in December 1971 on tax evasion and black money. This report tried to give a more or less authoritative estimate of black money in the Indian economy.

DTEC also for the first time, defined black money as tainted money – money which is not clean or which has a stigma attached to it. Black is a colour which is generally associated with evil. While it symbolizes something which violates moral, social or legal norms, it also suggests a veil of secrecy shrouding it. The term black money stands for both implications. It not only stands for money earned by violating legal provisions, even social conscience, but also suggests that money which is kept secret and not accounted for. The report also calculated the amount of tax evaded in 1968-69 at Rs.470 crores.

The report says, "tax evasion and black money has in fact given rise to a parallel economy operating simultaneously and competing with the official economy. This parallel economy has over the years grown in size and dimension and even on a conservative estimate, the amount of black money in circulation runs into some thousand crores. The menace of black money has now reached such staggering proportions that it is causing havoc to the economy of the economy of the country and poses a serious challenge to the fulfilment of our objectives of distributive justice and setting up of an egalitarian society. There are several causes responsible for the generation of black money as reported in the Report of Wanchoo Committee. Some principal causes are as follows –

a) High rates of taxation under the direct tax laws; they breed tax evasion and generate black money;

b) Economy of shortages and consequent controls and licences leading to corruption for issuing licences and permits and turning blind eye to the violation of controls;

c) Donations of black money encouraged by political parties to meet elections expenses and augmenting party funds and also for personal purposes;

d) Corrupt business practices such as payments of secret commission, bribes, on money, pugree etc. which need keeping on hand in black;

e) Ineffective administration and enforcement of tax laws by the authorities and

f) Deterioration in moral standards so that tax evasion is no longer regarded as immoral and unethical and does not carry any social stigma.

The DTEC felt that searches and seizures were the most potent weapon for unearthing black money and provided direct and clinching evidence about tax evasion and existence of black money.

CBDT Committee on Black Money

A Committee headed by the Chairman of CBDT was constituted on 27th May, 2011 for examining ways to strengthen laws to curb the generation of black money in the country, its legal transfer abroad and its recovery. The Committee submitted its report to the Ministry of Finance in March, 2012 and the recommendations are summarised hereunder –

- The fight against the monstrosity of black money has to be at ethical, socio-economic and administrative levels.
- In order to ensure transparent and efficient allocation of natural and man-made resources, oversight in the form of comprehensive regulations, and ombudsman for grievance redressal, particularly for scarce resources - as in land, minerals, forests, telecom, etc. - needs to be introduced and implemented expeditiously.
- There should be a dedicated training center for all law enforcement agencies dealing with financial crimes and offences, as this requires special skills.
- The proposed national level GST regime should be expeditiously implemented.
- There should also be sharing of real-time data under Foreign Contribution Regulation Act (FCRA) and DGIT (Exemption) and coordination amongst various enforcement agencies.
- Accountability of both public and private offices needs to be enhanced.

- Government may consider amending existing laws (The Coinage Act 2011, The Reserve Bank of India Act 1934, FEMA, IPC, Cr PC, etc.), or enacting a new law, for regulating the possession and transportation of cash, particularly putting a limitation on cash holdings for private use, and including provisions for confiscation of cash held beyond prescribed limits. This would address the concerns expressed by various courts, and also the Election Commission of India for reducing the influence of money power during elections.

- To reduce the element of black money in transactions relating to immovable properties, provision for NOC should be introduced in the Income Tax law with safeguards to reduce administrative complications and increased ease of compliance, so that an appropriate and uniform data-base is also set up, and a proper national-level regulation is put in place.

- The Accounting Standard No.7 should be modified by the ICAI to be made applicable to real estate developers also. AS-7 and AS-9 should be notified under the Income Tax Act, 1961.

- There is no uniformity in the matter of levy of agricultural income tax among states. Agriculture generates around 14 per cent of the country's GDP. Giving credit to agricultural income for income tax purposes without verification of claim allows an avenue for bringing black money into the financial system as agricultural income.

- The regulation and enforcement of KYC norms in the co-operative sector may be strengthened by the State Governments as well as the Central Government.

- The RBI could consider stricter implementation of KYC norms and limit number of accounts that can be introduced by a single person, the number of accounts that can be maintained in the same branch by any entity and alerts about same address being used for opening accounts in different names. Stricter adherence to, and enforcement of, KYC norms is needed for ensuring proper compliance by banks and financial institutions. The Government, as well as the RBI, also need to put a better regulatory framework in place and act promptly against errant persons / institutions.

- The Ministry of Corporate Affairs, which already has a centralized data-base of all companies, may examine placing a cap on the number of companies operating from the same premises and number of companies in which a person can become director.

- The government may consider introducing alternative financial instruments to reduce the attraction of gold as savings instrument. It may also consider revising customs duties, as also graded wealth tax, on gold and jewellery to discourage investments in unproductive assets. The taxation structure on bullion and jewellery, including VAT / Sales Tax should be harmonized.

- Better reporting / monitoring systems are to be put in place to trace the dealings in bullion / jewellery through the Income Tax / Customs / Sales Tax Acts.

- Use of banking channels and credit / debit cards should be encouraged, while trade practices such as cheque discounting should be discouraged.

- Foreign remittances using corporate structures and the formal financial sector instruments may be a popular method of transferring funds (even of illegal origin) to foreign jurisdictions or for routing back to India through Foreign Institutional Investment (FII). There is a need to create a robust database of such remittances and carry out an analysis of their backward and forward linkages in order to understand the nature and legitimacy of the transmitted funds. FIU-IND may be empowered by law to receive reports (similar to other reports submitted to FIU-IND) on all international fund-transfers through the Indian financial system.

- Some countries have implemented laws to make it obligatory to furnish information of all transactions undertaken abroad. We recommend that India may also insist on entities operating in India to report all global transactions above a threshold limit. For this purpose, appropriate law, rules or contractual / licensing arrangement with these entities may be framed and implemented.

- Institutions of the Lok Pal and Lokayukta may be put in place at the earliest, in the centre and states, respectively, to expedite investigations into cases of corruption and bring the guilty to justice.

- Effective battle against black money cannot be ensured unless the judicial machinery to deal with it is specialized and the trial of offences is expeditious and punishments exemplary. The legal support to various law enforcement agencies should be enhanced. All financial offences should be tried through fast track special courts. The Ministry of Law should take up this issue on priority and make arrangements for setting up fast-track courts all over the country in a time-bound manner. Judicial officers may be provided inputs as required in technical aspects of economic offences.

- As housing finance companies and the property buyers are provided fiscal incentives, it also leads to speculation and flipping transactions. To prevent this, Section 54 of the Income Tax Act should be amended to provide for availing this benefit only twice by a taxpayer in his lifetime.

- The period of limitation for reopening income tax assessments should be enhanced from present six years to sixteen years for bringing to tax undisclosed assets held abroad.

- One of the ways to get assets / money held abroad into the national mainstream is through a compliance scheme. The Committee is of the view that if the above recommendations are implemented properly, it would be possible to get information regarding assets held abroad as well as check the generation of black money within the country and its illicit transfer abroad. Already there are provisions in the Income Tax Act to waive prosecution and reduce penalties in genuine cases of inadvertent infraction of tax laws. Such taxpayers can always avail of the benefits under these provisions and declare any undisclosed income / assets in India or abroad.

White Paper on Black Money

The White Paper on Black Money was tabled in the Lok Sabha on May 21, 2012. The Paper presents the different facets of black money and its complex relationship with policy and administrative regime in the country. It also reflects upon the policy options and strategies that the Government has been pursuing in the context of recent initiatives, or need to take up in the near future, to address the issue of black money and corruption in public life. A summary of the paper is given hereunder –

- ✓ Black Money defined as 'assets or resources that have neither been reported to the public authorities at the time of their generation nor disclosed at any point of time during their possession.'

- ✓ Black money can be generated through (i) illegal activities like crime, drug trade, terrorism and corruption or (ii) failing to pay dues to the public exchequer in one form or another. In the second case, activities might be legal but the perpetrator may simply have failed to report the income generated to avoid paying tax.

- ✓ The Paper provides an overview of how manipulation of financial records and accounting techniques are used to generate black money.

- ✓ Certain sectors that are more vulnerable to black money issues have been mentioned. These include land and real estate, bullion and jewellery, financial markets, public procurement, the non-profit sector, informal sector and cash economy.

- ✓ The Paper does not provide an estimate of the amount of black money currently generated in India. It cites a lack of uniformity, unanimity or consensus about the best approach to be used to measure black money.

- ✓ The issue of Indian assets held abroad, particularly in Swiss banks has been mentioned. In 2010, liabilities in Swiss Banks towards India were Rs.7,924 crore and this was 0.13% of Swiss banks' total liabilities.

- ✓ The Paper describes the institutions currently in place responsible for dealing with black money issues. These include the Central Board of Direct Taxes (CBDT), the Enforcement Directorate (ED), the Financial Intelligence Unit (FIU-IND) and the Central Board of Excise and Customs (CBEC). The Central Economic Intelligence Bureau (CEIB), the National Investigation Agency (NIA), and the High Level Committee (HLC) act as coordinating agencies.

- ✓ It also describes the framework the Government of India has employed to tackle black money. It is a five pronged strategy which involves: (i) joining the global crusade against black money, (ii) creating an appropriate legislative framework, (iii) setting up institutions for dealing with illicit money, (iv) developing systems for implementation, and (v) imparting skills to personnel for effective action.

- ✓ It stresses the need for any long term strategy to be based on public acceptance, political consensus and the commitment to implement it.

- ✓ The Paper proposes a strategy to curb black money generation from legitimate activities based on four pillars:

    - **Reducing disincentives against voluntary compliance** – this could involve measures like rationalization of tax rates and reducing transaction costs by providing electronic and internet-based services to pay tax.

    - **Reforms in sectors vulnerable to generation of black money** – various policy initiatives to prevent black money generation in certain vulnerable sectors of the economy. For instance, in the area of real estate, the Paper proposes deducting tax at source on payments made on real estate transactions. In the cash economy, the Paper recommends that the Government provide tax incentives for use of credit/debit cards.

    - **Creation of effective credible deterrence** – policies should create enough disincentives for black money generation. The Paper believes the introduction of the Goods and Service Tax (GST) will be an important step in this process. Other measures proposed include strengthening the direct tax administration, strengthening of the prosecution mechanism and enhancing exchange of information.

    - **Supportive measures** – some of the measures suggested include creating public awareness and public support, enhancing the accountability of auditors and participating in international efforts. With regards to repatriation of money overseas, the Paper suggests a onetime partial benefit of immunity from prosecution for voluntary disclosure.

B. DISCLOSURE SCHEMES

In the past, the government has resorted to voluntary disclosure schemes/amnesty schemes by providing amnesty to tax evaders if they declared their unaccounted income and paid due taxes on the same. These voluntary schemes have been criticized on the grounds that they

provide a premium on dishonesty and are unfair to honest taxpayers, as well as for their failure to achieve the objective of unearthing undisclosed money.
The Wanchoo Committee did not consider voluntary disclosure programme as an effective siphon to draw out black money and believed that such schemes would work contrary to general taxation compliance and morale of the administration and would put a premium on tax evasion.

There have been 12 such schemes between 1946 and 1997. Many of them helped to convert huge sums of money into white without the payment of any tax.
Some of the schemes are –

1. Voluntary Disclosure Scheme of 1951, 1965, 1976, 1985 & 1997
2. Block Scheme, 1965
3. Voluntary Disclosure of Income and Wealth Ordinance, 1975

The Voluntary Disclosure Scheme of 1975 proved to be an eye-opener and disclosures were beyond all (even official) expectations. The total disclosures of income and wealth turned out to be more than 1500 crore leading to an income tax realisation of over Rs.250 crore and a corresponding investment of about Rs.40 crore in Government approved securities.

There have been later disclosure schemes which brought out much higher volumes of black money and unaccounted income but by that time the parallel economy had become cautious and defiant about disclosures and preferred to maintain its hold on black money and keep the same either in the dark or invested in cautious channels.

Going by the trend of these disclosures, it was felt that the extent of black money in absolute terms may be well beyond Rs.40,000 to Rs.50,000 crore! It was also felt that yet another voluntary measure against all economic offences may lead to disclosures well beyond Rs.50,000 crore, if the penalty for non-disclosures is made very severe and highly punitive.

C. BLACK MONEY IMPACT ON KEY SECTORS

Black money is a cause of concern for the Indian economy and results in huge losses in tax revenues for the government. India is the fifth leading county among the developing nations in the world with total illicit financial flows of USD 344 billion from 2002 till 2011 (according to Global Financial Integrity Report, December 2013).

About a third of India's black money transactions are believed to be in Real Estate, followed by Manufacturing, and purchase of Jewellery and Consumer Goods. The IT department detected undisclosed income worth INR 10,791.6 crore in search operations during FY14, and found unreported income of INR 90,390.7 crore in survey operations, the total figure of INR 1,01,181 crore from search and survey being more than double the figure arrived at in FY13. Seizure of Jewellery, fixed deposits and cash during the search operations was about INR 808 crore as the IT department executed 4,503 warrants and launched searches on 569 entities during this period. The number of search warrants in FY13 stood at 3,889. Real Estate emerged as the top tax evader.

Real Estate –

The Real Estate sector in India constitutes for about 11 % of the GDP of Indian Economy, as these transactions involve high transaction value. In the year 2012-13, Real Estate sector has been considered as the highest parking space for black money. Due to rising prices of Real Estate, the taxes applicable on Real Estate transactions in the form of stamp duty and capital gains tax may result into tax evasion through under-reporting of transaction price. This leads to both generation and absorption of black money. The buyer has the option of using his black money by paying cash in addition to the documented sale consideration. This also leads to generation of black money in the hands of the recipient. The incidence of multiple taxation provides the incentive to under report/under value the transactions. The cash generated is also absorbed by various avenues. Generally, the sub-contractors are usually hired for the job of painting or civil construction, etc. and are generally not registered with the Service tax or VAT Department. Therefore, the Real Estate seller finds it easier to dispense its black money in paying such sub-contractors in cash.

Jewellery –

India is one of the leading gold markets in the world and holds over 18,000 tonnes of above ground gold stocks, worth about 2/3rd of India's current GDP and represents 11 percent of global stock. Therefore, Bullion and Jewellery becomes a large segment for generation of black money. The black money holders invest in bullion and Jewellery to protect the value of their black money from inflationary depreciation. Cash sales in the gold and Jewellery trade gives the buyer an option to convert black money into gold and Jewellery, while it gives the trader the option of keeping his unaccounted wealth in the form of stock, not disclosed in the books or valued at less than market price. Nearly 70-80 % of the transactions involving Jewellery are made using cash (black money). Tax authorities have estimated purchases of gold bullion and Jewellery as the second-largest parking space for black money, next to Real Estate.

Consumer goods –

The Fast Moving Consumer Goods (FMCG) sector deals in a variety of products, such as soft drinks, toiletries, toys, processed food and other consumable items. In general, these goods are sold over the counter to the ultimate consumers. This sector primarily attracts Excise duty at the time of their manufacture and VAT in the event of their subsequent sales at regular intervals. According to FICCI's study, counterfeit brands in India have resulted in a loss of over INR 16,546 Crores to the Exchequer in 2012. Due to a chain of illegal transactions, the entire industry functions on black money. There is infusion, generation, investment and distribution of black money. Further, these counterfeiters are generally small manufacturers but are large in numbers. Hence, putting an end to such a practice again becomes a challenge for the Tax Departments and Government.

FMCG sector largely functions with the unorganised sectors that are primarily dealing in cash such as grocery stores, etc. Further, their customers are also large household consumers. Therefore, it is implied that the transactions with the end customers would be in cash, most of which would get unaccounted. This practice results in reduction in collection of duty and generation of black money.

E-Commerce transactions are also becoming an important source of black money generation with the growth of online retailers in India. The Cash on Delivery payment option on the

online transaction is fuelling the consumption of black money. About 50% of e-commerce sales could be in black. This is because of the cash-on-delivery facility that is being offered on online shopping.

Hotels & Hospitality –

The incidence of tax evasion in small and midsized hotels and restaurants/banquets is large. These institutions convince the customers to pay a part amount of the bill by way of cash, to save the applicable service and other related taxes on the transaction, thereby making some or whole of the transaction black income for them and untraceable for the tax authorities. Provision of food and services without raising any invoice or accounting in the books is a common practice. In this way, the black money is easily utilised escaping the tax net.

Betting -

Betting in sports is illegal in the country, and hence, creates a wide scope for black money generation.

Financial Market Transactions –

Black money generation can take place in Initial public offers (IPOs) through manipulations such as rigging of markets by market operators that can generate illegal money for the promoters or operators. This may involve use of shell companies and offshore companies or investors in foreign tax jurisdictions who invest in shares offered by the IPO and through manipulated trading escalate their price artificially, only to offload them later at the cost of ordinary investors.

Non-profit Sector and Education –

Misuse of the tax incentives available for indulging in charitable activities, and manipulations through entities claimed to be constituted for non-profit motive is among the sources of generation of black money in the non-profit sector.

The Indian education system generates about INR 48,400 crore of black money every year. The major source of unaccounted money is the capitation fee used for getting admission to UG, PG, medical, engineering and other professional courses.

D. LAWS TO REGULATE BLACK MONEY

There are many laws that indirectly regulate and prevent the generation of black money. Some of them are –

1. Income tax Act, 1961
2. Special Bearers Bond's (Immunities and Exemptions) Act, 1981
3. Narcotics Drugs and Psychotropic Substances Act, 1985
4. Prevention of Corruption Act, 1988
5. Benami Transactions (Prohibition) Act, 1988
6. Foreign Exchange Management Act, 1999
7. The Prevention of Money Laundering Act, 2002
8. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

Income tax Act, 1961

A number of significant changes were brought about in the Income Tax Act to check the menace of black money.

- ✓ A new section 94A was introduced in the Income Tax Act to discourage transactions between residents and persons located in jurisdictions which do not effectively exchange information with India (non-cooperative jurisdictions).
- ✓ To facilitate prompt collection of information on requests received from tax authorities outside India under the provisions of DTAAs/TIEAs, the powers under section 131 and 133A of income tax authorities have been extended.
- ✓ The time limit for completion of assessments if a request is made to foreign tax authorities has been extended to one year.
- ✓ General Anti Avoidance Rules (GAAR) have been introduced to check aggressive tax planning with the use of sophisticated structures.

- ✓ With a view to providing objectivity in determination of income from related domestic party transactions and determination of reasonableness of expenditure between related domestic parties, provisions relating to transfer pricing regulations have been extended to specified domestic transactions.

- ✓ To check the introduction of black money in the accounts, it has been provided that the nature and source of any sum credited as share capital, share premium, etc. in the books of a closely held company shall be treated as explained only if the source of funds is also explained by the said company in the hands of the resident shareholder.

- ✓ To create greater deterrence against black money, unexplained amounts deemed as income of a taxpayer under sections 68, 69, 69A, 69B, 69C and 69D of the Income Tax Act 1961 will be taxed at the maximum marginal rate without any allowance or deduction.

- ✓ The reporting mechanisms for those operating assets and banking accounts abroad is strengthened by making filing of return of income mandatory for every resident (excluding person who is not ordinarily resident in India) having any assets or banking accounts located outside India even if s/he does not have taxable income.

Prevention of Money Laundering Act, 2002

The Prevention of Money Laundering Act 2002 (PMLA) was enacted to prevent money laundering and provide for confiscation of property derived from, or involved in, money laundering and for matters connected therewith or incidental thereto. The Act also addressed international obligations under the Political Declaration and Global Programme of Action adopted by the General Assembly of the United Nations to prevent money laundering.

To strengthen the provisions of the Money Laundering Act, amendments were carried out in 2009 and 2012. In 2009 amendment, new definitions were introduced to clarify and strengthen the Act and it strengthened provisions related to attachment of property involved in money laundering and its seizure and confiscation. The 2012 amendment introduced the concept of 'reporting entity' to include therein a banking company, financial institution, intermediary or a person carrying on a designated business or profession; enlarged the definition of offence of money-laundering to include therein the activities like concealment, acquisition, possession and use of proceeds of crime as criminal activities; made provision for

attachment and confiscation of the proceeds of crime even if there is no conviction so long as it is proved that offence of money-laundering has taken place and property in question is involved in money-laundering.

Benami Transactions (Prohibition) Act, 1988

was enacted to prohibit benami transactions and the right to recover property held benami. The Act The Benami Transactions (Prohibition) Act, 1988 provides that —

(a) all the properties held benami shall be subject to acquisition by such authority in such manner and after following such procedure as may be prescribed;

(b) no amount shall be payable for the acquisition of any property held benami;

(c) the purchase of property by any person in the name of his wife or unmarried daughter for their benefit would not be benami transaction;

(d) the securities held by a depository as registered owner under the provisions of the Depositories Act, 1996 or participant as an agent of a depository would not be benami transactions.

The Act was inadequate to deal with benami transactions.

The Benami Transactions (Prohibition) Bill, 2011 was introduced by the Ministry of Finance in the Lok Sabha on August 18, 2011 to enact a new legislation to prohibit Benami transactions. This Bill is to replace the existing Benami Transactions (Prohibition) Act, 1988. The Bill was referred to the Parliamentary committee on 13th September, 2011. The Committee headed by Mr.Yashwant Sinha, submitted its 58th Report on 'The Benami Transactions (Prohibition) Bill, 2011' on June 15th, 2012. However, the Bill lapsed with the dissolution of 15th Lok Sabha.

The Benami Transactions (Prohibition) (Amendment) Bill, 2015 was on 13th May 2015 introduced in Lok Sabha after Union Cabinet gave its approval to amend the Benami Transactions (Prohibition) Act, 1988. On May 15, 2015, the Bill was referred to the Parliamentary Committee. The Bill seeks to amend the Benami Transactions (Prohibition) Act, 1988 by adding additional provisions that provides for stringent measures against violators in order to curb and check the generation of black money in the country. The Bill seeks to amend the definition of benami transactions, establish adjudicating authorities and an

Appellate Tribunal to deal with benami transactions and specify the penalty for entering into benami transactions. On May 15, 2015, the Bill was referred to the Parliamentary Committee.

E. GOVERNMENT'S EFFORTS TO TACKLE BLACK MONEY

There is no reliable information about the money of Indians in undisclosed bank accounts outside the jurisdiction of the country. The Government has taken several steps in the last few years, the details of which are given hereunder –

1) India has joined the Task Force on Financial Integrity and Economic Development in order to bring greater transparency and accountability in the financial system.

2) India has joined the Asia Pacific Group (APG) against Money laundering.

3) India has gained Membership of the Eurasian Group (EAG) in December, 2010.

4) India is an active member of G20 and has played a key role both in identifying issues and drafting communiqués.

5) The Government has been constantly trying to strengthen the legislative frame work to control generation of black money in the country as well as control the flight of such illicit fund to foreign shores.

6) Specific measures for unearthing black money proposed in the Direct Taxes Code Bill.

7) Government has decided to set up Exchange of Information (EoI) Cell for an effective exchange of information to curb tax evasion.

8) Government has set up Income tax Overseas Units in Indian Missions abroad.

9) The Directorate of International Taxation and Transfer Pricing in the Income Tax Department has also been strengthened as major part of the flow of illicit money outside of India takes place through mis-pricing of international transaction.

10) The Supreme Court has ordered creation of a Special Investigation Team (SIT) with the responsibilities and duties of investigation, initiation of proceedings and prosecution, whether in the context of appropriate criminal or civil proceedings, relating to cases involving stashing of unaccounted money in foreign banks by Indians or other entities operating in India.

11) Government's sharp focus on mis-pricing, which is one of the main and new method of transfer of illicit funds outside the country has resulted in detection of mis-pricing of Rs.33,784 crore in the last two financial years as against detection of trade mis-pricing of Rs.14,655 crore in last five Financial Years.

5. BLACK MONEY ACT & RULES

The **Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015** was enacted on 26th May 2015 and has been made effective from 1st July 2015. An Act to make provisions to deal with the problem of the Black money that is undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto. The Act consists of 88 sections under 7 chapters.

Chapter	**Sections**	**Content**
Chapter I	Secs.1 & 2	Preliminary – 14 definitions
Chapter II	Secs.3 to 5	Basis of Charge
Chapter III	Secs.6 to 40	Tax Management
Chapter IV	Secs.41 to 47	Penalties
Chapter V	Secs.48 to 58	Offences and Prosecutions
Chapter VI	Secs.59 to 72	Tax compliance for undisclosed foreign income and assets
Chapter VII	Secs.73 to 88	General Provisions

The **Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015** have come into effect from July 2nd, 2015. It contains 12 rules with 5 definitions. The following are dealt under the Rules –

- Fair market value
- Tax authorities
- Notice of demand

- Appeal to Commissioner (Appeals)
- Appeal to Appellate Tribunal
- Form of tax arrears
- Declaration of undisclosed asset located outside India under section 59
- Educational qualifications
- Authority in certain cases
- Rounding off of income, value of asset and tax

I. Important Definitions

"**Assessee**" means a person, being a resident other than not ordinarily resident in India within the meaning of clause (*6*) of section 6 of the Income-tax Act, by whom tax in respect of undisclosed foreign income and assets, or any other sum of money, is payable under this Act and includes every person who is deemed to be an assessee in default under this Act. (Sec.2(2) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015)

A person is said to be "not ordinarily resident" in India in any previous year if such person is—

(*a*) an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or

(*b*) a Hindu undivided family whose manager has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less. (Clause (*6*) of section 6 of the Income-tax Act, 1961)

"**Assessment year**" means the period of twelve months commencing on the 1st day of April every year. (Sec.2(4) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015)

"**Participant**" means—

(*a*) a partner in relation to a firm; or

(*b*) a member in relation to an association of persons or body of individuals. (Sec.2(7) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015)

"**Previous year**" means—

(*a*) the period beginning with the date of setting up of a business and ending with the date of the closure of the business or the 31st day of March following the date of setting up of such business, whichever is earlier;

(*b*) the period beginning with the date on which a new source of income comes into existence and ending with the date of closure of the business or the 31st day of March following the date on which such new source comes into existence, whichever is earlier;

(*c*) the period beginning with the 1st day of the financial year and ending with the date of discontinuance of the business other than business referred to in clause (*b*) or dissolution of an unincorporated body or liquidation of a company, as the case may be; or

(*d*) the period of twelve months commencing on the 1st day of April of the relevant year in any other case, and which immediately precedes the assessment year. (Sec.2(9) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015)

"**Undisclosed asset located outside India**" means an asset (including financial interest in any entity) located outside India, held by the assessee in his name 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 in the opinion of the Assessing Officer unsatisfactory. (Sec.2(11) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015)

"**Undisclosed foreign income and asset**" means the total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India, referred to in section 4, and computed in the manner laid down in section 5. (Sec.2(12) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015)

"**Unincorporated body**" means—
(*a*) a firm;
(*b*) an association of persons; or
(*c*) a body of individuals. (Sec.2(13) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015)

II. Assessee

"Assessee" means a person, being a resident other than not ordinarily resident in India within the meaning of clause (*6*) of section 6 of the Income-tax Act, by whom tax in respect of undisclosed foreign income and assets, or any other sum of money, is payable under this Act and includes every person who is deemed to be an assessee in default under this Act.

The term 'person' is not defined in the Black Money Act so its definition under the Income Tax Act must be adopted. Accordingly, assessee will include individual, HUF, company, firm, AOP, BOI, local authority and every artificial judicial person. The Black Money Act will not apply to any person who is Not Ordinary Resident and Non Resident.

III. Charge of tax

Sec.3 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 deals with charge of tax.

Every assessee will be charged for every assessment year commencing on or after the 1st day of April, 2016, a tax in respect of his total undisclosed foreign income and asset of the previous year at the rate of 30% of such undisclosed income and asset. Where an undisclosed asset is located outside India, it shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer.

"Value of an undisclosed asset" means the fair market value of an asset (including financial interest in any entity) determined in the prescribed manner.

IV. Determination of Fair Market Value

Determination of fair market value is covered under Rule 3 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015.

1) The fair market value of the assets shall be determined in the following manner, namely:-

(a) **value of bullion, jewellery or precious stone** shall be the higher of,-

(I) its cost of acquisition; and

(II) the price that the bullion, jewellery or precious stone shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of bullion, jewellery or precious stone under any regulation or law;

(b) **valuation of archaeological collections, drawings, paintings, sculptures or any work of art** (hereinafter referred to as artistic work) shall be the higher of,-

(I) its cost of acquisition; and

(II) the price that the artistic work shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of artistic work under any regulation or law;

(c) **valuation of shares and securities -**

(I) the fair market value of quoted share and securities shall be the higher of,-

(i) its cost of acquisition; and

(ii) the price as determined in the following manner, namely:—

(A) the average of the lowest and highest price of such shares and securities quoted on any established securities market on the valuation date; or

(B) where on the valuation date there is no trading in such shares and securities on any established securities market, average of the lowest and highest price of such shares and securities on any established securities market on a date immediately preceding the valuation date when such shares and securities were traded on such securities market

(II) the fair market value of unquoted equity shares shall be the higher of,-

(i) its cost of acquisition; and

(ii) the value, on the valuation date, of such equity shares as determined in the following manner, namely:—

the fair market value of unquoted equity shares = (A+B–L) x (PV), (PE) where,

A= book value of all the assets (other than bullion, jewellery, precious stone, artistic work, shares, securities and immovable property) as reduced by,- (i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any, and (ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B= fair market value of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in rule 3;

L= book value of liabilities, but not including the following amounts, namely:-

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with

reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;

PV= the paid up value of such equity shares;

(III) the fair market value of unquoted share and security other than equity share in a company shall be the higher of,-

(i) its cost of acquisition; and

(ii) the price that the share or security shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of share and security under any regulation or law;

(d) the **fair market value of an immovable property** shall be higher of,-

(I) its cost of acquisition; and

(II) the price that the property shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a valuation report from a valuer recognised by the Government of a country or specified territory outside India in which the property is located or any of its agencies for the purpose of valuation of immovable property under any regulation or law;

(e) **value of an account with a bank** shall be,-

(I) the sum of all the deposits made in the account with the bank since the date of opening of the account; or

(II) where a declaration of such account has been made under Chapter VI and the value of the account as computed under sub-clause (I) has been charged to tax and

penalty under that Chapter, the sum of all the deposits made in the account with the bank since the date of such declaration: **Provided** that where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account.

(f) value of an **interest of a person in a partnership firm or in an association of persons or a limited liability partnership** of which he is a member shall be determined in the manner specified in clause (g).

g) The net asset of the firm, association of persons or limited liability partnership on the valuation date shall first be determined and the portion of the net asset of the firm, association of persons or limited liability partnership as is equal to the amount of its capital shall be allocated among its partners or members in the proportion in which capital has been contributed by them and the residue of the net asset shall be allocated among the partners or members in accordance with the agreement of partnership or association for distribution of assets in the event of dissolution of the firm or association, or, in the absence of such agreement, in the proportion in which the partners or members are entitled to share profits and the sum total of the amount so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the partnership or association.
For the purposes of this clause the net asset of the firm, association of persons or limited liability partnership shall be (A + B – L), which shall be determined in the same manner as the fair market value of unquoted equity shares is determined.

(h) valuation of any other asset shall be higher of,-

(I) its cost of acquisition or the amount invested; and

(II) the price that the asset would fetch if sold in the open market on the valuation date in an arm's-length transaction.

2) Notwithstanding anything contained above, where an asset (other than a bank account) was transferred before the valuation date the fair market value of such asset shall be higher of its cost of acquisition and the sale price. Where such asset was transferred without consideration or inadequate consideration before the valuation

date, the fair market value of the asset shall be higher of its cost of acquisition and the fair market value on the date of transfer.

3) Where a new asset has been acquired or made out of consideration received on account of transfer of an old asset or withdrawal from a bank account, then the fair market value of the old asset or the bank account, as the case may be, determined in accordance with sub-rule (1) and sub-rule (2) shall be reduced by the amount of the consideration invested in the new asset.

   For example – A house property (H1) located outside India was bought in 1997 for twenty lakh rupees. It was sold in 2001 for twenty five lakh rupees which were deposited in a foreign bank account (BA). In 2002 another house property (H2) was bought for thirty lakh rupees. The investment in H2 was made through withdrawal from BA. H2 has not been transferred before the valuation date and its value on the valuation date is fifty lakh rupees. Assuming that the value of BA as computed under Rule 3(1)(e) is seventy lakh rupees, the fair market value (FMV) of the assets shall be as below:

   FMV of H1: (Higher of Rs. 20 lakh and 25 lakh) – Rs. 25 lakh (invested in BA) = Nil
   FMV of BA: Rs. 70 lakh – Rs. 30 lakh (invested in H2) = Rs. 40 lakh
   FMV of H2: (Higher of Rs. 30 lakh and 50 lakh) = Rs. 50 lakh

4) The fair market value of an asset determined in a currency which is one of the permitted currencies designated by the Reserve Bank of India under the Foreign Exchange Management Regulations, shall be converted into Indian currency as per the reference rate of the Reserve Bank of India on the date of valuation.

5) Where the fair market value of an asset is determined in a currency other than one of the permitted currencies designated by the Reserve Bank of India, then, such value shall be converted into United States Dollar on the date of valuation as per the rate specified by the Central Bank of the country or jurisdiction in which the asset is located and such value in United States Dollar shall be converted into Indian currency as per the reference rate of the Reserve Bank of India on the date of valuation. Where the Central Bank of the country or jurisdiction in which the asset is located does not

specify the rate of conversion from its local currency to United States Dollar then such rate shall be the one as specified by any other bank regulated under the laws of that country or jurisdiction.

For the purpose of determining the market value as on valuation date and for the purpose of conversion into Indian currency or conversion of foreign currency into United States Dollar and thereafter into Indian currency, the date shall be-

(a) in respect of asset declared under section 59 of the Act, the 1st day of July, 2015;

(b) in any other case, the 1st day of April of the previous year.

Meanings of some important terms for the purpose of calculating fair market value under Rule 3 –

(a) "Established securities market" means an exchange that is officially recognised and supervised by a Governmental entity in which the market is located and that has a meaningful annual value of shares traded on the exchange.

(b) "Meaningful annual value of shares traded on the exchange" with respect to an exchange means it has an annual value of shares traded on the exchange (or a predecessor exchange) exceeding one billion United States Dollar during each of the three calendar years immediately preceding the calendar year in which the determination is being made;

(c) "Meaningful volume of trading on an on-going basis" with respect to each class of shares means,- (i) trades in each such class are effected, other than in de minimis quantities, on one or more established securities markets on at least sixty business days during the prior calendar year; and (ii) the aggregate number of shares in each such class that are traded on such market or markets during the prior year are at least ten percent of the average number of shares outstanding in that class during the prior calendar year;

(d) "Quoted share or security" means the share or security which has a meaningful volume of trading on an ongoing basis on an established securities market and is regularly quoted by dealers where they actively do offer to, and in fact do, purchase the share from, and sell the share to, customers who are not related to the dealer in the ordinary course of a business;

(e) "Unquoted share and security" in relation to share or security means share or security which is not a quoted share or security.

V. Scope of total undisclosed foreign income and asset

According to Sec.4 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the total undisclosed foreign income and asset of any previous year of an assessee shall be,—

(*a*) the income from a source located outside India, which has not been disclosed in the return of income furnished within the time specified in *Explanation* 2 to sub-section (*1*) or under sub-section (*4*) or sub-section (*5*) of section 139 of the Income-tax Act;

(*b*) the income, from a source located outside India, in respect of which a return is required to be furnished under section 139 of the Income-tax Act but no return of income has been furnished within the time specified in *Explanation* 2 to sub-section (*1*) or under sub-section (*4*) or sub-section (*5*) of section 139 of the said Act; and

(*c*) the value of an undisclosed asset located outside India.

Notwithstanding anything contained above, any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of section 29 to section 43C or section 57 to section 59 or section 92C of the Income Tax Act, shall not be included in the total undisclosed foreign income.

The income included in the total undisclosed foreign income and asset under the Black Money Act shall not form part of the total income under the Income-tax Act.

VI. Computation of total undisclosed foreign income and asset

According to Sec.5 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, while computing the total undisclosed foreign income and asset of any previous year of an assessee -

(i) no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee, whether or not it is allowable in accordance with the provisions of the Income-tax Act;

(ii) any income,—

(*a*) which has been assessed to tax for any assessment year under the Income-tax Act prior to the assessment year to which the Black Money Act applies; or

(*b*) which is assessable or has been assessed to tax for any assessment year under Black Money Act.

shall be reduced from the value of the undisclosed asset located outside India, if, the assessee furnishes evidence to the satisfaction of the Assessing Officer that the asset has been acquired from the income which has been assessed or is assessable, as the case may be, to tax.

The amount of deduction referred to above in case of an immovable property shall be the amount which bears to the value of the asset as on the first day of the financial year in which it comes to the notice of the Assessing Officer, the same proportion as the assessable or assessed foreign income bears to the total cost of the asset.

For example - A house property located outside India was acquired by an assessee in the previous year 2009-10 for fifty lakh rupees. Out of the investment of fifty lakh rupees, twenty lakh rupees was assessed to tax in the total income of the previous year 2009-10 and earlier years. Such undisclosed asset comes to the notice of the Assessing Officer in the year 2017-18. If the value of the asset in the year 2017-18 is one crore rupees, the amount chargeable to tax shall be A-B=C where, A=Rs.1 crore, B=Rs. (100 x 20/50) lakh= Rs.40 lakh, C=Rs. (100-40) lakh=Rs.60 lakh.

VII. Tax Management

The income-tax authorities specified in section 116 of the Income-tax Act will be the tax authorities for the purposes of the Black Money Act. (sec.6)

The tax authority having jurisdiction in relation to an assessee who has no income assessable to income-tax under the Income-tax Act shall be the tax authority having jurisdiction in respect of the area in which the assessee resides or carries on its business or has its principal place of business.

According to Sec.8 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the prescribed tax authorities shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(*a*) discovery and inspection;

(*b*) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(*c*) compelling the production of books of account and other documents; and

(*d*) issuing commissions.

According to Rule 4 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015, the prescribed tax authorities shall be the Assessing Officer, Joint Commissioner, Commissioner (Appeals), Commissioner or Principal Commissioner, Chief Commissioner or Principal Chief Commissioner.

According to Sec.8(3) and (4), any prescribed tax authority may impound any books of account or other documents produced before it and retain them in its custody for such period as it thinks fit. Any tax authority below the rank of Commissioner shall not –
(*a*) impound any books of account or other documents without recording his reasons for doing so; or
(*b*) retain in his custody any such books or documents for a period exceeding thirty days without obtaining the approval of the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner.

Assessment

According to Sec.10, For the purposes of making an assessment or reassessment under the Black Money Act, the Assessing Officer may, on receipt of an information from an income-tax authority under the Income-tax Act or any other authority under any law for the time being in force or on coming of any information to his notice, serve on any person, a notice requiring him on a date to be specified to produce or cause to be produced such accounts or documents or evidence as the Assessing Officer may require for the purposes of the Black Money Act and may, from time to time, serve further notices requiring the production of such other accounts or documents or evidence as he may require. The Assessing Officer may make such inquiry, as he considers necessary, for the purpose of obtaining full information in respect of undisclosed foreign income and asset of any person for the relevant financial year or years.

The Assessing Officer, after considering such accounts, documents or evidence, as he has obtained above and after taking into account any relevant material which he has gathered and any other evidence produced by the assessee, shall by an order in writing, assess the undisclosed foreign income and asset and determine the sum payable by the assessee.

If any person fails to comply with all the terms of the notice, the Assessing Officer shall, after taking into account all the relevant material which he has gathered and after giving the assessee an opportunity of being heard, make the assessment of undisclosed foreign income and asset to the best of his judgment and determine the sum payable by the assessee.

Time limit for completion of assessment and reassessment

As per Sec.11, no order of assessment or reassessment shall be made after the expiry of two years from the end of the financial year in which the notice was issued by the Assessing Officer. An order of fresh assessment in pursuance of an order passed under section 18 setting aside or cancelling an assessment, may be made at any time before the expiry of the period of two years from the end of the financial year in which the order under section 18 is received by the Principal Commissioner or the Commissioner.

In computing the period of limitation for the purpose of sec.11 –

(*i*) the time taken in reopening the whole or any part of the proceeding; or

(*ii*) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(*iii*) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A of the Income-tax Act or under section 73 of the Black Money Act and ending with the date on which the Principal Commissioner or the Commissioner last receives, the information so requested or a period of one year, whichever is less, shall be excluded.

Where immediately after the exclusion of the aforesaid time or period, the period of limitation available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

Rectification of mistake

According to Sec.12, a tax authority may amend any order passed by it under this Act so as to rectify any mistake apparent from the record. No amendment should be made after a period of four years from the end of the financial year in which the order sought to be amended was passed.

Any application received by the tax authority for amendment of an order shall be decided within a period of six months from the end of the month in which such application is received by it.

Notice of demand

According to Rule 5 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015, where any tax, interest or penalty is payable in consequence of any order passed under the provisions of the Act, the Assessing Officer shall serve upon the assessee a notice of demand in Form 1 specifying the sum so payable.

Appeals to the Commissioner (Appeals)

According to Sec.15, any person –

(*a*) objecting to the amount of tax on undisclosed foreign income and asset for which he is assessed by the Assessing Officer; or

(*b*) denying his liability to be assessed under this Act; or

(*c*) objecting to any penalty imposed by the Assessing Officer; or

(*d*) objecting to an order of rectification having the effect of enhancing the assessment or reducing the refund; or

(*e*) objecting to an order refusing to allow the claim made by the assessee for a rectification under section 12, may appeal to the Commissioner (Appeals).

An appeal shall be presented within a **period of thirty days** from —

(*a*) the date of service of the notice of demand relating to the assessment or penalty, or

(*b*) the date on which the intimation of the order sought to be appealed against is served in any other case.

An appeal under sub-section (1) of section 15 to the Commissioner (Appeals) shall be made in Form 2. The form of appeal, the grounds of appeal and the form of verification appended

thereto relating to an assessee shall be signed and verified by the person who is authorised to sign the return of income under section 140 of the Income-tax Act, as applicable to the assessee. Every appeal filed shall be accompanied by a fee of ten thousand rupees. No appeal section 15 shall be admitted unless at the time of filing of the appeal the assessee has paid the tax along with penalty and interest thereon on the amount of liability which has not been objected to by the assessee. (Rule 6 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015)

According to Sec.17, in disposing of an appeal, the Commissioner (Appeals) shall have the following powers, namely:—

(*a*) in an appeal against an order of assessment, he may confirm, reduce,enhance or annul the assessment;

(*b*) in an appeal against an order imposing a penalty, he may confirm or cancel such order;

(*c*) in any other case, he may determine the issues arising in the appeal and pass such orders thereon, as he thinks fit.

The Commissioner (Appeals) may consider and decide any matter which was not considered by the Assessing Officer. The Commissioner (Appeals) shall not enhance an assessment or a penalty unless the appellant has been given an opportunity of being heard. In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before him by the appellant.

Appeals to Appellate Tribunal

According to Sec.18, any assessee aggrieved by an order passed by the Commissioner (Appeals) under section 15, or an order passed by the Principal Commissioner or the Commissioner under any provision of the Black Money Act, may appeal to the Appellate Tribunal against such order. Every appeal shall be filed within a **period of sixty days** from the date on which the order sought to be appealed against is communicated to the assessee or to the Principal Commissioner or the Commissioner, as the case may be.

An appeal under sub-section (1) of section 18 to the Appellate Tribunal shall be made in Form 3, and where the appeal is made by the assessee, the form of appeal, the grounds of

appeal and the form of verification appended thereto shall be signed by the person who is authorised to sign the return of income under section 140 of the Income-tax Act.

The memorandum of cross-objections to the Appellate Tribunal shall be made in Form 4, and where the memorandum of cross objection is made by the assessee, the form of memorandum of cross-objections, the grounds of cross-objections and the form of verification appended thereto shall be signed by the authorised person. Every appeal filed to the Appellate Tribunal shall be accompanied by a fee of twenty five thousand rupees.

Appeal to High Court

According to Sec.19, an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

The Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or an assessee, may file an appeal to the High Court on being aggrieved by any order passed by the Appellate Tribunal and such appeal shall be –

(*a*) filed within a **period of one hundred and twenty days** from the date on which the order appealed against is received by the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the assessee;

(*b*) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

If the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question. The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

An appeal filed before the High Court shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or if the Bench is of more than two Judges, by the majority of such Judges.

Appeal to Supreme Court

As per Sec.21, an appeal shall lie to the Supreme Court from any judgment of the High Court delivered under section 19 which the High Court certifies to be a fit case for appeal to the Supreme Court.

Revision of Orders

The Principal Commissioner or the Commissioner may, for the purposes of revising any order passed in any proceeding under the Black Money Act before any tax authority subordinate to him, call for and examine all available records relating thereto. The revision order passed by the Principal Commissioner or the Commissioner may have the effect of enhancing or modifying the assessment but shall not be an order cancelling the assessment and directing a fresh assessment. No order shall be made after the expiry of a period of two years from the end of the financial year in which the order sought to be revised was passed.

Tax to be paid

Notwithstanding any appeal preferred to the High Court or the Supreme Court, the tax shall be paid in accordance with the assessment made under the Black Money Act.

Modes of recovery of tax dues

The Assessing Officer or the Tax Recovery Officer may require the employer of the assessee to deduct from any payment to the assessee such amount as is sufficient to meet the tax arrears from the assessee. The Assessing Officer or the Tax Recovery Officer may, by notice in writing, require any debtor of the assessee to pay such amount, not exceeding the amount of debt, as is sufficient to meet the tax arrears of the assessee. A copy of the notice issued under sub-section (*4*) shall be forwarded to the assessee at his last address known to the Assessing Officer or the Tax Recovery Officer and in the case of a joint account, to all the joint holders at their last addresses known to the Assessing Officer or the Tax Recovery Officer. A person to whom a notice has been issued, i.e. the debtor, shall not be required to pay the amount of tax arrears specified therein, or part thereof, if he objects to it by a statement on oath that the sum demanded, or any part thereof, is not due to the assessee or that he does not hold any money for, or on account of, the assessee. The Assessing Officer or

the Tax Recovery Officer may apply to the court, in whose custody there is money belonging to the assessee, for payment to him of the entire amount of such money or if it is more than the tax arrears, an amount sufficient to meet the tax arrears.

Every person being a manager at any time during the financial year shall be jointly and severally liable for the payment of any amount due under this Act in respect of the company for the financial year, if the amount cannot be recovered from the company.

Every person, being a participant in an unincorporated body at any time during the financial year, or the representative assessee of the deceased participant, shall be jointly and severally liable, along with the unincorporated body, for payment of any amount payable by the unincorporated body under the Black Money Act and all the provisions of this Act shall apply accordingly.

The Tax Recovery Officer may, in a case where an assessee has property in a country or a specified territory outside India, forward a certificate to the Board for recovery of the tax arrears from the assessee, where the Central Government or any specified association in India has entered into an agreement with that country or territory under section 90 or section 90A of the Income-tax Act or under sub-sections (*1*), (*2*) or sub-section (*4*) of section 73 of the Black Money Act, as the case may be, for the purposes of recovery of tax.

Interest for default in furnishing return and payment or deferment of advance tax

Where the assessee has any income from a source outside India which has not been disclosed in the return of income furnished under sub-section (1) of section 139 of the Income-tax Act or the return of income has not been furnished under the said subsection, interest shall be chargeable in accordance with the provisions of section 234A of the Income-tax Act. Where the assessee has any undisclosed income from a source outside India and the advance tax on such income has not been paid in accordance with Part C of Chapter XVII of the Income-tax Act, interest shall be chargeable in accordance with the provisions of sections 234B and 234C of the Income-tax Act.

VIII. Tax compliance for undisclosed foreign income and assets

According to Sec.59, any person may make, on or after the date of commencement of the Black Money Act but on or before a date to be notified by the Central Government in the Official Gazette, a declaration 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 the assessment year beginning on 1st day of April, 2016, for which he has failed to furnish a return under section 139 of the Income-tax Act; which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of the Black Money Act; which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

A declaration in respect of any undisclosed asset located outside India under section 59 of the Act shall be made in Form 6.

Detailed explanation on the aspects of tax compliance has been discussed later on in Chapter VI.

IX. Service of notice

The service of any notice, summons, requisition, order or any other communication under the Black Money Act may be made by delivering or transmitting a copy thereof, to the person named therein -

(*a*) by post or by such courier service as may be approved by the Board;

(*b*) in such manner as provided under the Code of Civil Procedure, 1908 for the purposes of service of summons;

(*c*) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or

(*d*) by any other means of transmission of documents, including fax message or electronic mail message, as may be prescribed.

X. Appearance by authorised representative –

Any assessee who is entitled or required to attend before any tax authority or the Appellate Tribunal, in connection with any proceeding under this Act, may attend through an authorised representative.

"Authorised representative" means a person authorised by the assessee in writing to appear on his behalf, being -

(*a*) a person related to the assessee in any manner, or a person regularly employed by the assessee;

(*b*) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings;

(*c*) any legal practitioner who is entitled to practice in any civil court in India;

(*d*) an accountant;

(*e*) any person who has passed any accountancy examination recognised in this behalf by the Board; or

(*f*) any person who has acquired such educational qualifications as may be prescribed.

"Accountant" means a chartered accountant as defined in clause (*b*) of sub-section (*1*) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (*1*) of section 6 of that Act.

XI. Offences by Companies

Where an offence under the Black Money Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The person will not be liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, such company shall be punished with fine and every person, referred above or the director, manager, secretary or other officer of the company shall be liable to be proceeded against and punished in accordance with the provisions of the Act.

6. COMPLIANCES UNDER THE BLACK MONEY ACT & RULES

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 has introduced a tax compliance provision under Chapter VI (Secs.59 to 72) of the Act. It provides for a one-time compliance opportunity for a limited period to persons who have any foreign assets which have not been disclosed for the purposes of Income-tax.

About the Compliance provision

A declaration under Sec.59 can be made in respect of undisclosed foreign assets of a person who is a resident other than not ordinarily resident in India. The declaration can 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 the assessment year 2016-17 for which he had, either failed to furnish a return under Sec.139 of the Income-tax Act, or failed to disclose such income in a return furnished before the date of commencement of the Act, or such income had escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

Tax and Penalty

The person making the declaration would be liable to pay tax at the rate of 30% of the value of such undisclosed asset. In addition, he would also be liable to pay penalty at the rate of 100% of such tax (i.e., a further 30% of the value of the asset as on the date of commencement of the Act). Therefore, the declarant would be liable to pay a total of 60 percent of the value of the undisclosed asset declared by him. This special rate of tax and penalty specified in the compliance provisions will override any rate or rates specified under the provisions of the Income-tax Act or the annual Finance Acts.

Time limit for declaration and payment

The Central Government has notified 30th September, 2015 as the last date for making the declaration before the designated Principal Commissioner or Commissioner of Income Tax (PCIT/CIT) and 31st December, 2015 as the last date by which the tax and penalty shall be paid. Accordingly, a declaration under Chapter VI in Form 6 as prescribed in the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 may be

made at any time before 30.09.2015. After such declaration has been furnished, the designated Principal CIT/ CIT will issue an intimation to the declarant by 31.10.15 whether any information in respect of the declared asset had been received by the Competent Authority on or before 30th June 2015, under an agreement entered into by the Central Government under section 90 or 90A of the Income-tax Act. Where any such information had been received, the declarant shall file a revised declaration in Form 6 excluding such asset. The declarant shall not be liable for any consequences under the Act in respect of, any asset which has been duly declared but has been found ineligible for declaration as the Central Government had prior information on such asset. However, such information may be used under the provisions of the Income-tax Act. The revised declaration shall be filed within 15 days of receipt of intimation from the designated Principal Commissioner /Commissioner i.e. if a declarant has received the intimation on 10th October 2015, he can file a revised declaration on or before 25th October, 2015. However, in all cases, the declarant should pay the requisite tax and penalty on the assets eligible for declaration latest by 31.12.2015. After the intimation of payment by the declarant, the Principal CIT/CIT will issue an acknowledgement in Form 7 of the accepted declaration within 15 days of such intimation of payment by the declarant.

Form of declaration

The persons who are authorized to sign the declaration in Form6 are –

i. Individual - Individual; where individual is absent from India, person authorized by him; where the individual is mentally incapacitated, his guardian or other person competent to act on his behalf.
ii. HUF - *Karta*; where the *karta* is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of the HUF
iii. Company - Managing Director; where for any unavoidable reason the managing director is not able to sign or there is no managing director, by any director.
iv. Firm - Managing partner; where for any unavoidable reason the managing partner is not able to sign the declaration, or where there is no managing partner, by any partner, not being a minor.
v. Any other association - Any member of the association or the principal officer.
vi. Any other person - That person or by some other person competent to act on his behalf.

The declaration may be filed with the Commissioner of Income-tax, Delhi. The declaration may also be filed online on the e-filing website of the Income Tax Department using the digital signature of the declarant.

Declaration not eligible in certain cases

According to Sec.71 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, no declaration under the compliance window can be made in respect of any undisclosed foreign asset which has been acquired from income chargeable to tax under the Income-tax Act for assessment year 2015-16 or any earlier assessment year in the following cases—

(i) where a notice under section 142 or section 143(*2*) or section 148 or section 153A or section 153C of the Income-tax Act has been issued in respect of such assessment year and the proceeding is pending before the Assessing Officer. For the purposes of declaration under section 59 it is clarified that the person will not be eligible under the compliance window if any notice referred above has been served upon the person on or before 30th June 2015 i.e. before the date of commencement of this Act.

In the declaration (Form 6) the declarant should verify that no such notice has been received by him on or before 30th June 2015.

(ii) Where a search has been conducted under section 132 or requisition has been made under section 132A or a survey has been carried out under section 133A of the Income-tax Act in a previous year and the time for issuance of a notice under section 143 (*2*) or section 153A or section 153C for the relevant assessment year has not expired.

In the declaration (Form 6) the declarant will also verify that these facts do not prevail in his case.

(iii) Where any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act in respect of such undisclosed asset. For the purposes of declaration under section 59 it is clarified that the person will not be eligible under the compliance window if any information referred above has been received by the competent authority on or before 30th June 2015 i.e. before the date of commencement of the Black Money Act.

A person in respect of whom proceedings for prosecution of any offence punishable under Chapter IX (offences relating to public servants) or Chapter XVII (offences against property) of the Indian Penal Code or under the Unlawful Activities (Prevention) Act or the Prevention of Corruption Act are pending shall not be eligible to make declaration.

When declaration may be void

In the following situations, a declaration will be void and will be deemed never to have been made –

- If the declarant fails to pay the entire amount of tax and penalty within the specified date, i.e., 31.12.2015;
- Where the declaration has been made by misrepresentation or suppression of facts or information.

Where the declaration is held to be void for any of the above reasons, it shall be deemed never to have been made and all the provisions of the Act, including penalties and prosecutions, shall apply accordingly. Any tax or penalty paid in pursuance of the declaration shall, however, not be refundable under any circumstances.

Effect of valid declaration

Where a valid declaration has been made, the following consequences will follow –

- ✓ The amount of undisclosed investment in the asset declared shall not be included in the total income of the declarant under the Income-tax Act for any assessment year;
- ✓ The contents of the declaration shall not be admissible in evidence against the declarant in any penalty or prosecution proceedings under the Income-tax Act, the Wealth Tax Act, the Foreign Exchange Management Act, the Companies Act or the Customs Act;
- ✓ The value of asset declared in the declaration shall not be chargeable to Wealth Tax for any assessment year or years.
- ✓ Declaration of undisclosed foreign asset will not affect the finality of completed assessments. The declarant will not be entitled to claim re-assessment of any earlier year or revision of any order or any benefit or set off or relief in any appeal or proceedings under the Act or under Income-tax Act in respect of declared undisclosed asset located outside India or any tax paid thereon.

A. Clarifications on Tax Compliance for Undisclosed Foreign Income and Assets

The Central Board of Direct Taxes (Tax Planning and Legislation (TPL)) had released a Circular (13 of 2015) dated 6th July, 2015 to clarify on tax compliance for undisclosed foreign income and assets. The clarifications have been enumerated hereunder –

1) ***If firm has undisclosed foreign assets, can the partner file declaration in respect of such asset?***
    a. The declaration can be made by the firm which shall be signed by the person specified in sub-section (2) of section 62 of the Act. The partner cannot make a declaration in his name. However, the partner may file a declaration in respect of an undisclosed asset held by him.

2) ***Where a company has undisclosed foreign assets, can it file a declaration under Chapter VI of the Act? If yes, then whether immunity would be granted to Directors of the company?***
    a. Yes, the company can file a declaration under Chapter VI of the Act. The Directors of the company 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 declaration made in the name of the company.

3) ***Whether immunity in respect of declaration made under the scheme is provided in respect of Acts other than those mentioned in section 67 of the Act?***
    a. Section 67 provides immunity from prosecution under the five Acts viz. the Income-tax Act, Wealth-tax Act, FEMA, Companies Act and the Customs Act. It does not provide immunity from prosecution under any other Act. For example- if the undisclosed asset has been acquired out of the proceeds of sale of protected animals the person will not be eligible for immunity under the Wildlife (Protection) Act, 1972.

4) ***Whether the person making the declaration will be provided immunity from the Prevention of Money Laundering Act, 2002?***

a. The offence under the PMLA arises while laundering money generated from the process or activity connected with the offences specified in the schedule to the PMLA. Therefore, the primary requirement under PMLA is commission of a scheduled offence. With the enactment of the Act, the offence of wilful attempt to evade tax under section 51 of the Act has become a scheduled offence under PMLA. However, where a declaration of an asset has been duly made under section 59 of the Act the provisions of section 51 will not be applicable in respect of that asset. Therefore, PMLA will not be applicable in respect of the scheduled offence of wilful attempt to evade tax under section 51 of the Act in respect of assets for which declaration is made under section 59 of the Act.

5) ***Where an undisclosed foreign asset is declared under Chapter VI of the Act and tax and penalty is paid on its fair market value then will the declarant be liable for capital gains on sale of such asset in the future? If yes, then how will the capital gains in such case be computed?***

a. Yes, the declarant will be liable for capital gains under the Income-tax Act on sale of such asset in future. As per the current provisions of the Income-tax Act, the capital gains is computed by deducting cost of acquisition from the sale price. However, since the asset will be taxed at its fair market value the cost of acquisition for the purpose of Capital Gains shall be the said fair market value and the period of holding shall start from the date of declaration of such asset under Chapter VI of the Act.

6) ***Where a notice under section 142/ 143(2)/ 148/ 153A/ 153C of the Income-tax Act has been issued to a person for an assessment year will he be ineligible from voluntary declaration under section 59 of the Act?***

a. The person will only be ineligible from declaration of those foreign assets which have been acquired during the year for which a notice under section 142/ 143(2)/ 148/ 153A/ 153C is issued and the proceeding is pending before the Assessing Officer. He is free to declare other foreign assets which have been acquired during other years for which no notice under above referred sections have been issued.

7) ***As per section 71(d)(i), declaration cannot be made where an undisclosed asset has been acquired during any previous year relevant to an assessment year for which a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued. If the notice has been issued but not served on the declarant then how will he come to know whether the notice has been issued?***

   a. The declarant will not be eligible for declaration under Chapter VI of the Act where an undisclosed asset has been acquired during any previous year relevant to any assessment year where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act has been issued and served on the declarant on or before 30th day of June, 2015. The declarant is required to file a declaration regarding receipt of any such notice in Form 6.

8) ***Where an undisclosed foreign asset has been acquired partly during a previous year relevant to the assessment year which is pending for assessment and partly during other years not pending for assessment then whether such asset is eligible for declaration under Chapter VI of the Act?***

   a. In the case where proceedings are pending before an Assessing Officer in pursuance of a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act served on or before 30-06-2015, the declarant may declare the undisclosed asset under Chapter VI of the Act. However, while computing the amount of declaration the investment made in the asset during the previous year relevant to the assessment year for which such notice is issued needs to be deducted from the fair market value of the asset for which the person shall provide a computation alongwith the declaration. Further, such investment which is deducted from the fair market value shall be assessable in the assessment of the relevant assessment year pending under the Income-tax Act and the person shall inform the Assessing Officer the investment made during the relevant year in such asset.

      Where a notice under section 142, 143(2), 148, 153A or 153C of the Income-tax Act is issued on or after 30-06-2015, the declarant shall be eligible to declare full value of asset even if such asset (or part of such asset) is acquired

in the previous year relevant to the assessment year for which such notice is issued.

9) ***Can a declaration be made of undisclosed foreign assets which have been assessed to tax and the case is pending before an Appellate Authority?***

   a. As per section 65 of the Act, the declarant is not entitled to re-open any assessment or reassessment made under the Income-tax Act. Therefore, he is not entitled to avail the tax compliance in respect of those assets. However, he can voluntarily declare other undisclosed foreign assets which have been acquired or made from income not disclosed and consequently not assessed under the Income-tax Act.

10) ***Can a person against whom a search/ survey operation has been initiated file voluntary declaration under Chapter VI of the Act?***

   a. The person is not eligible to make a declaration under Chapter VI if a search has been initiated and the time for issuance of notice under section 153A has not expired, even if such notice for the relevant assessment year has not been issued. In this case, however, the person is eligible to file a declaration in respect of an undisclosed foreign asset acquired in any previous year in relation to an assessment year which is prior to assessment years relevant for the purpose of notice under section 153A.

      In case of survey operation the person is barred from making a declaration under Chapter VI in respect of an undisclosed asset acquired in the previous year in which the survey was conducted. The person is, however, eligible to make a declaration in respect of an undisclosed asset acquired in any other previous year.

11) ***Where a search/ survey operation was conducted and the assessment has been completed but the undisclosed foreign asset was not taxed, then whether such asset can be declared under Chapter VI of the Act?***

   a. Yes, such undisclosed asset can be declared.

12) ***Whether a person is barred from voluntary declaration under Chapter VI of the Act if any information has been received by the Government under DTAA?***

a. As per section 71(d)(iii), the person cannot make a declaration of an undisclosed foreign asset where the Central Government has received an information in respect of such asset under the DTAA. The person is entitled for voluntary declaration in respect of other undisclosed foreign assets for which no information has been received.

13) ***How would the person know that the Government has received information of an undisclosed foreign asset held by him which will make the declaration ineligible?***

a. The person may not know that the Government has information about undisclosed foreign asset held by him if the same has not been communicated to him in any enquiry/proceeding under the Income-tax Act. After the person has filed a declaration, which is to be filed latest by 30th September, 2015, he will be issued intimation by the Principal Commissioner/Commissioner by 31th October, 2015, whether any information has been received by the Government and consequently whether he is eligible to make the payment on the declaration made. If no information has been received up to 30th June, 2015 by the Government in respect of such asset the person will be allowed a time upto 31st December, 2015 for payment of tax and penalty in respect of the declared asset.

There may be a case where person makes declaration in respect of 5 assets whereas the Government has information about only 1 asset. In such situation the person will be eligible to declare the balance 4 assets. In such case the declarant, on receipt of intimation by the Principal Commissioner/Commissioner, shall revise the declaration made within 15 days of such receipt of intimation to exclude the asset which is not eligible for declaration. Tax and penalty on the eligible assets under the Act shall be payable in respect of the revised declaration by 31st of December, 2015. In respect of the ineligible assets provisions of the Income-tax Act shall apply.

14) ***What are the consequences if no declaration under Chapter VI of the Act is made in respect of undisclosed foreign assets acquired prior to the commencement of the Act?***

a. As per section 72(c), where any asset has been acquired prior to the commencement of the Act and no declaration under Chapter VI of the Act is made then such asset shall be deemed to have been acquired in the year in which it comes to the notice of the Assessing Officer and the provisions of the Act shall apply accordingly.

India is expected to start receiving information through Automatic Exchange of Information (AEOI) route under FATCA from USA later in the year 2015. Further, under the multilateral agreement India will start receiving information from other countries under AEOI route from 2017 onwards. As at 18th March 2015, 58 jurisdictions (including India) have committed to share information under AEOI by 2017 and 36 jurisdictions have committed to share by 2018, including jurisdictions which have beneficial tax regime. The multilateral agreement is expected to cover all the countries in the near future. The information under the AEOI will include information of controlling persons (beneficial owners) of the asset. The possibility of discovery of an undisclosed asset may arise at any time in the future; say for example, information of an immovable property can be unearthed if any utility bills/property tax or even gardener's/ caretaker's salary has been paid through an existing or closed bank account. Therefore, if any information of an undisclosed foreign asset acquired earlier, say in the year 1975, for $ 100,000 comes to the notice of an Assessing Officer later, say in the year 2020, when its value becomes, say, $ 5 Million, the liability under the Act amounting to 120 percent of the fair market value of the asset on the valuation date may arise in the year 2020, besides prosecution and other consequences. In this case if the valuation date is in the year 2020 the amount of tax and penalty under the Act will be $ 6 Million.

15) ***If a declaration of undisclosed foreign asset is made and the same was found ineligible due to the reason that Government had prior information under DTAA then will the person be liable for consequences under the Act?***

a. In respect of such assets which have been duly declared in good faith under the tax compliance but not found eligible, he shall not be hit by section 72(c) of the Act and no action lies in respect of such assets under the Act. However, such information may be used for the purpose of the Income-tax Act.

16) ***In respect of the undisclosed foreign assets referred to above, where the proceedings under the Income-tax Act are initiated, can the options of settlement commission etc. under the Income-tax Act be availed in respect of such assets?***

a. All the provisions of the Income-tax Act shall be applicable in respect of those assets.

17) ***A person has some undisclosed foreign assets. If he declares those assets in the Income-tax Return for assessment year 2015-16 or say 2014-15 (in belated return) then should he need to declare those assets in the voluntary tax compliance under Chapter VI of the Act?***

a. As per the Act, the undisclosed foreign asset means an asset which is unaccounted/ the source of investment in such asset is not fully explainable. Since an asset reported in Schedule FA does not form part of computation of total income in the Income-tax Return and consequently does not get taxed, mere reporting of a foreign asset in Schedule FA of the Return does not mean that the source of investment in the asset has been explained. The foreign asset is liable to be taxed under the Act (whether reported in the return or not) if the source of investment in such asset is unexplained. Therefore, declaration should be made under Chapter VI of the Act in respect of all those foreign assets which are unaccounted/ the source of investment in such asset is not fully explainable.

18) ***A person holds certain foreign assets which are fully explained and acquired out of tax paid income. However, he has not reported these assets in Schedule FA of the Income-tax Return in the past. Should he declare such assets under Chapter VI of the Act?***

a. Since, these assets are fully explained they are not treated as undisclosed foreign assets and should not be declared. However, if these assets are not

reported in Schedule FA of the Income-tax Return for assessment year 2016-17 (relating to previous year 2015-16) or any subsequent assessment year by a person, being a resident (other than not ordinarily resident), then he shall be liable for penalty of Rs. 10 lakhs under section 43 of the Act. The penalty is, however, not applicable in respect of an asset being one or more foreign bank accounts having an aggregate balance not exceeding an amount equivalent to Rs. 5 lakhs at any time during the previous year.

19) ***A person has a foreign bank account in which undisclosed income has been deposited over several years. He has spent the money in the account over these years and now it has a balance of only $500. Does he need to pay tax on this $500 under the declaration?***

a. Section 59 of the Act provides for declaration of an undisclosed asset and not income. In this case the Bank account is an undisclosed asset which may be declared. Tax on undisclosed asset is required to be paid on its fair market value. In case of a bank account the fair market value is the sum of all the deposits made in the account computed in accordance with Rule 3(1)(e). Therefore, tax and penalty needs to be paid on such fair market value and not on the balance as on date.

20) ***A person held a foreign bank account for a limited period between 1994-95 and 1997-98 which was unexplained. Since such account was closed in 1997-98 does he need to declare the same under Chapter VI of the Act?***

a. Section 59 of the Act provides that the declaration may be made of any undisclosed foreign asset which has been acquired from income which has not been charged to tax under the Income-tax Act. Since the investment in the bank account was unexplained and was from untaxed income the same may be declared under Chapter VI of the Act. The consequences of non-declaration may arise under the Act at any time in the future when the information of such account comes to the notice of the Assessing Officer.

21) ***A person inherited a house property in 2003-04 from his father who is no more. Such property was acquired from unexplained sources of investment. The property***

was sold by the person in 2011-12. Does he need to declare such property under Chapter VI of the Act and if yes then, what will be the fair market value of such property for the purpose of declaration?

a. Since the property was from unexplained sources of investment the same may be declared under Chapter VI of the Act. However, the declaration in this case needs be made by the person who inherited the property in the capacity of legal representative of his father. The fair market value of the property in his case shall be higher of its cost of acquisition and the sale price as per Rule 3(2) of the Rules.

22) ***A person acquired a house property in a foreign country during the year 2000-01 from unexplained sources of income. The property was sold in 2007-08 and the proceeds were deposited in a foreign bank account. Does he need to declare both the assets under Chapter VI of the Act and pay tax on both the assets?***

a. The declaration may be made in respect of both the house property and the bank account at their fair market value. The fair market value of the house property shall be higher of its cost and the sale price, less amount deposited in bank account. If the cost price of the house property is higher the declarant will be required to pay tax and penalty on (cost price – sale price) of the house. If the sale price of the house property is higher the fair market value of the house property shall be nil as full amount was deposited in the bank account. The fair market value of the bank account shall be as determined under Rule 3(1)(e) and tax and penalty shall be paid on this amount. Further, it is advisable to declare all the undisclosed foreign assets even if the fair market value as computed in accordance with Rule 3 comes to nil. This may avoid initiation of any inquiry under the Act in the future in case such asset comes to the notice of the Assessing Officer.

23) ***A person is a non-resident. However, he was a resident of India earlier and had acquired foreign assets out of income chargeable to tax in India which was not declared in the return of income or no return was filed in respect of that income. Can that person file a declaration under Chapter VI of the Act?***

a. Section 59 provides that a declaration may be made by any person of an undisclosed foreign asset acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to assessment year 2016-17. Since the person was a resident in the year in which he had acquired foreign assets (which were undisclosed) out of income chargeable to tax in India, he is eligible to file a declaration under section 59 in respect of those assets under Chapter VI of the Act.

24) ***A person is a resident now. However, he was a non-resident earlier when he had acquired foreign assets (which he continues to hold now) out of income which was not chargeable to tax in India. Does the person need to file a declaration in respect of those assets under Chapter VI of the Act?***

a. No. Those assets do not fall under the definition of undisclosed assets under the Act.

25) ***If a person has 3 undisclosed foreign assets and declares only 2 of those under Chapter VI of the Act, then will he get immunity from the Act in respect of the 2 assets declared?***

a. The person will get immunity under the provisions of the Act in respect of the two assets declared under Chapter VI of the Act and no immunity will be available in respect of the third asset which is not declared.

26) ***A resident earned income outside India which has been deposited in his foreign bank account. The income was charged to tax in the foreign country when it was earned but the same was not declared in the return of income in India and consequently not taxed in India. Does he need to disclose such income under Chapter VI of the Act? Will he get credit of foreign tax paid?***

a. Declaration under Chapter VI is to be made of an undisclosed foreign asset. In this case, the person being a resident of India, the foreign bank account needs to be declared under Chapter VI as it is an undisclosed asset and acquired from income chargeable to tax in India. The fair market value of the bank account shall be determined as per Rule 3(1)(e). No credit of foreign taxes paid shall be allowable in India as section 84 of the Act does not provide for application

of sections 90(1)(a)/90(1)(b)/ 90A(1)(a)/ 90A(1)(b) of the Income-tax Act (relating to credit of foreign tax paid) to the Act. Further, section 73 of the Act does not allow agreement with foreign country for the purpose of granting relief in respect of tax chargeable under the Act.

27) ***Can a person declare under Chapter VI his undisclosed foreign assets which have been acquired from money earned through corruption?***

a. No. As per section 71(b) of the Act, Chapter VI shall not apply, *inter-alia*, in relation to prosecution of any offence punishable under the Prevention of Corruption Act, 1988. Therefore, declaration of such asset cannot be made under Chapter VI. However, if such a declaration is made and in an event it is found that the asset represented money earned through corruption it would amount to misrepresentation of facts and the declaration shall be void under section 68 of the Act. If a declaration is held as void, the provisions of the Act shall apply in respect of such asset as they apply in relation to any other undisclosed foreign asset.

28) ***If a foreign asset has been acquired partly out of undisclosed income chargeable to tax and partly out of disclosed income/exempt income (tax paid income) then whether that foreign asset will be treated as undisclosed? Whether declaration under Chapter VI needs to be made in respect of such asset? If yes, what amount should be disclosed?***

a. As per section 5 of the Act, in computing the value of an undisclosed foreign asset any income which has been assessed to tax under the Income-tax Act from which that asset is acquired shall be reduced from the value of the undisclosed foreign asset. Only part of the investment is such foreign asset is undisclosed (unexplained) hence declaration of such foreign asset may be made under Chapter VI of the Act. The amount of declaration shall be the fair market value of such asset as on 1st July, 2015 as reduced by the amount computed in accordance with section 5 of the Act.

29) ***Whether for the purpose of declaration, the undisclosed foreign asset should be held by the declarant on the date of declaration?***

a. No, there is no such requirement. The declaration may be made if the foreign asset was acquired out of undisclosed income even if the same has been disposed off and is not held by the declarant on the date of declaration.

30) ***Whether at the time of declaration under Chapter VI, will the Principal Commissioner/Commissioner do any enquiry in respect of the declaration made?***

a. After the declaration is made the Principal Commissioner/ Commissioner will enquire whether any information has been received by the competent authority in respect of the asset declared. Apart from this no other enquiry will be conducted by him at the time of declaration.

31) ***A person is a beneficiary in a foreign asset. Is he eligible for declaration under section 59 of the Act?***

a. As far as ownership is concerned, as per section 2(11) of the Act "undisclosed asset located outside India" means an asset held by the person in his name or in respect of which he is a beneficial owner. The definition of "beneficial owner" and "beneficiary" is provided in *Explanation* 4 and *Explanation* 5 to section 139(1) of the Income-tax Act, respectively (which is at variance with the determination of beneficial ownership provided under Rule 9(3) of the PMLA (Maintenance of Records) Rules, 2005). Therefore, for the purpose of the Act "beneficial owner" in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person. Further, "beneficiary" in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary. Therefore, as per the Act the beneficial owner is eligible for declaration under section 59 of the Act.

There may be a case where a person is listed as a beneficiary in a foreign asset, however, if he has provided consideration for the asset, directly or indirectly, he will be covered under the definition of beneficial owner for the purposes of the Act.

32) ***A person was employed in a foreign country where he acquired or made an asset out of income earned in that country. Whether such asset is required to be declared under Chapter VI of the Act?***

a. If the person, while he was a non-resident in India, acquired or made a foreign asset out of income which is not chargeable to tax in India, such asset shall not be an undisclosed asset under the Act. However, if income was accrued or received in India while he was non-resident, such income is chargeable to tax in India. If such income was not disclosed in the return of income and the foreign asset was acquired from such income then the asset becomes undisclosed foreign asset and the person may declare such asset under Chapter VI of the Act.

7. IMPACT OF BLACK MONEY ACT

The Black Money Act puts reporting obligations on tax payers who are earning abroad and acquiring assets through legitimate funds. The salaried class could also be impacted by this, and it is necessary that the employees as well as their employers identify possible non-compliance. With the liberalised remittance schemes permitting significant investments in the overseas jurisdictions, resident employees may own assets overseas and generate foreign-sourced income. Employees deputed abroad earn foreign-sourced income and have overseas bank accounts and other investments. Many employees are entitled to stock option benefits, allowances or bonus. Failure to disclose overseas income and assets in the India tax return by resident and ordinarily resident employees would attract the provisions of the Black Money Act.

If the employer is responsible for the payment of overseas income of the resident employee and such income is not reported in India, it could trigger proceedings under the Act for 'abetment'. The employees of the company are covered under the stock option scheme of the global parent. Since the benefit to the employees arise on account of the employment to the Indian entity, the responsibility of tax withholding on the stock option benefits rests with the Indian employer. Employees are tax-equalised and the employer has the responsibility to report and remit taxes of the employee. This situation would typically be applicable in the case of a globally mobile population, where employees receive salary and benefits in multiple jurisdictions. In the event of non-disclosure of overseas income in these situations, the employer may be held responsible for abetment. The employer provides overseas allowances and benefits to its employees who are deputed abroad. Where such employees are residents and ordinarily residents, the employer has to consider the overseas allowances and benefits for tax withholding in India. All of the above instances will amount to non-reporting of overseas income by the employer, which may be categorised as "abetment" under the Black Money Act.

8. OFFENCES AND PENALTIES

Chapter IV and V deals with penalties and offences and prosecutions.

Section	Offence	Punishment
41	Undisclosed foreign income and asset	Penalty, in addition to tax, if any, payable by him, a sum equal to three times the tax computed.
42	Failure to furnish return in relation to foreign income and asset	Penalty of ten lakh rupees.
43	Failure to furnish in return of income, an information or furnish inaccurate particulars about an asset (including financial interest in any entity) located outside India	Penalty of ten lakh rupees.
44	Default in payment of tax arrear	Penalty of an amount, equal to the amount of tax arrears.
45	Failure to – (*a*) answer any question put to him by a tax authority in the exercise of its powers under the Black Money Act; (*b*) sign any statement made by him in the course of any proceedings under the Act which a tax authority 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	A sum which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.

	response to summons issued under section 8.	
49	Failure to furnish return in relation to foreign income and asset.	Rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.
50	Failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India.	Rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.
51(1)	Wilful attempt to evade any tax, penalty or interest chargeable or imposable under the Act by person, being a resident other than not ordinarily resident in India.	Rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine.
51(2)	Wilful attempt to evade the payment of any tax, penalty or interest under the Act.	Rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.
52	False statement in verification	Rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.
53	Abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to tax	Rigorous imprisonment for a term which shall not be less than six months but which

	payable under this Act which is false.	may extend to seven years and with fine.
58	Second and subsequent offences	Rigorous imprisonment for a term which shall not be less than three years, but which may extend to ten years and with fine which shall not be less than five lakh rupees, but which may extend to one crore rupees.

9. REGULATORY AUTHORITIES TO DEAL WITH BLACK MONEY

The responsibility of dealing with the challenge of unaccounted wealth and its consequences is jointly and collectively shared by a number of institutions belonging to the central and state governments. These include various tax departments which are assigned the task of enforcement of tax laws. The regulatory authorities that deal with the menace of black money are discussed hereunder.

Central Board of Direct Taxes

The CBDT, New Delhi, is part of the Department of Revenue in the Ministry of Finance. While the CBDT provides essential inputs for policy and planning of direct taxes in India, it is also responsible for administration of direct tax laws through its Income Tax arm. The CBDT is a statutory authority functioning under the Central Board of Revenue Act 1963. The officials of the Board in their ex-officio capacity also function as a Division of the Ministry dealing with matters relating to the levy and collection of direct taxes.

The Income Tax Department is primarily responsible for combating the menace of black money. For this purpose, it uses the tools of scrutiny assessment as well as information-based investigations for detecting tax evasion and penalising the same as per provisions of the Income Tax Act, with the objective of creating deterrence against tax evasion. In doing so, it plays one of the most important roles in preventing generation, accumulation, and consumption of unaccounted black money.

Enforcement Directorate (ED)

The ED was established in 1956 to administer the provisions of the Foreign Exchange Regulation Act 1973 (FERA). However, FERA was repealed on 31 May 2000 and replaced with the Foreign Exchange Management Act 1999 (FEMA) which came into force with effect from 1 June 2000.

The ED has currently been entrusted with the investigation and prosecution of money-laundering offences and attachment/confiscation of the proceeds of crime under the Prevention of Money Laundering Act 2002 (PMLA). The officers of the ED undertake multifaceted functions of collection, collation and development of intelligence, investigation

into suspected cases of money laundering, attachment/confiscation of assets acquired through the commission of scheduled offences, and the criminal prosecution of the offenders in the court of law. The ED also enforces the provisions of FEMA, aimed at promoting the development and maintenance of India‘s foreign exchange market and providing, inter alia, for action against persons/entities involved in international hawala transactions.

Financial Intelligence Unit

The FIU-IND was established by the Government of India for coordinating and strengthening efforts for national and international intelligence by investigation and enforcement agencies in combating money laundering and terrorist financing. FIU-IND is the national agency responsible for receiving, processing, analysing, and disseminating information relating to suspect financial transactions. It is an independent body reporting to the Economic Intelligence Council headed by the Finance Minister. For administrative purposes, the FIU-IND is under the control of the Department of Revenue, Ministry of Finance.

Central Board of Excise and Customs and DRI

The CBEC is a part of the Department of Revenue under the Ministry of Finance, Government of India. It deals with the tasks of formulation of policy concerning levy and collection of customs and central excise duties, prevention of smuggling, and administration of matters relating to customs, central excise and narcotics to the extent under the CBEC's purview. The Board is the administrative authority for its subordinate organizations, including Custom Houses, Central Excise Commissionerates and the Central Revenues Control Laboratory.

The Directorate General of Central Excise Intelligence (DGCEI) is the apex intelligence organization functioning under the CBEC. It is entrusted with the responsibility of detecting cases of evasion of central excise and service tax. The Directorate develops intelligence, especially in new areas of tax evasion through its intelligence network across the country and disseminates information in this respect by issuing Modus Operandi Circulars and Alert Circulars to apprise field formations of the latest trends in duty evasion.

The Directorate of Revenue Intelligence (DRI) also functions under the CBEC. It is entrusted with the responsibility of collection of data and information and its analysis, collation, interpretation and dissemination on matters relating to violations of customs laws and, to a

lesser extent, anti-narcotics law. It maintains close liaison with the World Customs Organisation, Brussels, the Regional Intelligence Liaison Office at Tokyo, INTERPOL, and foreign customs administrations.

Thorough scrutiny and enquiry of cases of Suspected Transaction Reports (STRs) forwarded by the FIU is conducted by the DRI (Headquarters) and its zonal units which helps in the identification of cases of unaccounted money both within and outside the country.

Central Economic Intelligence Bureau

The CEIB functioning under the Ministry of Finance is responsible for coordination, intelligence sharing, and investigations at national as well as regional levels amongst various law enforcement agencies.

Any information on black money or money laundering or hawala transactions is regularly shared with the ED and Director General of Income Tax so that proper action on all accounts is initiated in the matter. Evidence is shared with the ED to help establish cases of money laundering and hawala operations by unscrupulous importers / exporters and hawala operators. Cases of unaccounted cash recovery are reported to the DGIT (Investigation), CBDT to establish the source of the money and its proper accounting.

10. USEFUL WEBSITES

Ministry of Finance - http://www.finmin.nic.in/

Central Board of Direct Taxes - http://www.incometaxindia.gov.in/Pages/about-us/central-board-of-direct-taxation.aspx

Financial Intelligence Unit- India - http://www.fiuindia.gov.in/

Directorate of Enforcement - http://www.directorateofenforcement.gov.in/

The Central Economic Intelligence Bureau - http://www.ceib.nic.in/

Reserve Bank of India - http://www.rbi.org.in/

Securities and Exchange Board of India - http://www.sebi.gov.in/

Financial Action Task Force on Money Laundering (FATF) - http://www.fatf-gafi.org

11. ABOUT THE AUTHOR

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Mr. Rajkumar S. Adukia is a highly acclaimed academician, an eminent and experienced Chartered Accountant. An active member of various professional bodies, he is a member of the Central Council of the Institute of Chartered Accountants of India for more than 10 years. He also a member of numerous committees of the Institute of Chartered Accountants of India and is actively involved in their working.

In addition to being a Chartered Accountant, Company Secretary and a Cost Accountant, MBA, Dip IFR (UK), Mr. Adukia also holds a degree in law and Diploma in Labour Laws. He has been involved in the activities of the Institute since 1984 as a convenor of Kalbadevi CPE study circle. He was the Chairman of the Western Region of Institute of Chartered Accountants of India in 1997 and has been actively involved in various committees of ICAI. He became a member of the Central Council in 1998 and ever since he has worked tirelessly towards knowledge sharing, professional development and enhancing professional opportunities for members.

He has been coordinating with various professional institutions, associations' universities, University Grants Commission and other educational institutions. Besides he has actively participated with accountability and standards-setting organizations in India and at the international level. He was a member of J.J. Irani committee which drafted Companies Bill 2008. He is also member of Secretarial Standards Board of ICSI. Currently he represents ASSOCHAM as member of Cost Accounting Standards Board of ICWAI. He is a member of

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He has served on the Board of Directors in the capacity of independent director at BOI Asset management Co. Ltd, Bharat Sanchar Nigam Limited and SBI Mutual Funds Management Pvt Ltd. He is also a member of the London Fraud Investigation Team

Mr. Rajkumar Adukia specializes in IFRS, Enterprise Risk Management, Internal Audit, Business Advisory and Planning, Commercial Law Compliance, Labour Laws, Project Work, Carbon Credit, Taxation and Trusts. His clientele include large corporations, owner-managed companies, small manufacturers, service businesses, property management and construction, exporters and importers, and professionals. He has undertaken specific assignments on fraud investigation and reporting in the corporate sector and has developed background material on the same.

Based on his rich experience, he has written numerous articles on most aspects of finance-accounting, auditing, taxation, valuation, public finance. His authoritative articles appear regularly in financial papers like Business India, Financial Express, Economic Times and other professional / business magazines. He has authored several accounting and auditing manuals. He has authored more than 100 books on vast range of topics including Internal Audit, Bank Audit, SEZ, CARO, PMLA, Anti-dumping, Income Tax Search, Survey and Seizure, etc.

Mr. Rajkumar is a frequent speaker on trade and finance at seminars and conferences organized by the Institute of Chartered Accountants of India, various Chambers of Commerce, Income Tax Offices and other Professional Associations. He also develops and delivers short courses, seminars and workshops on changes and opportunities in trade and finance. He has extensive experience as a speaker, moderator and panelist at workshops and conferences held for both students and professionals across the country and abroad. Mr. Adukia has delivered lectures abroad at forums of International Federation of Accountants and traveled very extensively abroad for professional work.