



Foreign Incomes and Assets under Black Money Act in India

1. Introduction on Black Money Act (BMA) 2015

- (i) Govt. of India has introduced the BMA, 2015 in addition to the existing Income Tax Act (ITA) 1961 to punish the ordinary residents of India (taxpayers) for having undisclosed foreign incomes and assets (UFIA) as earned through illegitimate activities which are resulting to a loss of the Income tax (revenue) to the Govt. of India.*
- (ii) Govt. of India has introduced the BMA, 2015 to prevent the illegitimate UFIA which are kept outside India and also to use for the purpose of social, economic, strategic interest and national security of peoples of India.*
- (iii) Govt. of India has introduced the BMA, 2015 to expand the scope and coverage of the Act to include the taxpayers those were taking the shelter under the ITA 1961 up to June 30, 2015 as provisions of the ITA 1961 were not specific*
- (iv) BMA, 2015 has 88 Sections and 7 Chapters:*

 - (a) Preliminary*
 - (b) Basic of charge*
 - (c) Tax Management*
 - (d) Penalties*
 - (e) Offences and Prosecution*
 - (f) One Time Disclosure window*
 - (g) General Provisions*

(v) **The UFIA includes:**

- (a) Any **asset including financial interest in any entity** as located outside India **and also** held by the taxpayers **in their own names or in other's names where the taxpayer is a **beneficial owner****. The taxpayer **has no explanation** for the **source of investment** in the assets or the **explanation** given by the taxpayer to the assessing officer **(AO) is unsatisfactory**.
- (b) The UFIA is an undisclosed income of the taxpayer from a **source as located outside India** and actual **value of the undisclosed assets** is also located at **outside India**.

(vi) **Financial interest outside India includes:**

- (a) Where taxpayers are **owner on record or holder of legal title** of any financial account besides that taxpayer is ultimate beneficiary or **not ultimate beneficiary**.
- (b) **Taxpayer is owner on record or holder of title includes:-**
 - (ba) **Agent, nominee, attorney** or a person as acting in some other capacity **on behalf of the taxpayer**.
 - (bb) **Corporation** where taxpayer is **owning directly or indirectly in the equity shares** or voting powers.
 - (bc) **Partnership** firm where taxpayer owning directly, indirectly or **interest** in the partnership's **profits** or in the partnership **capital**.
 - (bd) **Trust** where the taxpayer is having **beneficial ownership or interest in ownership**.
 - (be) **Any other entity** where the taxpayer is owning directly or indirectly any **voting power, equity interest, asset or share in profits**.

(vii) **Special features of the BMA, 2015**

- (a) BMA, 2015 is **strictly dealing with tax evasion** activities as being carried out outside India. However the tax evasion activity is **not treated as criminal activity**

- (b) (ba) BMA, 2015 is **not applicable** against the **Benami Transactions** under the **Benami Transactions (Prohibition) Amendment Act (PMLA) 2016**. Hence BMA, 2015 is applicable against the UFIA only.
- (bb) BMA, 2015 is **applicable on UFIA only**. Hence the PMLA 2016 is applicable on the **Benami Properties as held in India through Benamidar**.
- (c) BMA, 2015 is **permitting a threshold limit** for lower value UFIA like INR **not exceeding 5 lac**. However ITA, 1961 is applicable where BMA, 2015 is **not applicable**.
- (d) BMA, 2015 is **demanding for maintenance of adequate documentations and records** against the UFIA
- (e) BMA, 2015 is sometime **misusing the information's as received from the foreign sources** through harassing the taxpayers to prove themselves to be **cleaned citizen of India**.

2. **Applicability of the BMA, 2015**

- (i) BMA, 2015 is **applicable from July 01, 2015**. Incomes up to June **30, 2015** are to be **taxed under the ITA 1961**. Hence the BMA, 2015 is applicable from the year ending on March **31, 2016** (Assessment year **2016-17**).
- (ii) BMA, 2015 is **applicable on the taxpayers** as define under section **6 (6)** of ITA 1961.
- (iii) BMA, 2015 is also applicable on every **person who is deemed to be an assessee in default** under this Act
- (iv) **BMA, 2015 is applicable on:**
- (a) **Individual**
 - (b) **HUF**
 - (c) **Company**
 - (d) **Firm**
 - (e) **AOP**

- (f) **BOI**
- (g) **Local authority**
- (h) **Every artificial judicial person**
- (v) BMA, 2015 is applicable on the ordinary resident of India although **he was not ordinary resident of India** in the previous year proceeding to the relevant (previous) year but he was a resident of India **due to his stay in India for a minimum period of 182 days** in a financial year.
- (vi) (a) BMA, 2015 is **applicable** where computed totals of all credit entries in the all bank accounts outside India are **exceeding INR 5 Lac** in **1** year or more than **1** year. Hence exceeding INR **5 Lac** may be a computed total of all credit entries in **10** years.
- (b) Computation of INR **5 Lac** is to be made by **adding all credit entries in the all bank accounts outside India** from the date of opening bank accounts till date.
- (c) Total of the all **debit entries are not to be deducted** for computing the amount as **not exceeding INR 5 Lac**.
- (vii) BMA, 2015 is applicable where the UFIA **are acquired through legal or illegal structure** or activity.
- (viii) BMA, 2015 is applicable where although the structure outside India is **legal but not disclosed** to the tax authorities **in India**.

3. Non Applicability of the BMA, 2015

- (i) BMA, 2015 is **not applicable** where an ordinary resident **individual** has **invested in the assets outside India** under the Liberalized Remittance Scheme (**LRS**) of the RBI
- (ii) BMA, 2015 is **not applicable** where an Indian (domestic) company has **invested in the assets or equity shares etc.** outside India under the Overseas Direct Investments (**ODIs**) guidelines as issued by the RBI.

- (iii) BMA, 2015 is **not applicable** where an ordinary resident of India is **holding the assets outside India** which were acquired when **he was non residents of India (returning NRI)** and also permitted under section **6(4)** of the **FEMA, 1999**
- (iv) BMA, 2015 is **not applicable** where an ordinary resident of India has **inheritance** the **assets outside India** from a **non resident relative** and also permitted under section **6(4)** of the **FEMA, 1999**
- (v) BMA, 2015 is **not applicable** where an ordinary resident of India as returned from outside India properly known as **returning NRIs** against the assets as held outside India and also permitted under the **FEMA, 1999**
- (vi) BMA, 2015 is **not applicable** where companies are buying the foreign assets **through their subsidiaries** as located outside India.
- (vii) BMA, 2015 is **not applicable on not ordinary residents and not residents of India.**
- (viii) BMA, 2015 is **not applicable** where total of UFIA is **not exceeding INR 5 Lac.** However **ITA, 1961 is applicable** where BMA, 2015 is **not applicable.**

4. Chargeability of Income Tax under the BMA, 2015- Section 3(1)

- (i) Income tax **@ 30% flat** is **to be charged against the UFIA** for the year ending on **March 31, 2016** and also onward.
- (ii) Income tax **@ 30% flat** is to be charged against the UFIA at **Fair Market Value of the assets** in the year in which the AO has **1st time noticed.**
- (iii) **Education cesses and surcharge are not to be levied** on the above mentioned amount of the Income Tax under the BMA, 2015.

5. Allowability of the Expenditures and Set off the losses- Section 5

- **Expenditures** for earning UFIA and **set off the losses** for the preceding to previous year and also for the relevant year are **not permitted against the UFIA** under the BMA, 2015.

6. Disclosure of the UFIA under the Foreign Asset (FA) schedule in the ITR

- (i) **Disclosure of the UFIA in the FA schedule** in the Income Tax Return (**ITR**) is **not material** for applicability of the BMA, 2015

- (ii) Hence applicability of the BMA, 2015 is permitted where **source of UFIA are not fully explained** by the taxpayers

7. BMA, 2015 versus ITA, 1961

● BMA, 2015

- (i) **BMA, 2015 is applicable** against UFIA commencing **from July 01, 2015** as notified by the CBDT.
- (ii) **Notice under the BMA, 2015 for the reassessment** can be issued **without any time limit** like **3 years and 10 years** under the ITA, 1961. Hence **notice under the BMA, 2015 for the reassessment** can be issued even after **100 years**.
- (iii) **Interest is not to be levied** on UFIA under the BMA, 2015 similar to the sections **234A, 234B and 234C** for late or non filing of ITR under ITA, 1961. Hence **only flat Income tax @ 30%** is being levied along with a **minimum fine of 100%** or **maximum fine of 300%** under the BMA, 2015.
- (iv) BMA, 2015 is **not permitting any credit of tax** paid on the UFIA under the DTAA's outside India against the Income tax **@ 30%** flat is to be paid under the BMA, 2015.

● ITA, 1961

- (i) **ITA, 1961 is applicable** against UFIA **up to June 30, 2015** as AO is able to notice.
- (ii) **Notice under the ITA, 1961 for the reassessment** can be issued **within 3 years and 10 years** as case may be against the **non UFIA incomes** and maximum **up to 16 years against the UFIA**.
- (iii) **Penal interest is to be levied** on UFIA under ITA, 1961 up to June **30th, 2015** under the sections **234A, 234B and 234C** for late or non filing of ITR under ITA, 1961.
- (iv) ITA, 1961 is **permitting all credit of tax paid on the UFIA** under the DTAA's outside India against the normal Income tax liability on the UFIA.

8. Imprisonment + Penalty (Fine) for the UFIA

● Imprisonment under the BMA, 2015

- (i) **Imprisonment** for failure to furnish ITR for UFIA is **minimum 6 months** and **maximum 7 years**
- (ii) Imprisonment for failure to furnish any information for UFIA is **minimum 6 months** and **maximum 7 years**
- (iii) Imprisonment for **willful attempt to evade** the Income tax against UFIA is **minimum 3 years** and **maximum 10 years**.
- (iv) Imprisonment for **Subsequent offence** under the BMA, 2015 where the taxpayer is committing the Subsequent offence is **minimum 3 years** and **maximum 10 years**
- (v) Imprisonment for **making false statement or delivers false evidence** is **minimum 6 months** and **maximum 7 years**
- (vi) Imprisonment for **making and delivering a false return, account, statement or declaration** against the tax payable is **minimum 6 months** and **maximum 7 years**

● **Fine under the BMA, 2015**

- (i) **Fine** for the UFIA is **minimum @ 100%** and **maximum @ 300%** of the Income tax liability under the BMA, 2015. Hence maximum **effective tax liability** (including fine) is @ **120%** (Tax @ **30%** + maximum Fine @ **90%**) on the current **fair market value** of the UFIA.
- (ii) Fine for **failure to furnish the ITR** for UFIA is **INR 10 Lac**
- (iii) Fine for **failure to furnish an information** or furnish inaccurate particulars for UFIA is **INR 10 Lac**
- (iv) Fine for **subsequent offence** under the BMA, 2015 where the taxpayer is committing the subsequent offence is **minimum 5 Lac** and **maximum 1 crore**
- (v) Fine for **failing to answer any question, sign a statement** where taxpayer is legally bound and also failed to produce books of accounts and supporting evidences is **minimum 50 thousand** and **maximum 2 lac**

9. Source of information's for the UFIA

- (i) *The European Commission and the **Swiss government have signed a landmark new tax transparency agreement** which is effectively ending the bank secrecy for the Europeans banks and also **to strengthen the fight against the tax evasion** and to prevent tax evaders **from hiding UFIA in Swiss bank accounts.***
- (ii) ***India has also signed the Multilateral Competent Authority Agreement (MCAA)** pact for the Automatic Exchange of Information **(AEOI)**. More than **100** countries had joined the MCAA in addition to India.*
- (iii) ***Switzerland's Official Gazette has revealed** publicly the **names of 7 Indians for tax evasion**. Swiss Federal Tax Administration **(SFTA)** has asked **7 Indians to file appeal within 30 days for sharing details** to the Indian tax authorities. However these **7 persons** has not shared details to the Indian tax authorities.*
 - (a) **Yash Birla**
 - (b) **Gurjit Singh Kochar**
 - (c) **Ritika Sharma**
 - (d) **Sneh Lata Sawhney**
 - (e) **Sangita Sawhney**
 - (f) **Sayed Mohamed Masood**
 - (g) **Chaud Kauser Mohamed Masood**
- (iv) *The **France Govt.** has also **given a list of 628 Indians** in the year **2010** where these Indians were having **bank account at HSBC's Geneva.***
- (v) ***Power of Govt. of India to enter into an agreement with the foreign countries and the specified territories:***
 - (a) *For **exchange of information** for **prevention of tax evasion or tax avoidance** under the BMA, 2015 and similar law in the corresponding country or territory*
 - (b) *For **investigation** against the cases as **involving the tax evasion or tax avoidance***

- (c) For **recovery of tax** under the BMA, 2015
- (d) For **not to grant any relief** against the **double taxation** under the BMA, 2015 and similar law in the corresponding country or territory

10. Assessment procedures – Chapter III

- (i) Taxpayer is **not required to file a separate return** under the BMA, 2015. Hence taxpayer is required to fill the appropriate columns in ITR as to be filed under ITA, 1961.
- (ii) **AO under BMA, 2015** is required to **issue a notice to the taxpayer to produce the information's**, documents or explanations as desired by him where he has received any information's from the Income tax authority under the ITA or under any other authority in any other law or any **information's as received by AO from any source like newspapers, electronic media etc.**
- (iii) AO is permitted to have **information's through any source as legal, illegal or stolen data.**
- (iv) AO is permitted to **issue notice for the assessment or reassessment without any time limit** which may be **100** years. However AO is required to **give an reasonable opportunity for hearing** and to furnish the evidences or documents based on the **principle of natural justice.**
- (v) AO is permitted to **enquire or investigate** any matter besides that **proceeding is not pending before him.**
- (vi) AO is required to **complete the assessment** or reassessment maximum **within 2 years** from the end of the financial year in which notice was issued by him – Section **11** under the BMA, 2015
- (vii) AO is required to **issue 2 assessment orders against the single ITR** under section **143(3)** of the ITA, 1961 and under section **10(3)** of the BMA, 2015 for the incomes as taxable under the ITA, 1961 and incomes as taxable under the BMA, 2015.

(viii) **AO and taxpayer both are permitted for:**

- (a) *Filing of appeal before CIT appeals*
- (b) *Filing of appeal before ITAT*
- (c) *Filing of appeal before High Court*
- (d) *Filing of appeal before Supreme Court*
- (e) *Filing of rectification of mistake*
- (f) *Filing for Revision of order*

11. Recovery of Tax under the BMA, 2015

(i) AO or Tax Recovery Officer (**TRO**) is permitted to recover the outstanding demand under the BMA, 2015 from the taxpayers in accordance to the different modes as specified.

(ii) **Specified modes for recovery of the outstanding demands under the BMA, 2015:**

- (a) **Recovery from the employer** of the taxpayer where employer is to be deduct the outstanding demand as demanded under the BMA, 2015 and to deposit the same with the Govt. of India.
- (b) **Recovery from the debtors** of the taxpayer where debtors are required to deposit against the outstanding demand of the taxpayer as demanded under the BMA, 2015. However **debtors are not required to deposit** the amount as exceeding the outstanding debt with them.
- (c) **Debtors are to be treated as assessee in defaults** where the debtors are failed to deposit the amount as outstanding with them. **AO or TRO will initiate the recovery proceeding** from the debtors as assesses in defaults.

(iii) **Recovery of Tax from other person than the taxpayer under the BMA, 2015**

- (a) AO or TRO is permitted to recover the outstanding tax amount from other persons as to be treated **personal liability** where the outstanding tax amount is not recoverable from the taxpayers. **Other person** includes:

(aa) **Manager (including a managing director) of a company**

(ab) **Partners of a firm**

(ac) **Member of an AOP or BOI**

(b) *Manager of company and partner of limited liability partnership (LLP) are **not personally liable** where non recovery of outstanding tax is **not to be attributed to any neglect, misfeasance** or breach of duty on his part for the affairs of the company or LLP*

(c) *The BMA, 2015 is **silent against liability of the partners** and member of the AOP or BOI.*

(iv) Recovery of tax under the BMA, 2015 from the Indian assets:

(a) *Appropriate **Income tax authorities** under the BMA 2015, the RBI and Enforcement Director (ED) under the FEMA, 1999 are **not permitted to take any penal action or prosecution for imprisonment** without any proper enquiry where the UFIA are **legally held and also properly disclosed** to the Income tax department.*

(b) *Appropriate Income tax authorities under the BMA, 2015 or ED under the FEMA, 1999 are **permitted to directly seize the Indian assets** equivalent in the value of tax under the BMA, 2015 **without asking any question**. This provision is inserted through Finance Act, 2015*

(c) *The above mentioned **seizure of the Indian assets** is permitted based on the **reason to believe** or suspicion. Similar Provisions are also included under the **PMLA Act, 2002**. This provision is inserted through **Finance Act, 2015***

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