The Undisclosed Foreign Income and Assets (Imposition of New Tax) Bill, 2015 – Laudable On Intent, Daunting On Content?

The phrase "black money" is yet undefined in economic literature. Ordinarily it connotes undisclosed wealth - assets or income from lawful or unlawful activities, which have not been disclosed whether at the time of generation or possession thereof and, thereby, untaxed due to such non-disclosure. The current government, in order to fulfill its commitment for focused action on black money front, has formulated the Undisclosed Foreign Income and Assets (Imposition of New Tax) Bill, 2015 to deal with black money stashed away overseas. The Bill, introduced by the government in March 2015, was passed by Lok Sabha on 11th May, 2015 and by Rajya Sabha on 13th May, 2015. The Bill provides heavy penalties and taxes along with criminal prosecutions for those who had concealed black money abroad. The article looks upon the salient features of the Bill vis-à-vis the government's intents and objectives, and the expected implications. Read on…

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Genesis of the Bill

In India, since long, the scourge of black money has been manifest in public and the parliamentary institutions' debates, in varying magnitudes. The matter attained greater public and apparent government attention for the last five years. During this time and thus far, there have been various media

reports revealing stark truths of various facets of the black money impacting India. According to *white paper on black money* in India report, published by the Ministry of Finance in May 2012, the Swiss National Bank estimated that the total amount of deposits in all Swiss banks, at the end of 2010, by citizens of India were CHF 1.95 billion (₹92.95 billion, $2.1 billion). The Swiss Ministry of External Affairs confirmed these figures upon request for information by the Indian Ministry of External Affairs. American intelligence units say that Indians have stashed abroad more than $400 billion in black money. These reports along with many others, which vary on estimates, snowballed into high pitched outcry to combat the venom of shadow economy. PILs, constitution of special investigation teams and introduction of amnesty schemes towards anti-black money drive have been a known phenomenon in India since early 1950s.

During his budget speech, the current Hon'ble Finance Minister, Shri Arun Jaitley underlined his government's commitment to unearth and deal with black money generated and possessed by Indians as stashed abroad. The following statements of the Finance Minister's speech in the context of his direct tax proposals amplify this commitment- *"The first and foremost pillar of my tax proposals is to effectively deal with the problem of black money which eats into the vitals of our economy and society. The problems of poverty and inequity cannot be eliminated unless generation of black money and its concealment is dealt with effectively and forcefully"*. The Undisclosed Foreign Income and Assets (Imposition of New Tax) Bill, 2015 or the UFIA Bill 2015 or popularly, the Anti-Black Money Bill, is a new direct tax bill formulated by the current government, for curbing generation of black money, through the medium of taxation of gross undisclosed income and assets owned by Indian residents. The Bill, proposed to be effective from assessment year 2016-17 and comprising of 7 chapters with around 88 clauses there-under, was tabled before the Lok Sabha on 20th March 2015, during which Indian taxpayers were still decoding the impact of the Union Budget 2015 pronouncements. The Bill was passed by the Lok Sabha on 11th May 2015 and by the Rajya Sabha on 13th May 2015. It is important to note that this Bill is proposed to be enacted to tax only undisclosed foreign wealth (assets and income) as a part of anti-black money drive of the government, as opposed to the domain of extant income tax law, which is aimed at taxation of disclosed income. The Bill seems to be a part of the government's initiative *vis-a-vis* other G20 countries,for adhering to a global framework of automatic information exchange.

The Bill is essentially a part of the comprehensive black money law contemplated by the government, which aims to discourage the generation and non-disclosure of wealth generated by Indian residents outside India, by imposing 30% tax and additional penalty to the tune of 100%/300% of tax, on hitherto undisclosed foreign assets and income. In computing such undisclosed income or asset, no deduction of expenses shall be allowed, whether or not allowable under the Income-tax Act, 1961 (the "ITA").

Objectives of the Bill

The objectives of the new direct tax Bill, as expressed in the preamble to the Bill, are to make provisions for:

1. Undisclosed foreign income and assets,
2. Laying down procedures for dealing with such undisclosed foreign income and assets,
3. Imposition of tax on any undisclosed foreign income and assets, and
4. Matters connected or incidental thereto.

Salient Features of the Bill

The Bill is essentially a part of the comprehensive black money law contemplated by the government, which aims to discourage the generation and non-disclosure of wealth generated by Indian residents outside India, by imposing 30% tax and additional penalty to the tune of 100%/300% of tax, on hitherto undisclosed foreign assets and income. In computing such undisclosed income or asset, no deduction of expenses shall be allowed, whether or not allowable under the Income-tax Act, 1961 (the "ITA").

The charging provisions under clauses (3) and (4) of the Bill stipulate that the charge is in respect of an assessee's *"total undisclosed foreign income and asset of the previous year"* qualified by a *proviso* clarifying that an undisclosed asset located outside India shall be charged to tax on its value in the previous year in which such asset comes to the notice of the assessing officer. "Undisclosed foreign income and asset" is defined to mean:

(i) income from a source located outside India

which has not been disclosed in a return filed under the ITA,

(ii) income from such sources, in respect of which return is not filed at all under the ITA, and

(iii) value of an undisclosed asset located outside India.

The Bill defines an "assessee" for the purpose of this legislation to mean a person who is a "resident" and is liable to pay tax in respect of undisclosed foreign income and assets and every other person who is deemed to be an assessee-in-default under the Bill. Thus, the provisions of the Bill do not apply to a "non-resident" or a "resident but not ordinarily resident" as defined in Section 6(6) of the Income -tax Act. The term "assessee in default" is not defined. Further, "undisclosed asset located outside India" is defined to mean *"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."* Additionally, *"undisclosed foreign income and asset" is defined to mean the total amount of undisclosed income of the assessee from a source located outside India and the value of an undisclosed foreign asset referred to in the Bill and computed in a manner laid down in the Bill."* The charge on the asset would be computed by taking the fair market value of the asset in the year in which the asset is noticed by the assessing officer and not in the year of its acquisition.

The computation of tax as per the UFIA Bill 2015 as per clause (5) of the Bill may be depicted as follows:

Particulars	Amount in ₹
Foreign income which has not been disclosed in the ROI furnished under the ITA	XXX
Add: Foreign income in respect of which no ROI is furnished under the ITA	XXX
Add: Fair Market Value of foreign assets (the source of which is not explained or explanation provided is unsatisfactory in the opinion of the AO)	XXX

Significantly, the Bill proposes to provide a limited, one-time declaration window for resident Indians with undisclosed foreign income or assets through disclosure based payment of tax and equivalent amount of penalty. This one time compliance will ensure that they will not be required to pay wealth tax on these assets, and no separate proceedings under the ITA would be initiated. While the limited compliance window date and duration is yet to be notified, the declaration window may be as short as 60 days.

Particulars	Amount in ₹
Less: Income which has been assessed to tax for any assessment year under the ITA prior to relevant AY in which UFIA applies	XXX
Less: Income which is assessable or has been assessed to tax for any assessment year under UFIA	XXX
Less: Proportionate income relatable to the fair market value of immovable property*	XXX
Total Undisclosed Foreign Income and Assets (A)	XXX
Tax on above @ 30% on (A)= (B)	XXX
Penalty on above @ 100% / 300% of (B)**	XXX

The disclosures shall be made through the income tax returns and the proposed legislation will be administered by the central board of direct taxes (CBDT) through the income tax authorities.

Provisions with respect to assessments (including best judgment assessments) of undisclosed foreign income and assets, rectifications and appeals in connection thereto as proposed under the Bill are largely akin to corresponding provisions under the ITA. The procedure for assessment as laid down under Section 10 and Section 11 of the Act indicates that if an income tax authority receives any information from another income tax authority or any other authority under any law or any information is brought to his notice, the former can serve a notice on the concerned person to cause

* *The proportionate income shall be the fair market value of the undisclosed of foreign assets as on the first day of the financial year in which the assessing officer notices such asset, in the same proportion which the assessed/assessable foreign income under the ITA/UFIA Bill bears to the total cost of undisclosed foreign asset acquired from such assessed/assessable income. This scenario can arise in a scenario when foreign assets (acquired from assessed or assessable foreign income) remain voluntarily undeclared by the assessee.*

** *The quantum of penalty may vary between 100% to 300% of tax amount, depending on whether voluntarily disclosures are made within the one time disclosure window or undisclosed foreign income / assets are noticed by the assessing officer through reference or his own investigation.*

such person to produce such accounts, documents or evidence as such former officer may require for the purpose of this new legislation on the specified date. The income tax authority is vested with adequate powers of inquiry for the purpose of obtaining full information in respect of undisclosed foreign income and assets of the person for the relevant financial year. Notably, clause (14) of the Bill proposes to empower the income tax authority to make a direct assessment of a person on whose behalf or for whose benefit undisclosed foreign income is receivable or undisclosed asset is held, outside India.

One Time Declaration Window

Significantly, the Bill proposes to provide a limited, one-time declaration window for resident Indians with undisclosed foreign income or assets through disclosure based payment of tax and equivalent amount of penalty. This one time compliance will ensure that they will not be required to pay wealth tax on these assets, and no separate proceedings under the ITA would be initiated. While the limited compliance window date and duration is yet to be notified, the declaration window may be as short as 60 days.

Rigorous penalty provisions are proposed in scenarios where voluntary disclosures are not made through this limited one time declaration window. For instance, if the income tax authority has found that the assessee has not disclosed his foreign income or asset through the limited compliance window, such authority shall be empowered to levy 90% penalty in addition to 30% tax *i.e.*, to the tune of 120% of the value of undisclosed foreign income and asset, as opposed to 60% of the value under the voluntary disclosure scenario.

The Bill also casts stringent prosecution implications which could range from six months' to seven years' rigorous imprisonment on persons guilty of abetment or persons inducing others to make false declarations under the Bill. Section 278 of the ITA provides for similar implications as above besides levy of fine in certain circumstances.

It may be noted that the Bill does not provide for repatriating undisclosed income or assets to India or identification of undisclosed assets or income within India. The Bill simply seeks to impose taxes on undisclosed foreign income and foreign assets of Indian residents. During his budget speech, the finance minister (FM) indicated that amendments under the Foreign Exchange Management Act (FEMA)as well, towards repatriation of black money stashed abroad to India would be an integral part of government's new law on black money.

The salient features of the Bill, as per the government Press Release dated 20th March 2015, are reproduced below:

Scope– *The Act will apply to all persons resident in India. Provisions of the Act will apply to both undisclosed foreign income and assets (including financial interest in any entity).*

Rate of tax– *Undisclosed foreign income or assets shall be taxed at a flat rate of 30 percent. No exemption or deduction or set off of any carried forward losses which may be admissible under the existing Income Tax Act, 1961, shall be allowed.*

Penalties–

(a) Violation of the provisions of the proposed new legislation will entail stringent penalties. The penalty for non-disclosure of income or an asset located outside India will be equal to three times the amount of tax payable thereon, i.e., 90 percent of the undisclosed income or the value of the undisclosed asset. This is in addition to tax payable at 30%.

(b) Failure to furnish return in respect of foreign income or assets shall attract a penalty of Rs. 10 lakh. The same amount of penalty is prescribed for cases where although the assessee has filed a return of income, but he has not disclosed the foreign income and asset or has furnished inaccurate particulars of the same.

Prosecutions– *The Bill proposes enhanced punishment for various types of violations.*

(a) The punishment for willful attempt to evade tax in relation to a foreign income or an asset located outside India will be rigorous imprisonment from three years to ten years. In addition, it will also entail a fine.

(b) Failure to furnish a return in respect of foreign assets and bank accounts or income will be punishable with rigorous imprisonment for a

It is pertinent to note that what constitutes undisclosed income and assets for the Indian government is likely to be different in connotation for foreign regulators and banks, and this difference could pose major challenges in enforcement of the black money law.

Significantly, the Bill casts onerous obligations on every person being a manager of a company at any time during the financial year, to ensure discharge of liabilities under the Bill by the company, failing which such liability shifts to such manager.

term of six months to seven years. The same term of punishment is prescribed for cases where although the assessee has filed a return of income, but has not disclosed the foreign asset or has furnished inaccurate particulars of the same.

The above provisions will also apply to beneficial owners or beneficiaries of such illegal foreign assets.

(c) Abetment or inducement of another person to make a false return or a false account or statement or declaration under the Act will be punishable with rigorous imprisonment from six months to seven years. This provision will also apply to banks and financial institutions aiding in concealment of foreign income or assets of resident Indians or falsification of documents.

Safeguards –

(a) The principles of natural justice and due process of law have been embedded in the Act by laying down the requirement of mandatory issue of notices to the person against whom proceedings are being initiated, grant of opportunity of being heard, necessity of taking the evidence produced by him into account, recording of reasons, passing of orders in writing, limitation of time for various actions of the tax authority, etc.

(b) Further, the right of appeal has been protected by providing for appeals to the Income Tax Appellate Tribunal, and to the jurisdictional High Court and the Supreme Court on substantial questions of law.

(c) To protect persons holding foreign accounts with minor balances which may not have been reported out of oversight or ignorance, it has been provided that failure to report bank accounts with a maximum balance of up to Rs.5 lakh at any time during the year will not entail penalty or prosecution.

(d) Other safeguards and internal control mechanisms will be prescribed in the Rules.

It is pertinent to note that while the ITA deals with the global taxability of residents, non-residents and residents but not ordinarily residents as reported in the Indian income tax returns (ITRs), the UFIA Bill is proposed to deal with the taxability of undisclosed foreign income and assets of residents only.

Certain Issues Embedded In the Draft of the Bill

As mentioned above, one of the key intents of the UFIA Bill is to curb non-disclosure of assets owned and income earned outside India by Indian residents through the cannon of taxation. While the intent to curb black money is indeed laudable considering India's socio-economic and allied conditions, from the present draft of the Bill, it needs to be seen whether the proposed legislation actually achieves the desired objective or mires the legislation in more controversies. One may be reminded of the direct taxes code (DTC) era towards Indian income tax law simplification drive, which unleashed a plethora of controversies of various magnitudes on the proposed drafts of the DTC. Though the DTC has been finally weeded out after some transplants into the ITA after almost seven years of debates and amendments, it leaves behind a trail of wasted man-hours that were consumed in formulation of the code and deliberations thereon, besides deciding on the abandonment thereof. From this perspective, it is yet to be concluded whether this Bill has been deliberated upon well by the legislators and the government before its release, close on the heels of the Finance Bill 2015.

The concept of disclosure *qua* a reporting person is not free from ambiguity–whether disclosure of purchase of foreign assets while effecting foreign remittances under the Liberalised Remittance Scheme could be tainted as "undisclosed" from the perspective of taxpayers merely because hitherto it was not disclosed under any prescribed returns under the ITA? The answer could be in the affirmative as such transaction or asset has not been disclosed in the income tax returns. Further, it may be noted that the taxable subject under the ITA can only be foreign income and not foreign assets *viz.* foreign bank accounts per se. Even under the Indian exchange control regulations, there is no bar on retaining foreign bank accounts or usage of such bank proceeds in a particular way. However, as per the Bill, there could be tax, penalty and even prosecution consequences in a scenario of undisclosed foreign assets exceeding a low threshold of only ₹5 lakh for years in which the ITA did not require such disclosures. It is pertinent to note that what constitutes undisclosed income

and assets for the Indian government is likely to be different in connotation for foreign regulators and banks, and this difference could pose major challenges in enforcement of the black money law. For instance, if foreign assets are acquired through legitimate disclosures and banking channels in foreign countries, the same cannot not be construed as undisclosed wealth in those countries from the perspective of the declarant, particularly in the absence of disclosure requirement in India.

The term "resident" for the purpose of the Bill means a person who is a resident as per Section 6 of the ITA. Pursuant to the amendments proposed under Section 6 of the ITA, significantly with respect to companies, there is considerable hue and cry on the tax residency of foreign companies having India parentage as well as being part of Indian promoter groups. Specifically, the criterion of 'place of effective management of companies during the relevant financial year' to determine tax residency of companies, have led to considerable doubts in India Inc. Needless to add, pending adequate clarifications from the government with respect to what are the objective tests to determine the place of effective management of foreign companies in India, the current draft of the Bill spells more detriment to the interests of the concerned taxpayers in India. The ramifications of the Bill going through in its current form could therefore lead to piling unwarranted litigations, detrimental to the interests of Indian economy and judiciary as a whole. The taxpayers would ardently hope that the UFIA Bill 2015 is not enacted with these intertwined open issues of significant importance. Specifically, one may expect the government to exclude income which was hitherto not taxable in India on account of tax residency being outside India but has now come within the purview of Indian residence based taxation.

A conjoint issue and seemingly much prevalent uncertainty today, relates to implications of the Bill for long term foreign expats in the country, who are tax residents of India. Typically, such foreign expats may have been reporting only their foreign income in their Indian income tax return as there has been no requirement to report their foreign financial interests thus far. Can their foreign financial interests now partake the character of undisclosed assets? Can such foreign expats be said to be liable to cough up taxes and penalties in India due to retro impact of the provisions under the UFIA Bill? Currently there is no definite answer to these intriguing aspects. Interestingly, even before the Bill seeing the light of the day, the government made an attempt to fetch additional disclosures pertaining to foreign travel and expenses of individual taxpayers through a new schedule FT in the income tax return (ITR). This attempt though aborted due to extreme criticism, affirms the government's attempts in unearthing black money by casting arduous reporting responsibilities on taxpayers. Besides, certain amendments to the disclosure requirements under Schedule FA to the ITR, specifically by a beneficiary of assets raises concerns on the extent of record keeping by taxpayers and his/her acquaintances. Non Resident Indians returning to India permanently whether for employment or retirement reasons, who have not filed ITRs in India, may have to judiciously evaluate the ramifications, specifically possible tax cost associated with their first disclosures of their foreign assets and financial interests before the Indian tax authorities.

Finally, clause 88 of the Bill stipulates that if an Indian resident assessee willfully attempts to evade tax and penalty imposable under the Bill, such action shall be treated as an offence under the Prevention of Money Laundering Act, 2002 (PMLA) as well as under the Indian Penal Code, leading to imprisonment between 3 to 10 years and fine.

Significantly, the Bill casts onerous obligations on every person being a manager of a company at any time during the financial year, to ensure discharge of liabilities under the Bill by the company, failing which such liability shifts to such manager. This provision prompts more uncertainties than solving one – what is the span of responsibility both in terms of time and function for such manager? What are the obligations of a manager if the company is cash strapped at the time when liability under this Bill arises?

Chapter VI of the Bill dealing with tax compliance for undisclosed foreign income and assets is not free from doubts on certain counts. For instance, with respect to declaration of undisclosed foreign income or assets, one needs to be procedurally sure of rectifying declarations made out of inadvertence or otherwise, as the Bill explicitly provides that once a declaration is made

by a person with respect to an asset (whether in a representative capacity or otherwise), any further declarations made with respect to such asset shall be void. The Bill further proposes that if taxes and penalties due based on the declarations made are not paid before the stipulated due date, then such declaration shall be deemed to have not been made. So, in light of the above possible restriction on rectification of declarations, one may ponder whether non-payment of tax dues based on original declaration made within the due date could be used as a tool to file a rectified declaration subsequently. Moreover, there may be a pronounced need to clarify whether the term "assessee" includes declarant for the purpose of the Bill. The chapter houses an important provision with respect to refund of taxes and penalty paid pursuant to declarations made. It is provided that taxes and penalties with respect to voluntarily disclosed assets are not refundable. It is worth evaluating whether this principle holds true for similar levies with respect to voluntarily disclosed income as well. Further, it may be deliberated whether the difference between undisclosed foreign income and assets are intentionally blurred at places in the draft or one ought to follow strict interpretation of this penal taxing statute.

The Bill consistently includes "financial interest in any entity" within the purview of the term "asset" in the context of undisclosed assets. In the context of the valuation of such assets, as mentioned earlier, the Bill provides that such value will be the fair market value computed as per the prescribed guidelines. But the phrase "financial interest in any entity" is not defined; as a consequence, it leads to multiple points of debates. One such basic debate could be around what kind of financial interests are contemplated, whether the same could be direct or indirect. Further, whether being a beneficial owner or beneficiary of an asset could mean having financial interest in such asset, how would banks account for such interests in scenarios of mortgage loans and other guarantees, *etc.*, are certain aspects which do not have definite answers at this stage.

The Bill, essentially being a direct tax Bill, provides for tax treaty relief with respect to taxes payable under the UFIA Bill and corresponding law in force in the other contracting state on undisclosed income. While there is no mention with respect to taxes paid on undisclosed assets, it is also uncertain whether all contracting states necessarily have separate legislation on black money. Does this indicate that summarily certain provisions of the ITA are grafted on to the Bill without adequate consideration of ramifications pursuant thereto on the taxpayers, tax administrators and the judiciary?

Clause 76 of the Bill relating to validity of notices served on the assessee bears a testimony to the sweeping arbitrary powers of tax authorities conceived under the draft legislation. The said clause stipulates that a notice shall be deemed to be validly served on a person, if the person on whom such notice is served appears before or co-operates in any manner with such proceedings or assessments. Would it be right to infer the corollary of this provision to preserve immunity to persons genuinely affected by improper notices served by the tax authorities?

Whether the penalty and prosecution provisions appear to be more harsh than desirable could be another point of debate, considering the moot intent of law *vis-à-vis* the texts of the legislations thus far. The provisions stipulating penalty of ₹10 lakh in scenarios where the resident taxpayer has not filed his tax return before the end of relevant assessment year and the tax officer discovers that such tax payer owns foreign assets and income whether in his legal or beneficial capacity or as a beneficiary as well as where the taxpayer may have filed tax return but failed to accurately disclose the correct particulars, does appear to be stringent in the absence of no correlation with the quantum of foreign asset or income. It may be considered whether this quantum of levy could rattle genuine taxpayers and in parallel lead to routes of greater infractions of this law.

Finally, clause 88 of the Bill stipulates that if an Indian resident assessee willfully attempts to evade tax and penalty imposable under the Bill, such action shall be treated as an offence under

The taxpayers may be advised to voluntarily disclose complete details of their foreign income and assets under the limited compliance window which is proposed to be notified in due course. In a scenario of expiry of declaration window on genuine grounds of non-performance (health grounds, presence in India, *etc.*), the tax payer may approach the income tax authority to advise on the best approach for compliance.

the Prevention of Money Laundering Act, 2002 as well as under the Indian Penal Code, leading to imprisonment between 3 to 10 years and fine. It may be noted that while such determination of willful attempt is extremely subjective and contingent upon clarity of provisions of law, this mandate under the draft legislation is excruciatingly detrimental to taxpayers, who besides the complicated tax laws have to be aware of the nuances and implications of economic offences under the criminal laws. One may be inclined to ponder whether the proposed legislation is a criminal law in the making under the garb of a tax law. Even, under criminal law, a person is considered to be innocent until proven to be guilty whereas, under the proposed law, it is matter of unease whether the tax authorities with sweeping powers may just inflict tax, penal and prosecution consequences on taxpayers based on their belief, unless the taxpayers prove otherwise.

Besides the above, there are other aspects of uncertainties *viz.*, valuation methodologies of foreign assets acquired in past years, method of determination of fair market value of foreign assets and by whom, assets acquired prior to the commencement of this draft Bill deemed to be acquired in the previous year when notice of assessment is served on the assessee, *etc.* which contribute to the obscurity cast by the Bill.

Conclusion

The UFIA Bill or impliedly an extended income tax Bill, shall have implications on two segments of Indian tax residents, hitherto unknown to Indian tax authorities–one, who may avail of the limited compliance window of disclosure and pay up taxes and penalties (voluntary declarants) and second, who may not do so (non-declarants). For the second category, the conspicuous implications are harsh, leading to prosecutions. The reasons of existence of second category of tax payers could be as genuine as lack of prohibitive legal enactment at the time of generation of wealth outside India, inability to pay or even protest against infringement of fundamental rights, in some cases. From the daunting content of the Bill, based on recall of earlier trends of voluntary disclosure of income scheme (VDIS) leading to sales tax demands and enforcement directorate (ED) raids, one may not be sure of parallel adverse implications of disclosure *vis-à-vis* other laws, meted by the proposed Indian UFIA Bill. It is worthwhile to watch how the other laws including the Indian exchange control laws are amended in the comings days to cater to the prime objective of diverting the illicit financial flows back into the country.

Since the evil of black money is a testimony of government policy gaps coupled with resonating people mindset, probably it is high time for the government to introspect into those gaps instead of legislations with inherent dampeners for an emerging economy. While punitive provisions like penalties and prosecutions are required in enforcement economic laws, inappropriate trigger points thereof may make the compliances arduous and detrimental. Accordingly, the government may be advised to pronounce a threshold for compliances and applicability penal provisions. Similarly, since the Bill does not currently provide for any specific annual reporting form similar to income tax returns, there could be a possibility of arbitrary usage of materials gathered by the income tax authorities to inflict penal and prosecution consequences on taxpayers. This arbitrary usage of power may be curtailed through appropriate mechanisms of representation and settlement of the matter. To allay the concerns of foreign expats working in India as well as non resident Indians who have recently returned to India, the Bill should provide for exclusion of foreign income and assets from disclosure and taxation while the taxpayers were non-residents in India. For prospective declarants under the limited declaration window, the extent of immunity from other punitive economic laws, like the PMLA, shall be critical.

In conjunction with the above, the taxpayers may be advised to voluntarily disclose complete details of their foreign income and assets under the limited compliance window which is proposed to be notified in due course. In a scenario of expiry of declaration window on genuine grounds of non-performance (health grounds, presence in India, *etc.*), the tax payer may approach the income tax authority to advise on the best approach for compliance. Additionally, the professional advisors to taxpayers ought to ensure that their professional advice is in no way construed as a form of facilitation of false declarations by taxpayers. It must be realised that unless the Bill is treated by taxpayers, professional advisors and the government alike with the correct attitude and mindset, Indian economy cannot be freed from the menace of black money and suffer perpetual underfunding and allied socio-political challenges. ■