



Black Money Act An Overview

ICAI Goregaon CPE Study Circle

30 May 2026

CA Ganesh Rajgopalan

BMA - A Backdrop

- Preamble

*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.*

- Enacted wef 1.7.2015

- One-time Compliance Window (OTCW) [Ch. VI of BMA]

- 30% tax plus 30% penalty and requirement to repatriate back to India
- Window from 1.7.2015 to 30.9.2015

- Exchange of information on request

- Under DTAA, Tax Information Exchange Agreements (TIEA), Mutual Administrative Assistance in Tax Matters Convention
- Information about specific person or business

- Multilateral Competent Authorities Convention

- Common Reporting Standards (CRS) on Automatic Exchange of Information
- India has activated AEOI with 111 jurisdictions
- Currently, only financial information covered; may be extended to non-financial information in future

- CBDT's Nudge Campaign (2025)

- Awareness Campaign for Schedule FA and FSI (2024-25)

Charge of tax under BMA [s. 3]

- AY commencing from 1-4-2016
- Tax @ 30% of **undisclosed foreign income and asset** of the previous year
- Charge on every **assessee** [s. 2(2)]
 - Resident or NR or RNOR who was resident in the PY to which undisclosed FI relates or **undisclosed FA acquired (without giving effect to s. 72(c))**
 - Amended vide FA 2019 wref from 1.7.2015 –earlier only referred to ROR – it left out NR/RNOR who acquired undisclosed FA when they were Residents.
 - Treaty residence relevant?
- Undisclosed FA chargeable to tax on its FMV in PY in which it comes to the notice of AO
 - Similar provision in s. 72(c) –
 - Where any **asset is acquired or made prior to the commencement of BMA**, such asset shall be **deemed to have been acquired or made** in the year in which notice u/s 10 is issued by the AO
 - Even if it was already in the knowledge of Government authorities, other than the JAO [Rashesh Manhar Bhansali [2021] 132 taxmann.com 20 (Mumbai - Trib.)]
- Asset **located outside India**
 - Virtual digital assets (VDA), intangibles, IPRs – *Mobilia sequuntur personam* [CUB Pty Ltd (2016) 71 taxmann.com 315 (Delhi)]

Charge of tax under BMA

- Undisclosed asset [s. 2(11)]
 - Where the assessee has no explanation about the source of investment in such an asset or his explanation is, in the opinion of AO, unsatisfactory
 - Where the source of investment is known (through LRS and reported in BS in ITR, outside s. 2(11) [Srinidhi Karti Chidambaram (2018) 99 taxmann.com 181 (Madras)]
 - Insurance policies premium paid when NR and later by NR father, source of investment explained [Srinjoy Bose (2023) 150 taxmann.com 273 (Kolkata Trib)]
- Undisclosed foreign income [s. 2(12)]
 - Income as defined in ITA; Deemed income provisions in ITA?
 - Chargeability under ITA subject to DTAA provisions
 - At the time income is earned, not when discovered
 - Sources outside India
 - Income from foreign sources [s. 6 of ITA] definition?
 - Income accruing or arising outside India (except income derived by a business controlled in or profession set up in India and which is not income deemed to accrue or arise in India)
 - Tax levied in foreign jurisdictions irrelevant
 - FTC unavailable against BMA levy on undisclosed income- Treaty override? No revenue loss to India as FTC would have been otherwise granted

Valuation [rule 3]

Asset	Value on valuation date (1st April of PY)
Bullion, jewellery or precious stone	Higher of Cost and Open Market price
archaeological collections, drawings, paintings, sculptures or work of art	Higher of Cost and Open Market price
Quoted shares and securities	Higher of Cost and Avg of opening and closing price
Unquoted shares and securities (other than equity share)	Higher of Cost and Open Market price
Unquoted equity shares	Higher of Cost or (FMV of specified assets + Book value of other assets - Liabilities)* Paid-up Value of equity shares/Total Paid-up equity share capital
Immovable property	Higher of Cost and Open Market price
Bank account	Sum of all deposits made since opening of the account or from the date of BM declaration where made; Deposits made from prior withdrawals excluded
Where asset transferred without / for inadequate consideration	Higher of Cost and FMV on the date of its transfer
Where new asset acquired on transfer of another asset or withdrawal from bank account	FMV of old asset or bank account to be reduced by amount of consideration for new asset

Q. 7, Cir 15/2015

Debit	Credit	Bal
	By clearing 10,000	10,000
To clearing 4000 (pur. of 1000 shares of S1)		6000
To clearing 5000 (pur. of 500 bonds of S2)		1000
	By transfer 2500 (sale of 500 shares of S1)	3500
To clearing/transfer 3000 (pur. of 100 shares of S3)		500
	By clearing 50 (interest on bonds)	550
	By transfer 7000 (sale of 500 bonds of S2)	7550
To clearing 4000 (pur. of 400 shares of S4)		3550
	By transfer 3000 (sale of 400 shares of S4)	6550
To credit card 1000 (pyt of credit card bill)		5550
To clearing 500 (pur. from store)		5050
To transfer 1500 (trfer to other bk a/c BA2)		3550
To Bk Charges 10		3540

Asset	Valuation
Value of 500 shares of S1 sold	(higher of 2000 and 2500) - 2500 [amount deposited in the bank account; refer rule 3(3)] = Nil
Value of 500 S1 shares held as on valuation date	Fair market value of 500 shares of S1 as on valuation date i.e. 1-7-2015
Value of 500 bonds of S2 sold	(Higher of 5000 and 7000) - 7000 [amount deposited in bank account; refer rule 3(3)] = Nil
Value of 100 shares of S3 held as on valuation date	Fair market value of 100 shares of S3 as on valuation date i.e. 1-7-2015
Value of 400 shares of S4 sold	(Higher of 4000 and 3000) - 3000 [amount deposited in bank account (new asset); refer rule 3(3)] = 1000
Value [^] of bank account (BA1)	= (10000 + 2500 + 50 + 7000 + 3000) - (4000 + 5000 + 3000 + 4000) acquisition of new asset; refer rule 3(3) - 1500* [transferred to another bank account BA2 (new asset); refer rule 3(3)] = 5050

[^]The reduction from the gross deposits in the bank account is available in respect of those withdrawals which have been made for acquisition of a new asset or deposit in another bank account as that new asset/bank account is being separately declared under Chapter VI of the Act

*The amount of 1500 USD transferred to bank account (BA2) shall be considered (while adding credits) in the valuation of BA2.

Scope provisions [s. 4]

- Total undisclosed foreign income and asset
 - Income from sources located outside India
 - Not disclosed in return filed u/s 139(1), 139(4) or 139(5)
 - No return has been furnished u/s 139(1), 139(4) or 139 (5)
 - Value of an undisclosed asset located outside India
- Reported in updated return u/s 139(8A) or in return u/s 148?
 - Return filed u/s 148 prior to when BMA took effect- subsequent Order of ITSC final- BMA proceedings cannot continue [Arun Mammen (2025) 171 taxmann.com 570 (Madras)]
- Foreign income/asset included in return but taxes not paid
 - Recovery under ITA, not covered under BMA; what if return filed declared invalid u/s 139(9)?
- FA reported in Sch FA but source of investment not disclosed

Scope provisions [s. 4]

- Variation made to income from a source outside India in assessment/ reassessment
 - u/s 29-43C, 57-59 or 92C - not included in total undisclosed foreign income
- Total undisclosed foreign income or asset shall not form part of total income under ITA
 - Converse not provided in ITA –
 - FA/income already assessed under ITA cannot again fall under BMA- no longer undisclosed
 - Double assessment of the same income not justified
 - Assessee disclosed FA/income in revised return filed after search proceedings – BMA s. 4 not attracted [K Mohammad Harris [2023] 147 taxmann.com 370 (Karnataka)]
 - Protective assessment under ITA when assessed under BMA - not permissible [Ashok Kumar Singh (2023) 151 taxmann.com 207 (Delhi Trib)]

Computation [s. 5]

- No deduction in respect of any expenditure or allowance or set off of any loss allowed [s. 5(1)(i)]
 - Conflicts with Scope u/s 4 – **income which is not disclosed in return** under ITA – that is, Net Income after deductions – Additional tax burden disguised as valuation
- Any income-
 - **assessed to tax under ITA for any AY prior** to the AY 2016-17
 - Income assessment under ITA in the same year a BMA not envisaged –
 - Bar u/s. 4(3) for including income assessed under BMA in total income under ITA
 - **assessable or assessed** to tax for any AY from AY 2016-17 under BMA,
 - Income of a prior year cannot be included in value of asset in later year and taxed
 - shall be reduced from the value of undisclosed FA,
 - if, assessee furnishes evidence to the satisfaction of AO that FA was acquired from the income which has been assessed or is assessable - Correlation between income earned and disclosed and asset acquired needed.

Computation [s. 5]

- If immovable property is partly from known sources, value of undisclosed FA proportionate [s. 5(2)]
 - If immovable property acquired for 50 from out of 20 disclosed sources and balance undisclosed, the property comes to the notice of AO in a subsequent year when FV is 100 – Value u/s 5= $100 \times 30/50 = 60$
 - Not extended to other assets
 - If the source of investment is **partially from non-income?** Asset not undisclosed to that extent.

Assessment and time limit [s. 10 & 11]

- Notice to be served [s. 10(1)]
 - No time limit specified for issue of notice
 - CBDT Guidelines 2018 – **preferably** within 30 days of receipt of information by AO; where not so issued, reason to be recorded and approval from Pr DIT/Pr CIT taken
 - Dhruv Lamba (2023) 152 taxmann.com 302 (Delhi)
 - No information available on when AO came to know about FA, date when notice u/s 10(1) was issued (23.3.2020) to be taken; undisclosed FA in AY 2020-21 to be assessed in AY 2020-21 u/s 72(c); assessment in AY 2017-18 without jurisdiction [Elangovan Malarmangai TS-5318-ITAT-2025 (CHNY-O)]
- Time limit for completing assessment [s. 11]
 - Within 2 years from the end of FY in which notice u/s 10 issued.
 - A fresh assessment ordered to be made, within 2 years from the end of FY in which sec 18 order recd by PCIT

Penalty for undisclosed foreign income and asset [s. 41]

- Undisclosed foreign income and asset as computed u/s 10
- Penalty 3 times the tax
- AO 'may direct' - Whether discretionary
 - “reasonable clause” exemption absent
 - Opportunity of being heard [s. 46(2)]
- Quantum mandatory – assessee 'shall pay'

Penalty for not furnishing return of income [s. 42]

- Applies to ROR
- To file return u/s 139(1)
- Who **at any time of the year**
 - **Held** any FA [asset located outside India (incl financial interest in an entity)] as **beneficial owner or otherwise**
 - Owned or controlled
 - Was **beneficiary** of a FA
 - Had any income from a **source outside India**
- Need not be undisclosed FA
- Penalty Rs. 10 lacs
- Relaxation
 - Foreign Asset(s) (other than immovable property) aggregate value not exceeding Rs. 20 lacs
 - Forex conversion at SBI TT buying rate
- Penalty how computed

Penalty for not furnishing information in return of income [s. 43]

- Applies to ROR
- Who has filed return u/s 139(1), 139(4) or 139(5)
- Who **at any time of the year**
 - **Held** any FA [asset located outside India (incl financial interest in an entity)] as **beneficial owner or otherwise**
 - Owned or controlled
 - Was **beneficiary** of a FA
 - Had any income from a **source outside India**
- Need not be undisclosed FA
- Penalty Rs. 10 lacs
- Relaxation
 - Foreign Asset(s) (other than immovable property) aggregate value not exceeding Rs. 20 lacs [wef 1.10.24]; before substitution - Bank account(s) balances not exceeding Rs. 5 lacs.
 - Forex conversion at SBI TT buying rate

Penalties – procedure and limitation

- Procedure [s. 46]
 - Issue of notice mandatory
 - Penalty u/s 43 for non-furnishing particulars of overseas ESOPs not automatic, assessee to be heard on the principle of natural justice [Arnab Mitra TS-6324-ITAT-2024(Mumbai)-O]
 - During pendency of any BMA proceedings wrt penalty for undisclosed FA/FI u/s 41
 - Within 3 years from end of the FY in which default committed wrt penalties u/s 45
 - No time limit prescribed to issue notice for penalties u/s 42, 43 and 44
- Limitation for imposing penalty [s. 47]
 - Penalty cannot be imposed after 1 year from the end of the FY in which penalty notice issued
 - Penalty order may be revised or revived on the basis order by CIT(A), Tribunal, HC or SC – to be passed within 6 months of receiving the appellate order by PCIT/CIT.

Penalty u/s 43 - Case law

- Disclosure in Schedule AL adequate, penalty deleted [Chintan Sanjay Shah TS-7300-ITAT-2024(Mumbai)-O]
- Joint/secondary owner for administrative reasons, FA disclosed by primary owner, penalty deleted [Sanjay Bhupatrai Shah [TS-5287-ITAT-2025(Mumbai)-O]
- FA inadvertently not reported in s.139(1) return; only a small bank balance inherited from father; reported in return filed u/s 153A -to be construed as return u/s 139(1), penalty deleted [Leena Gandhi Tiwari (2022) 136 taxmann.com 409 (Mumb. Trib)]
- FA reported in revised return u/s 139(5) – revised return filed within time available though after summons issued, penalty deleted [Timothy John Brinkman (2025) 173 taxmann.com 66 (Mumbai Trib)]
- FA sourced from LRS transfer from India from tax-paid funds, though source proven, penalty not in respect of source/ ownership but wrt non-disclosure in return; though penalty discretionary, assessee unable to substantiate failure to furnish information bona fide, penalty sustained [Shobha Harish Thawani (2023) 154 taxmann.com 564 (Mum Trib)]

	Immovable property	Bank account 1	Bank account 2	Shares	Relaxation
FY 2021-22		6			Not available
FY 2022-23		5			Available
FY 2023-24	50	5	12	4	Not available
FY 2024-25		4	12	4	Available

Offences - non-furnishing of return/FA info

- **S. 49.** Wilful failure to furnish return in relation to foreign income and asset in due time - Rigorous imprisonment from 6 months to 7 years and fine
 - No prosecution if
 - return filed before the end of the assessment year [Proviso];
 - if no penalty imposed /imposable u/s 43 [CBDT Instruction dt 15.3.22]
- **S. 50.** Wilful failure to furnish information about FI/FA in return u/s 139(1), 139(4) or 139(5) - Rigorous imprisonment from 6 months to 7 years and fine
 - No prosecution if no penalty imposed /imposable u/s 43 [CBDT Instruction dt 15.3.22]
 - For incomplete or inaccurate disclosures?
- Assessment and prosecution, independent proceedings
 - Process of sanctioning prosecution can start even before assessment (u/s 10) [Srinidhi Karti Chidambaram (2018) 99 taxmann.com 181 (Madras)]
 - Where appeal against assessment u/s 10 proceedings to be stayed since prosecution premature [Anil Dhirajlal Ambani (2022) 145 taxmann.com 656 (Bombay)]

Offences - attempt to evade tax [s. 51]

- Wilful evasion of tax, penalty or interest – RI from 3 to 10 years and fine
 - Include cases where any person (similar to s. 276C of ITA)-
 - Has in his possession or control books or other documents containing a false entry/statement
 - Makes or causes to be made any false entry/statement in such books/documents
 - Wilfully omits any relevant entry in books/statements
 - Causes any other circumstances to exist to enable him to evade tax, penalty or interest
 - Scheduled offence under PMLA [s. 88 BMA]
- Wilful evasion of payment of tax/penalty/interest- RI from 3 mths to 3 years

Other provisions

- S. 52 – wilfully making a false statement in any verification or delivering a false account/statement – RI 6 months to 7 years and fine
 - Similar to s. 277 of ITA
- S. 53 – abetting or inducing another person to make or deliver false account/statement/declaration - RI 6 months to 7 years and fine
 - Similar to s. 278 of ITA
 - Prosecution for abetment can continue even where assessee not proceeded against for evading tax
- S. 54 – presumption as to culpable mental state, accused to prove otherwise;
 - Accused to prove a fact beyond reasonable doubt and not merely establish the fact by preponderance of probability

BMA - Retrospective application

- If no declaration made in OTCW, even if asset was made prior to BMA coming into force, it shall be deemed to be an offence under BMA [s. 72(c)]
- Article 20, Constitution

No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
- Smt Dhanashree Ravindra Pandit (2024) 163 taxmann.com 695 (Kar); stayed by SC (2024) 166 taxmann.com 279

..law must actually be in force on the date of commission of offence and not be deemed to be in force..... Article 20 comes under Chapter III of the Constitution of India, a fundamental right. Constitution of India is not a statute. It is the fountain head of all statutes including the special statute (BMA). Therefore, the rigour of any provision of the Act should pass muster of Article 20 of the Constitution...failure (to pass muster) leads to obliteration of the crime against the petitioners.
- “*..in rem forfeiture provision in section 5 of Benami Transactions (Prohibition) Amendment Act, 2016 being punitive in nature can only be applied prospectively, not retrospectively*” [Ganpati Dealcom CA 5783/2022 judgment dated 23.8.2022]
 - 2022 judgment recalled since the question of constitutional validity was not before the Court [Review Petition No 359/2023, order dt 18.10.2024]
- Confiscation is a civil consequence and does not amount to prosecution under the scheme of the Benami Act. Confiscation and prosecution contemplated under the Benami Act operate in distinct spheres and are governed by different procedures. Hence, Article 20(2) of the Constitution is not attracted [Manjula v DA Srinivas CA No.7370/2026, order dt 7.5.2026]

Foreign Asset Disclosure Scheme 2026

- Introduced vide FA 2026, Chapter IV
- Not yet notified.
- Declaration by any person in respect of any foreign asset or income,
 - failure to furnish return u/s 139 of ITA; or
 - failure to disclose such asset/income in the return filed before commencement of the Scheme; or
 - such asset/income has escaped assessment within the meaning of sec. 147 of ITA
- Category 1 –
 - Undisclosed foreign asset /foreign income 30% tax + 30%
 - Aggregate undisclosed FA and FI **not exceeding Rs 1 Cr**
- Category 2 –
 - Flat fee of Rs. 1 lac for
 - a. Foreign asset acquired from **income accruing or arising outside India** when assessee was NR but asset not declared in Schedule FA in ITR after he became Resident.
 - b. Foreign asset acquired from **income offered to tax under ITA 1961**, but asset not declared in Schedule FA in ITR
 - Value of Foreign Asset **not exceeding Rs 5 Cr**

- Tax on FA calculated on its value as at 31.3.2026
- Immunity from penalty /prosecution under BMA
- Does *not* apply to income or assets
 - that represent proceeds of crime under PMLA, 2002 or to assets
 - Relating to assessment year for which assessment under BMA completed.
- Declaration to be considered during assessment
- Finality of completed assessments
- No refund of amounts paid under the Scheme

Category 2 - FA acquired from

- non-income (say, borrowing, capital receipt);
- from not-yet income (ESOPs);
- Income exempt or not taxable (say, DTAA relief)?
- Income deemed to accrue /arise in India – if offered to tax, falls under (b), otherwise under Category 1

Thank you!

Comments invited.
Author's email: ganesh@aprco.in