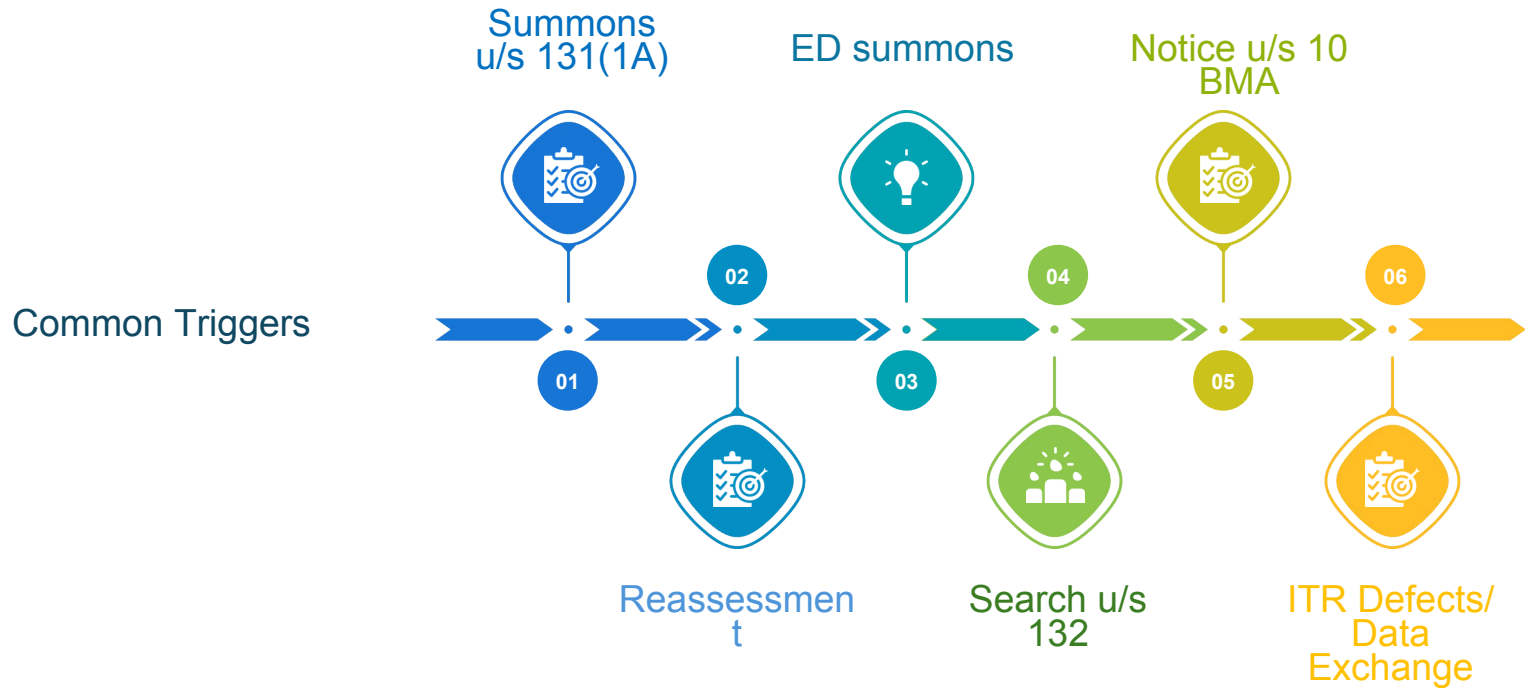


How to handle the matters on Black Money Act 2015 – Broad guidelines

CA Virat Atul Bhavsar
Virtu TaxEdge

Proceedings under the Black Money Act – Common Triggers and Initiation Framework



- 1) Mr. A is a UK citizen and presently holding US Citizenship. He is residing in US along with his parents last more than 2 decades. He finished studies and started working in US. For the period 2012- 2014 he was in India and helping his grand father's business due to medical conditions. Mr. A is holding OCI card. He went to UAE in the year 2014 and worked till 2015 and shifted back to US in the year 2016.
- 2) For all the years, he has been filing Tax returns in overseas countries. For the period while he was in India (2012-2014) he did not have any income in India and therefore, did not file ITR in India. During the said period, however, he used to provide consultancy to clients based in USA and getting management consultancy income in US bank accounts. Apart from this, he was also earning dividend, capital gains and interest income from his US portfolios during 2012-14. Mr. A has offered these income in US and paid taxes.
- 3) Mr. A married to Natasha, who is an Indian Citizen. In the year 2019, she was detected with serious medical issue and for the purpose of her treatment, she located to India. Her parents also used to take care of her. Mr. A used to visit India to take care of her. Mr. A stayed in India as follow
 - FY 2019-20 140 days
 - FY 2020-21 160 days
 - FY 2021-22 175 days
 - FY 2022-23 80 days
 - FY 2023-24 100 days

Questions to be considered

- 1) Whether Mr. A has any Tax Exposure in India?
- 2) The JCIT, CC-1 , Pune issued summons u/s 131(1A) of the ITA 1961 to Mr. A. whether the action is as per law?
- 3) The JCIT, CC-1, Pune also issued notice u/s 10(1) of the BM Act 2015 for the purpose of assessing undisclosed foreign income and assets which may be taxable in India as per BM Act 2015. Whether the action is as per law?
- 4) The JAO based on the said information proposes to issue notice u/s 148A/147 of the ITA. Please advice the client.
- 5) Whether ED can summons Mr. A for the purpose of violating the provisions of FEMA in India?
- 6) ED also wants to summons Mr. A in view of the Money Laundering Act. Whether the action of ED is as per law?

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FAST-DR 2026 – Resolution Window

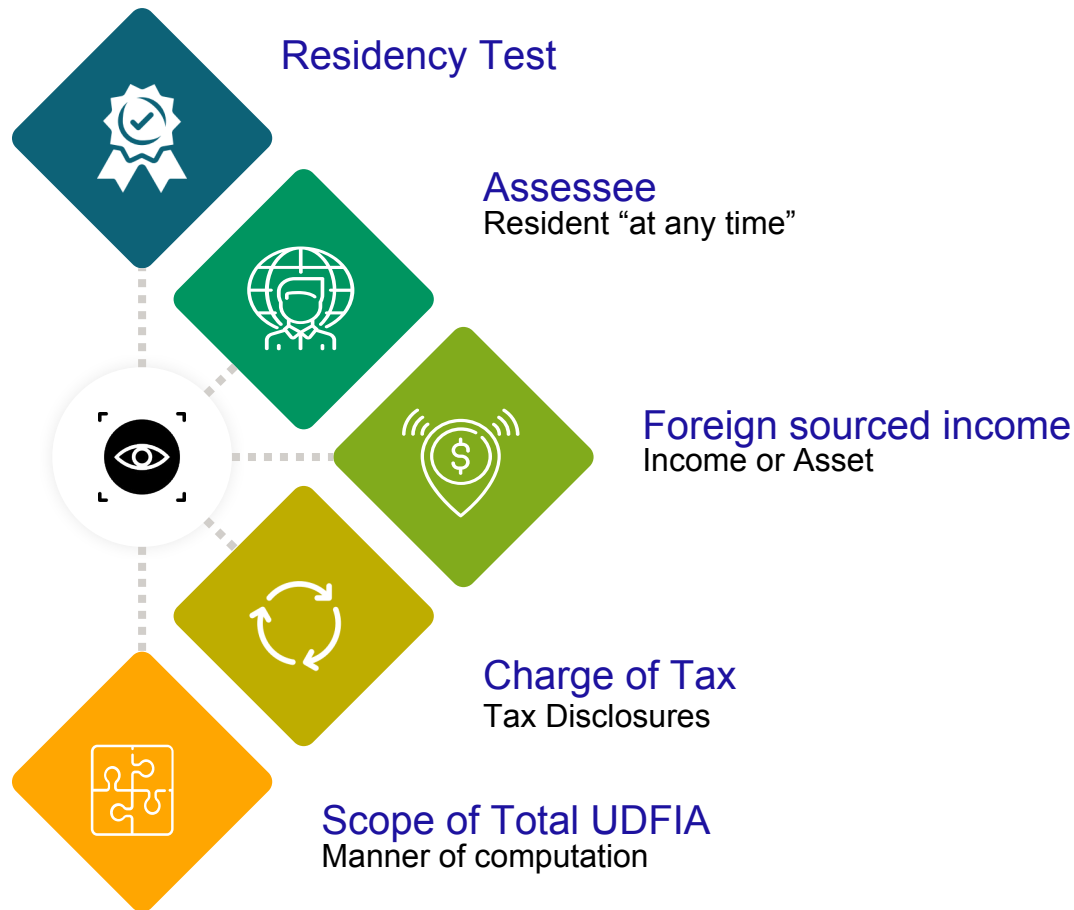
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Open questions

Overview of BM Act 2015

BM Act 2015

Key Considerations



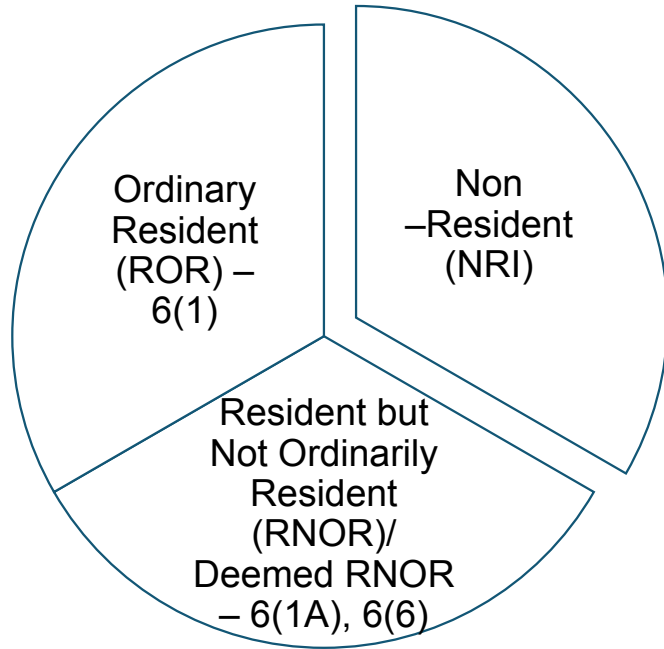
Preamble to the BM Act 2015

- An Act to make provisions to deal with:
 - The problem of Black money that is “*Undisclosed foreign income and asset*”
 - The procedure for dealing with such income and asset , and
 - To provide for imposition of tax any undisclosed foreign income and asset *held outside India , and*
 - The matters connected therewith or incidental thereto

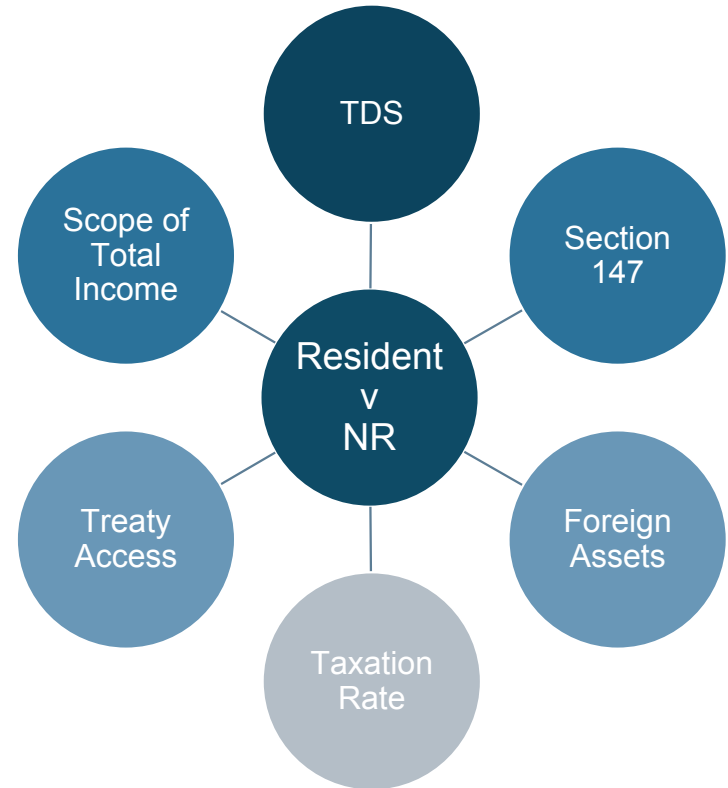
»» Taxation of Black Money – Supremacy of BMA over ITA?

- »» Domestic undisclosed Income /Assets
 - › Section 68 to 69D of the ITA
 - › Taxation at flat rate of 60% /30% plus higher surcharge (25%) & cess (4%) and additional penalty @ 10% of tax – As per 115BBE
 - › Immunity from penalty and prosecution (as per 270AA/ 271AAC)
- »» Overseas Undisclosed Income/Assets
 - › Whether the existing provision of the ITA to apply?
- »» An enactment came into force with effect from AY 16-17

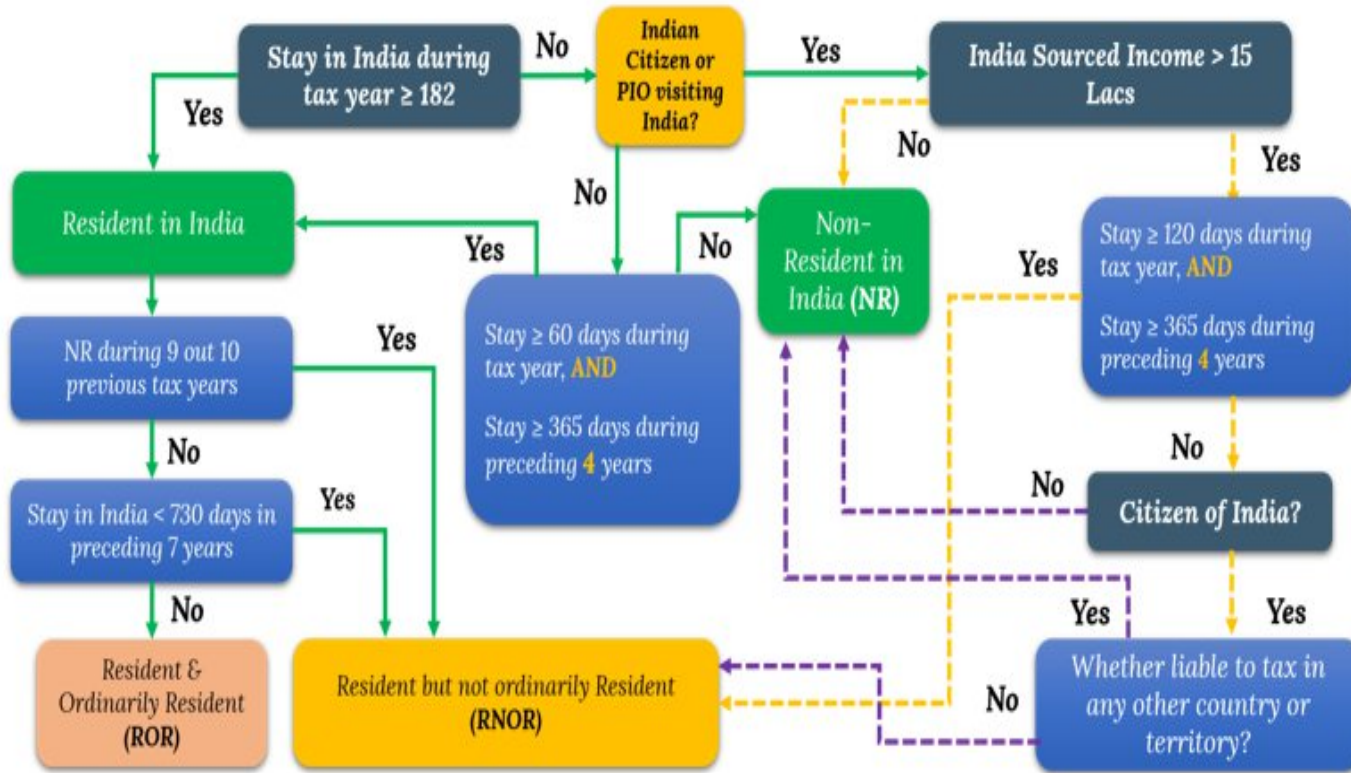
Why "Residency" is important ?



Section 2(30)	Section 2(42)	Section 9A	Section 115C
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Residential Status flow chart



*60 days to be replace: -

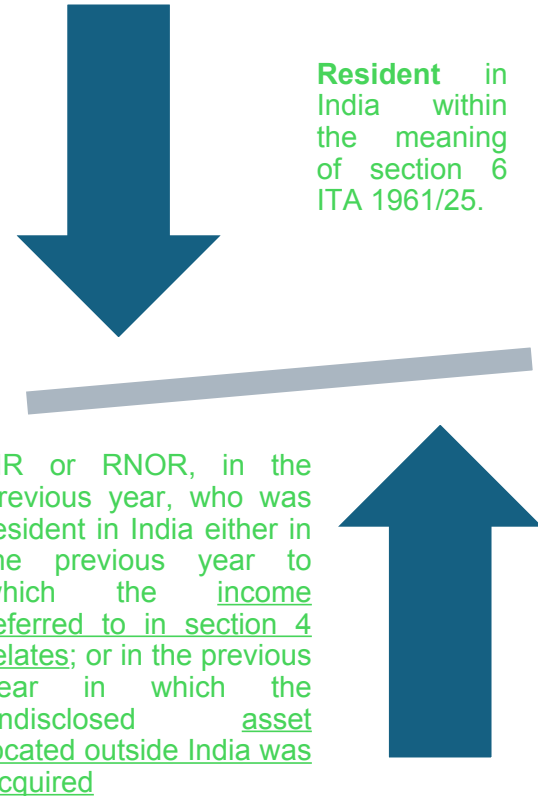
- with 182 days for the year in which person left for employment outside India and
- with 182 days in case of Indian Citizen / PIO visits India in Tax year

Citizenship and Residential Status

- » Whether the benefit of the extended stay (182 days) is available to the citizen of other countries holding OCI card in India?
 - › As per the Citizenship Act 1955 and an Indian Constitution, OCI cardholders are at par with Indian Citizen with some exception. (which mainly debars voting rights in India). For all economical and financial purpose, they have parity with Non-Resident.
 - › The Indian Citizenship Act 1955 provides an option to obtain the Indian Citizenship after fulfilment of certain conditions.
- » Non-Discrimination clause – Article 26 of DTAA
 - › Prohibits Contracting States from denying tax benefits or imposing additional burdens solely **based on nationality**. Ensures nationals of one Contracting State are treated equitably in the other Contracting State under similar conditions.
 - › Citizenship v Nationality
 - › It is a settled law that residential status shall be determined basis Section 6 and not based on citizenship of any country.
 - › ACIT v Sudhir Choudhrie [2017] 88 taxmann.com 570 (Delhi ITAT)/ CIT v Suresh Nanda [2013] 35 taxmann.com 199 (Delhi HC) / K. Sambasiva Rao v ITO [2014] 42 taxmann.com 115 (Hyderabad ITAT)

“Assessee” under the BMA

- Retrospective amendment in the law by the FA 2019 w.r.e.f 01.04.2016
 - Constitutionally validity
- **“Resident”** in India
 - No explicate provision for determination of “Residency Test” under BMA
 - Dual Resident –Article 4 of Country specific DTAA and section 6
- Foreign Company having **POEM in India** shall be tax resident in India.
 - Become liable to tax under BMA
- Section 72(c) **creates deeming fictions**
 - Year of acquisition or year of assessment? - No clarity



2(11) - “undisclosed asset located outside India”

Undisclosed asset located outside India means an asset held by the Assessee in his name or in respect of which he is the beneficial owner and he has no explanation about the source of investment in such asset or the explanation given by him to the Assessing Office is not satisfactory .

2(11) - “undisclosed asset located outside India”

- » Any “**Asset**” located **outside India**
 - » Tangible/ Intangible Asset + Capital Asset / Current Asset
- » Asset **held** by the Assessee
 - » Beneficial ownership v symbolic ownership
 - » Beneficiary of Trust / Joint- holder / Benami overseas Investment
 - » FAQ no. 31 Of CBDT Circular No. 13 of 2015 dt. 06-07-15 + Section 139 of the ITA
 - » Whether the physical existence of a “foreign asset” is mandatory?
 - » Asset disposed of prior to BMA came into force/ prior to detection by ITD?
 - » Rashesh Bhansali v ACIT [2021] 132 taxmann.com 20 (Mumbai ITAT)
- » To substantiate the **source of asset**
 - » **Akhilesh Singh (TS-620-ITAT-2024(Kol))** - Nature and source of credit to be explained , BMA not applicable

Charge of tax – section 3 of the BMA

1) There shall be **charged on every assessee** for every **assessment year commencing on or after the 1st day of April, 2016**, subject to the provisions of this Act, a tax in respect of his total undisclosed foreign income and asset of the **previous year at the rate of thirty per cent. of such undisclosed income and asset:**

Provided 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.**

(2) For the purposes of this section, “value of an undisclosed asset” means the fair market value of an asset (including financial interest in any entity) determined in such manner as may be prescribed.

- Unless a person is an “Assessee” BMA does not apply.
- The terms “PY” is defined in 2(9) of the BMA
 - The principle of ITA to apply
- The law is applicable with effect from AY 2016-17
 - CBDT Notification No. 56/2015 dt. 01.07.2015
- Basis of charge
 - Undisclosed income in the year of “accrual”
 - Judicial precedent - Guj HC/ SC
 - Undisclosed Asset to be charged to tax in year of detection
- Principles of ITA embodied under BMA

Scope of total UDFIA- section 4 of BMA

If the ITR is filed but the Assessee failed to disclose / offer any income from a **source located outside India** u/s 139(1)/139(4)/139(5) of the ITA

- Source of Receipt v Source of Income
- Exemption / Relaxation as per DTAA
 - Liable to Tax in “other contracting jurisdiction” (FTS/ Royalty etc.)
 - Liable to Tax – UAE Corporate Tax
 - Taxation of “Payment basis” (Interest on ECB)
- Income wrongly shown as exempt income in ITR
- Taxation of a fiscally transparent entity income in India (US)
- Income disclosed in the ITR filed u/s 153A/153C/ 148
- Consequences of ITR treated as defective u/s 139(9) – Updated ITR 139(8A) / FAST-DR

Scope of total UDFIA- section 4 of BMA

» Scope of total UDFIA

- » If an Assessee **failed to furnish his ITR** within the stipulated time frame u/s 139
 - » Fourth proviso to 139(1) mandate for filing ITR if any taxpayer is holding any foreign asset or interest therein
 - » If the foreign income is < taxable limit
 - » If foreign income is not liable to tax in India as per DTAA
 - » What if there is losses from foreign sources ?
 - » Set-off of losses and foreign income (aggregation Rule u/s 70 & 71 of the ITA)
- » **“value”** of an undisclosed asset located outside India determined as per Rule 3
 - » Separate mechanism for quantification of Income
 - » If income is offered u/s 68-69D in the ITR and paid tax as per 115BBE

Exclusion from scope of total UDFIA

- » Any “variation” made during course of assessment proceeding u/s 29 to 43C (Business Income) or section 57 to 59 (IFOS) of the ITA
 - » Any adjustment on account of Income assessable u/s 22 – House Property or Income assessable u/s 16 – Salary or Capital Gain Income u/s 45- whether assessed under BMA or ITA?
- » Transfer pricing adjustments u/s 92C
- » Income included under BMA not to be assessed again under the ITA
 - » No double taxation
 - » Supremacy of BMA over ITA?
 - › No clarity of the law leading to serious disputes
 - › FAQs / language of law v legislative intent
- » Tax Credit as per DTAA and BMA
 - » Section 90 operates with limitations (Section 84 of BMA)
 - » Foreign Tax Credit

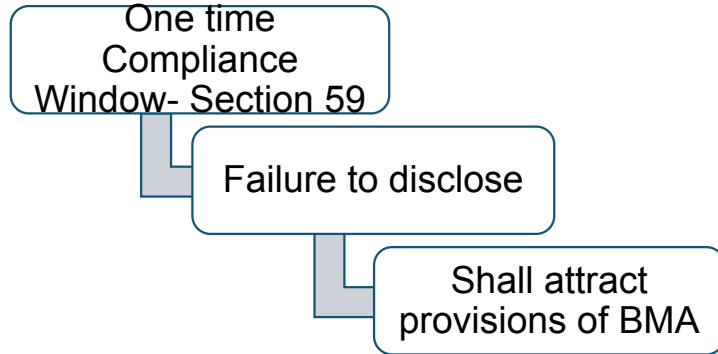
Computation of total UDFIA – section 5 of the BMA

- » **No deduction of any expenditure or allowance of any set-off of losses shall be allowed**
 - » Foreign Commission Income of US\$100K, Travelling and Commissions paid overseas US\$ 30K – How to compute the UDFIA?
 - » Rebate u/s 87A and section 5 of the BMA
 - » Deductions u/s 54F/ 54EC and section 5 of BMA
 - » Foreign securities (Capital Gain Income) – Net gain US\$ 500K (Gain US\$ 750K and loss of US\$ 250K)
 - » Whether losses /expenses are allowable under the ITA against other income?
 - » No reopening of the assessment under the ITA?
 - » Implication of section 80 – loss ITRs
 - » Deductions under chapter VI-A *Telescoping is allowed*
- » **Income already assessed under the ITA prior to 2016**
 - » Incomer which is assessed/ assessable under the BMA
 - » In case of an undisclosed Immovable property; proportionate valuation to be allowed as deduction

Key judicial decisions on BM Act 2015

- » BM Act 2015 is applicable with effect from AY 2016-17
 - » Union of India v Gautam Khaitan [2019] 110 taxmann.com 272 (SC)
- » Undisclosed Foreign income would be subject to tax under BMA only for every AY commencing on or after 01.04.2016 i.e. AY 2016-17. Any foreign income accruing prior to BM Act came into force, the same therefore, cannot be assessed under the BM Act 2015.
 - » PCIT v ITSC [2019] 111 Taxmann 176 (Gujarat HC)
 - » Akhilesh Singh (TS-620-ITAT-2024(Kol))
 - » JCIT v Vikash Marda BMA No. 4 to 12/KOL/2024 (Kolkata ITAT)
- » Where income is already subjected to or charged or assessed under the Income Tax Act, 1961, the same cannot be brought under the purview of the BM Act
 - » Sri Srinjoy Bose v ADIT [2023] 150 taxmann.com 273 (Kolkata ITAT)

One-time window under BMA



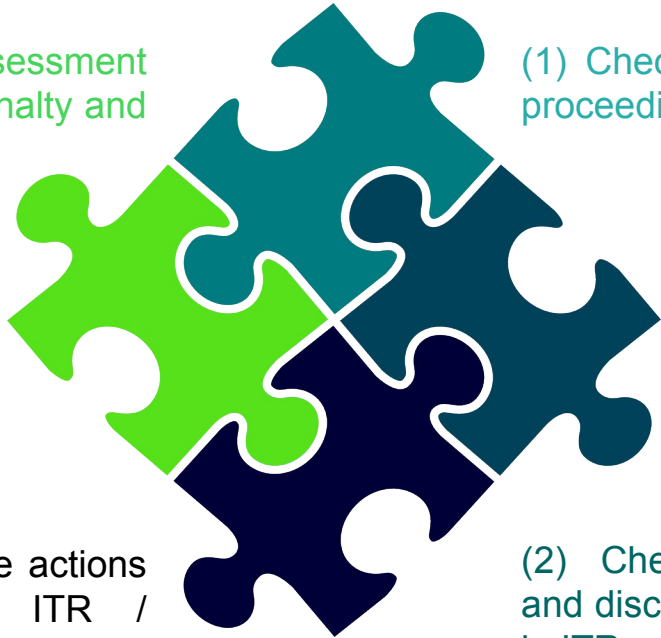
Benefits of Declaration – Section 62-67 of BMA

- Income disclosed by the Assessee shall not be included in total income and therefore there will not be double taxation.
- Voluntary Disclosure will not affect the finality of completed assessments.
- Declaration is not admissible in evidence against the declarant in any penalty or prosecution proceedings under the Income Tax Act and the Wealth- tax Act.
- The value of asset declared in the declaration shall not be chargeable to Wealth Tax for any assessment year or years.

“Asset” deemed to have been acquired in the year in which notice u/s 10 (Assessment) is issued

Key considerations to be examined

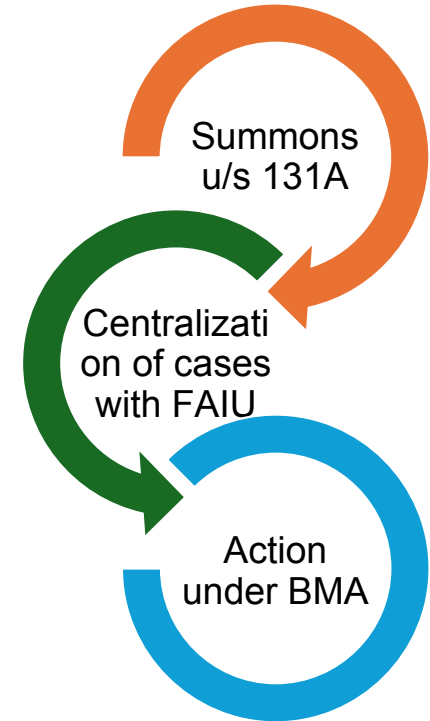
(4) Assessment strategy / Penalty and Prosecution ringfencing



(3) Corrective actions
– Updated ITR / Onetime window

(1) Check the nature proceeding initiated

(2) Check the ITR and disclosures made in ITR



Step by step analysis resolutions

- » Determine FYs in which Mr. A was ROR in India.
 - » FY 2012-13 and FY 2013-14 he was in India.
 - » As per US tax laws, US Citizen is liable to tax on global income.
 - » Visit to India?
 - » India US DTAA or India – UK DTAA – Article 4
 - » FY 2019-20 till date.
- » Determine the “Total Income” chargeable to tax in India.
 - » FY 2021-12-13 to 2013-14
 - » US Passive Income
 - » Professional Income
 - » Section 5 – Income deemed to accrue in India / form profession managed from India
 - » India US DTAA
- » Year wise applicability of BMA – scope of UDFIA
 - » Source of Income

Litigation strategy

- »» Summons issued by Income Tax / ED
 - » Before responding to the summons, one should assess complete tax exposures of Mr. A in India.
 - › Determine year wise implication both under ITA and BMA
 - » Taking corrective steps to safeguard from Penal and Prosecutions actions
 - › Voluntary admissions etc.
- »» Notice u/s 10 of BMA
 - » Legal objections based on factual analysis of the case
 - » Assessing the Tax under ITA , if any
- »» Search actions under the ITA
 - » Critical analysis of data and provisions required
 - » Legal objections
- »» Money Laundering
 - » BMA is part of schedule offence

Foreign Assets of Small Tax Payers Disclosure Scheme 2026 (FAST DR 2026)

- » Applicable to all “person”
 - » Who failed to “pay tax” on foreign Income or
 - » Who failed to “disclose” foreign assets in ITR
- » Resolution mechanisms
 - » Undisclosed foreign Income / Asset
 - › 30% of Value as on 31.03.2026
 - › 30% of Foreign escaped income
 - › 100% of the tax paid (penalty) = 30%
 - › Aggregate value is < 1 crore
 - » Non-disclosure of foreign assets
 - › Aggregate value < 5 crores
 - › Amount payable - 1 lac

Open questions

Let's discuss



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