BEYOND THE TAX BOOK

Disclosure of foreign assets in I-T returns

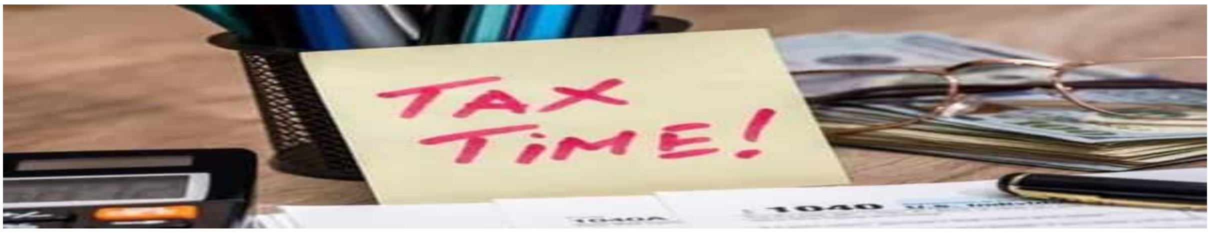

Photo: iStock4 min read . Updated: 25 Jul 2022, 10:18 PM IST**Gautam Nayak**

- Foreign assets acquired after 31 Dec 2021 are to be disclosed in the returns for FY2022-23

Just computing your taxable income and income tax payable, and paying the correct amount of your income tax liability is not the end of your income tax obligations. You also need to ensure that your return of income is properly filled up and filed on time. One of the crucial aspects of the income tax return that you need to pay attention to is Schedule FA, the disclosures relating to foreign assets.

This schedule is to be filled in by all persons who are resident and ordinarily resident in India during the year. It is not required to be filled in by non-residents or by persons who are resident and not ordinarily resident in India during the year.

Typically, the persons who would need to make disclosures under this schedule would be persons who have invested abroad or acquired assets using the Liberalised Remittance Facility, employees who have been granted and have exercised stock options and been allotted shares of foreign companies, NRIs who have returned to India and have retained assets abroad, as well as expatriates who have been in India for more than two years and have therefore become resident and ordinarily resident in India.

The objective of this schedule is to compare the information received from the US and other jurisdictions under FATCA and Common Reporting Standard (CRS), which provide details to the Indian tax authorities about persons with an Indian connection having financial and other assets in those jurisdictions.

It is possible that you may have acquired the foreign assets through an Indian intermediary. For instance, you may have acquired shares of foreign companies through a transaction facilitated by your local bank, or you may have acquired crypto-currencies online.

The shares of a foreign company, or units of a foreign mutual fund are regarded as foreign assets, irrespective of from whom they are purchased. Crypto-currencies stored in a foreign crypto-wallet would also be regarded as foreign assets. However, if you hold shares of an Indian mutual fund, which has invested in shares of foreign companies or overseas exchange traded funds, the units that you hold, being in an Indian fund, would be regarded as domestic assets, and not foreign assets.

One point to note is that you are also required to state the country in which the asset is held. That may not necessarily be the same country in which the asset was acquired. For instance, if you hold shares of a US company acquired on the Singapore Stock Exchange, the country in which the asset is held would have to be disclosed as USA, and not Singapore. This is because it is the US company which would report the fact of having an Indian shareholder under FATCA.

An interesting aspect is that the disclosure of the foreign assets has to be vis-à-vis the preceding calendar year. Therefore, if you have acquired a foreign asset after 31 December 2021, that is not required to be disclosed in the return of income that you file for the financial year 2021-22, but in the following year’s tax return. Again, this requirement stems from the fact that the reporting under both FATCA and CRS is made on the basis of the calendar year, and not the Indian year of taxation from April to March. Therefore, this will facilitate comparison by the Indian tax authorities of the information received under FATCA/CRS with the information provided in the income tax return.

The language used in the schedule is a bit confusing. There is a reference to depository accounts and custodial accounts. Depository Account does not mean demat accounts in a depository, but deposits with a financial institution. These terms are the same as those used under FATCA/CRS, basically referring to deposits held by financial institutions and financial assets held by a depository/portfolio manager for clients, respectively.

Another aspect to be kept in mind is that in case of foreign retirement accounts, where the income is taxable in the foreign country on retirement, while one may opt to pay tax in India also on withdrawal, yet the foreign retirement account balances as well as income earned during the calendar year need to be disclosed in the Schedule FA.

Great care needs to be exercised in filling up Schedule FA, as summons are being sent by the tax authorities to verify whether foreign assets, details of which are received by them under FATCA/CRS, have been disclosed by the taxpayer or not. Failure to disclose a foreign asset can attract a penalty of as much as ₹10 lakh, under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, though the foreign asset may have been acquired out of disclosed income.

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