

## How to disclose foreign stocks in your I-T returns



In most cases, physical share certificates are not issued in your name, and the stocks are held by the broker or portfolio manager in street names.

4 min read. Updated: 28 Jul 2022, 12:08 AM IST **Gautam Nayak**

- Resident Indian taxpayers holding foreign stocks have to make various disclosures in the Foreign Assets (FA) schedule of the income-tax returns, with severe consequences for failure in making such disclosure

any resident Indian investors have in recent years invested in foreign stocks, particularly US stocks. The taxation of income from such stocks is different from that for Indian shares. Resident Indian taxpayers holding foreign stocks have to make various disclosures in the Foreign Assets (FA) schedule of the income-tax returns, with severe consequences for failure in making such disclosure. Some of the issues involved in disclosure of foreign stocks are discussed below.

Very often, employees are granted stock options (ESOPs) of the overseas parent company which vest over a period of time, can then be exercised, and are then held in the form of stocks. Are ESOPs required to be disclosed as foreign assets if they are not vested, or have vested but have not been exercised? Till such time as they are exercised, no amounts are paid towards ESOPs. Even the perquisite value is computed only after the exercise. ESOPs are considered contingent assets till the time of vesting. They are not equity until such time as exercised. Therefore, it is advisable to show vested ESOPs under Part B of Schedule FA as Financial Interest in any Entity Held at nil value.

If you are a resident in India holding US stocks through a broker or portfolio manager, where should the stocks be disclosed in Schedule FA – in Part A3 as Foreign Equity Interest held, or in Part A2 as Foreign Custodial Accounts held? In most cases, physical share certificates are not issued in your name, and the stocks are held by the broker or portfolio manager in street names, i.e. they are held in the name of the broker or portfolio manager, which issues an account statement of the stocks that they hold on your behalf. Such stocks are not registered in your name with the company, and therefore should be disclosed as Custodial Account held in Part A2, and not Equity Interest held.

In such cases, an investor would generally be holding multiple shares in the same broking account or portfolio. What one needs to therefore disclose is the broking or portfolio account in aggregate, with peak balance etc. of the entire portfolio. At times, providing peak balance (the maximum account balance during a particular period) may be a challenge, unless the broker or portfolio manager provides it. Alternatively, one may take the peak balance as the highest closing monthly balance as per monthly statements provided. In case the broking or portfolio accounts are in joint names, do both joint holders need to disclose the same balances, though one name may have been added only for convenience and all the assets belong only to the first holder? Perhaps it may

suffice if the joint holder, who does not really own the foreign assets for tax purposes, discloses such custodial account in Part E of Schedule FA, Accounts in Which You Have Signing Authority Held. To err on the safer side, it may be advisable to disclose the Custodial Account in the Schedule FA of both joint holders. The reporting financial institution would also normally disclose both the joint holders in its FATCA/CRS filing, and such disclosure by both joint holders would facilitate verification of the data received by the tax authorities.

At times, you may have invested in a fund, which may be structured as a trust or an LLC (limited liability company). What is the appropriate disclosure for investments in such a fund – as equity interest – Part A3 (in case of an LLC), as beneficiary of a trust – Part F (in case of a trust structure), or Financial Interest in any Entity Held – Part B? In an investment fund, you are really not aware of who the other investors are as required to be disclosed if you are the beneficiary of a trust. In the LLC, you are really investing in a fund, rather than as an equity interest holder. Therefore, the appropriate disclosure would be as Financial Interest in any Entity Held – Part B.

These and many other issues do crop up when you are filling up Schedule FA. In the absence of any detailed practical guidance provided by the tax authorities in this regard, one has to try and understand the logic, and fill in the Schedule FA to the best of one's understanding to ensure that the foreign investments are all disclosed. So long as you have ultimately disclosed the asset in some part of Schedule FA which is a possible manner of disclosure, you cannot be penalized for failing to make a disclosure or making a wrong disclosure of foreign assets.

*Gautam Nayak is partner, CNK & Associates LLP.*