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Dear Sir,

**Sub: Reporting requirements for Resident Individuals
in relation to Foreign Assets**

The Government has obtained several details from foreign countries regarding foreign bank accounts held by Indian citizens. The tax department has initiated proceedings against several such citizens who are tax residents of India.

To make mandatory the disclosures regarding foreign assets, the Government has amended the necessary provisions and forms. We have mentioned below the specific requirements for the same.

1. Details to be reported:

1.1 As per Finance Bill 2012, resident individuals and HUFs having foreign assets need to report details of such foreign assets. The CBDT has revised the forms applicable to Individuals and HUFs to include information regarding foreign assets. Details are required specifically for:

- a. Foreign bank accounts;
- b. Signing authority in any bank account (even if the person does not own the funds / assets in the account);
- c. Financial interest in any entity;
- d. Immovable properties; and
- e. Any other asset.

1.2 Each of the above disclosure requires further information like details of the bank; name mentioned in the account; peak balance during the year; address of the property; country in which the asset is situated; and nature of other foreign assets; etc. An extract of the modified form is enclosed.

2. Filing to be done even if income not taxable:

2.1 It should be noted that a return for foreign assets has to be filed even if the person does not have taxable income and normally does not have to file a return of income. Along with the reporting of foreign assets, income will also have to be reported even though it may be below taxable limits.

2.2 Further, persons who come to India after being non-residents for 9 years or more, are considered as Not Ordinarily Resident (NOR). Such persons are not taxable on foreign incomes as long as they are NOR. Now even if the **NOR does not have taxable income in India**, but has foreign assets, he will have to file his return of foreign assets.

2.3 This can have serious implications. Many **expatriates** come to India for short assignments of 2-3 years. Such people are generally NOR for 2 years. (In some cases, this status may be available for 3 years.) They will have to file the return for their Indian income. However they will also have to disclose their foreign assets (even though their foreign incomes will not be taxable). Perhaps this was not the intention of the Government.

3. **Entities covered:**

3.1 **Foreign Trusts:**

If a person has a **financial interest** in any entity, then also he is required to file a return. Thus if a beneficiary has an interest in a specific foreign trust, he has to file a return. In a discretionary trust, a beneficiary only has a possibility of receiving something from the trust if the trustees distribute anything to him. And these trust deeds are so drafted, that one cannot say that the assessee has any interest in the trust. Properly drafted trust deeds will not be exposed by the above amendment. However, such beneficiaries are likely to face difficulties under sections 56 & 68 to 69D. In short, whenever the distribution is received from a trust, etc. it will be deemed to be taxable income.

3.2 **Other entities:**

Investment in any entity by an Indian resident is to be disclosed. Therefore, apart from trusts, investment in Dutch Cooperatives, Foreign Partnerships, Foreign LLCs, Foreign LLPs, Offshore private annuities, etc. will now have to be disclosed.

4. **Reopening of assessments:**

Through the recent budget, the Government has made provisions to enable reopening of assessments for a period of **18** financial years instead of the usual 8 years, in cases where information regarding foreign assets is found. Further details regarding reopening of assessments is provided in our budget note which will be shortly sent to you separately.

5. Consequences of not disclosing the foreign assets:

If foreign assets are not disclosed, it will be considered as income having “escaped assessment”. A notice can be issued for upto 18 years. (see para 4 above.)

6. Return not be filed:

In the following situations, we believe the return for disclosing foreign assets does not have to be filed.

6.1 A nominee in the foreign account (as the person would not be the owner of the foreign account, nor would he have any signing authority).

6.2 A joint account holder (provided the person does not have any signing authority).

6.3 A protector of a trust if the appointment has been made appropriately.

7. Information to be maintained:

With the above amendments, it is necessary for every Indian resident to maintain full details regarding their foreign assets. Apart from the details required as per the form, it would be better to maintain:

7.1 Documents in relation to any major transactions undertaken through foreign bank accounts;

7.2 Documents establishing source of funds used for acquisition/investment in foreign assets;

7.3 Reasons for having signing authority in any account wherein funds / assets do not belong to you;

7.4 Details regarding incomes earned from such assets even if not taxable; and

7.5 Details of foreign trusts in which you are a beneficiary.

While the details listed in paragraph 7 above do not have to be filed with the return, it is advisable to keep them ready.

There is a high chance that such cases may be taken up for scrutiny. It is the experience of some assesseees that Income-tax department

perceives discretionary trusts in tax havens as instruments of black money. To remove this foregone conclusion, it will be necessary to maintain detailed evidence to prove that such foreign assets or interest in foreign entity is not black money.

Please let us know in case any clarification is required in this regard.

Yours sincerely,

Rutvik Sanghvi.

Enclosure: Extract of Modified Return filing form

Schedule FA		Details of Foreign Assets			
A Details of Foreign Bank Accounts					
Sl No	Country Name	Country Code	Name and Address of the Bank	Name mentioned in the account	Peak Balance During the Year (in rupees)
(1)	(2)	(3)	(4)	(5)	(6)
i					
ii					
B Details of Financial Interest in any Entity					
Sl No	Country Name (1)	Country Code (2)	Nature of entity (3)	Name and Address of the Entity (4)	Total Investment (at cost) (in rupees) (5)
(i)					
(ii)					
C Details of Immovable Property					
Sl No (1)	Country Name (2)	Country Code (3)	Address of the Property (4)	Total Investment (at cost) (in rupees) (5)	
(i)					
(ii)					
D Details of any other Asset					
Sl No (1)	Country Name (2)	Country Code (3)	Nature of Asset (4)	Total Investment (at cost) (in rupees) (5)	
(i)					
(ii)					
E Details of account(s) in which you have signing authority and which has not been included in A to D above.					
Sl No (1)	Name of the Institution in which the account is held (2)	Address of the Institution (3)	Name mentioned in the account (4)	Peak Balance/Investment during the year (in rupees) (5)	
(i)					
(ii)					