



My Dear Friend

*I am presenting **Thursday Article on Undisclosed Foreign Income and Asset (UFIA) under Black Money Act (BMA) 2015 in India***

- 1. Any kind of non-compliance is attracting **Financial Penalty + imprisonment (both)**.*
 - 2. It's humbly suggested to stop non-compliance against furnishing of legal documents + correct informations (both).*
 - 3. I trust that you will be enriched by reading this article*
- ***With best wishes from CA Satish Agarwal, New Delhi*** ●



Undisclosed Foreign Income and Asset (UFIA) under Black Money Act, 2015

INDEX		
S.NO	Topic	Page No.
1.	<i>Introduction on Black Money Act (BMA) 2015 in India</i>	3
2.	<i>7 Chapter + 88 Section under BMA, 2015 in India</i>	3
3.	<i>Meaning of UFIA under BMA, 2015 in India</i>	4
4.	<i>Meaning of Financial interest outside India</i>	4
5.	<i>Special features of BMA, 2015 in India</i>	4 & 5
6.	<i>Applicability of BMA, 2015 in India</i>	5 & 6
7.	<i>Non Applicability of BMA, 2015 in India</i>	6 & 7
8.	<i>Chargeability of Income Tax under BMA, 2015 [Section 3(1)] in India</i>	7
9.	<i>Allowability of Expenditures + Set off the losses [Section 5] in India</i>	8
10.	<i>Disclosure of UFIA under Foreign Asset (FA) schedule in ITR in India</i>	8
11.	<i>Comparison between BMA, 2015 and ITA, 1961 in India</i>	8 & 9
12.	<i>Imprisonment + Financial Penalty for UFIA under BMA, 2015 in India</i>	9 & 10
13.	<i>Source of information's for UFIA under BMA, 2015 in India</i>	10 & 11
14.	<i>Assessment procedures for UFIA under BMA, 2015 in India [Chapter III]</i>	11 & 12
15.	<i>Recovery of Tax under BMA, 2015 in India</i>	12 & 14
<i>Profile of Publisher on Undisclosed Foreign Income and Asset under Black Money Act, 2015</i>		15



Undisclosed Foreign Income and Asset (UFIA) under Black Money Act, 2015

1. Introduction on Black Money Act (BMA) 2015 in India

- (i) Govt. of India has introduced the BMA, 2015 in addition to existing Income Tax Act (ITA) 1961 to punish the ordinary resident of India (taxpayer) for having undisclosed foreign income and asset (UFIA) outside India as earned through illegitimate activity as resulting to loss of Income tax (revenue) to Govt. of India (Govt.)*
- (ii) Govt. has introduced the BMA, 2015 to prevent the illegitimate UFIA as kept outside India + to use for social + economic + strategic interest + national security of people of India.*
- (iii) Govt. has introduced the BMA, 2015 to expand the scope + coverage of Act to include the taxpayer as taking the shelter under ITA 1961 up to June 30th 2015 as provisions of ITA 1961 were not specific like BMA, 2015*

2. 7 Chapter + 88 Section under BMA, 2015 in India

- (i) Preliminary provisions*
- (ii) Basic of charge provisions*
- (iii) Tax Management provisions*
- (iv) Penalties provisions*
- (v) Offences and Prosecution provisions*
- (vi) One Time Disclosure window provisions*
- (vii) General provisions*



3. **Meaning of UFIA under BMA, 2015 in India**

(i) (a) **Any asset + financial interest (both) in entity as located outside India + hold by taxpayer in own name + in other's name where taxpayer is beneficial owner.**

+

(b) **Taxpayer has no explanation against source of investment in asset or explanation as given to Assessing Officer (AO) is unsatisfactory.**

(ii) **UFIA is undisclosed income of taxpayer from source as located outside India + undisclosed asset also located at outside India (both).**

4. **Meaning of Financial interest outside India**

(i) **Where taxpayer is owner on record + holder of legal title of financial interest beside that taxpayer is ultimate beneficiary or not ultimate beneficiary.**

(ii) **Where taxpayer is owner on record + holder of title of financial interest like:-**

(a) **Agent + nominee + attorney + person (all) acting in some other capacity on behalf of taxpayer.**

(b) **Corporation where taxpayer is owning directly + indirectly (both) in equity shares or voting powers.**

(c) **Partnership firm where taxpayer is owning directly + indirectly + interest (all) in partnership's profits or partnership capital.**

(d) **Trust where taxpayer is having beneficial ownership + interest in ownership (both).**

(e) **Any other entity where taxpayer is owning directly + indirectly (both) voting power + equity interest + asset + share in profits (any).**

5. **Special features of BMA, 2015 in India**

(i) (a) **BMA, 2015 is strictly dealing with tax evasion activities being carried out outside India.**



- (b) *However tax evasion activity is not treated as criminal activity in India*
- (ii) ● *BMA, 2015 is not applicable against Benami Transactions under Benami Transactions (Prohibition) Amendment Act 2016.*
- (iii) (a) *BMA, 2015 is applicable on UFIA (only).*
- (b) *Hence Benami Transactions (Prohibition) Amendment Act 2016 is applicable on Benami Properties as held in India through Benamidar.*
- (iv) (a) *BMA, 2015 is permitting a threshold limit for lower value UFIA like INR not exceeding the 5 lac.*
- (b) *However ITA, 1961 is applicable where BMA, 2015 is not applicable.*
- (v) *BMA, 2015 is demanding for maintenance of adequate documentations + records against UFIA*
- (vi) *BMA, 2015 is sometime misusing the information's as received from foreign sources through harassing the taxpayer to prove himself to be cleaned citizen of India.*

6. Applicability of BMA, 2015 in India

- (i) (a) *BMA, 2015 is applicable from July 01, 2015.*
- (b) *Therefore Incomes up to June 30th, 2015 to be taxed under ITA 1961.*
- (c) *Hence BMA, 2015 is applicable from year ending on March 31st, 2016 (Assessment year 2016-17).*
- (ii) *BMA, 2015 is applicable on taxpayer as define under section 6 (6) of ITA 1961.*
- (iii) *BMA, 2015 is applicable on every person as deemed to be assessee in default under this Act*
- (iv) *BMA, 2015 is applicable*



- (a) *On individual*
 - (b) *On HUF*
 - (c) *On company*
 - (d) *On Partnership firm +Limited Liability Partnership (LLP) both*
 - (e) *On AOP*
 - (f) *On BOI*
 - (g) *On local authority*
 - (h) *On every artificial judicial person*
- (v) (a) **BMA, 2015 is applicable on ordinary resident (only)**
- (b) **Hence BMA, 2015 is not applicable on not ordinary resident of India where residency of India is because of minimum stay in India for 182 day in financial year (only).**
- (vi) (a) **BMA, 2015 is applicable where total of 100% credit entries in all bank accounts outside India are exceeding INR 5 Lac in 1 year or more than 1 year.**
- (b) **Hence exceeding INR 5 Lac may be for 100% credit entries in 10 year (also).**
- (c) **Computation of INR 5 Lac to be made by adding the 100% credit entries in all bank accounts outside India from date of opening bank accounts till today.**
- (d) **Hence total of 100% debit entries are not to be deducted for computing INR 5 Lac.**
- (vii) **BMA, 2015 is applicable where UFIA are acquired through illegal structure or activity.**
- (viii) **BMA, 2015 is applicable where UFIA are acquired through legal structure or activity but UFIA not disclosed to tax authorities in India.**

7. Non Applicability of BMA, 2015 in India

- (i) **BMA, 2015 is not applicable where resident individual has invested in assets outside India under Liberalized Remittance Scheme (LRS) of RBI**



- (ii) **BMA, 2015 is not applicable** where **Indian (domestic) company has invested in assets + equity shares + etc. (all) outside India under Overseas Direct Investments (ODIs) scheme of RBI.**
- (iii) **BMA, 2015 is not applicable** where **resident of India is holding assets outside India as acquired when he was non-resident of India + permitted under section 6(4) of FEMA, 1999**
- (iv) **BMA, 2015 is not applicable** where **resident of India is inherited the asset outside India from non-resident close relative + permitted under section 6(4) of FEMA, 1999**
- (v) **BMA, 2015 is not applicable** where **resident of India is returned from outside India commonly known as returning NRI against assets as held outside India + permitted under FEMA, 1999**
- (vi) **BMA, 2015 is not applicable** where **company is buying the foreign assets through subsidiary as located outside India + permitted under FEMA, 1999**
- (vii) **BMA, 2015 is not applicable on not ordinary resident + non-resident of India (both).**
- (viii) (a) **BMA, 2015 is not applicable** where **total of UFIA is not exceeding INR 5 Lac.**
(b) **However ITA, 1961 is applicable** where **BMA, 2015 is not applicable.**

8. Chargeability of Income Tax under BMA, 2015 [Section 3(1)] in India

- (i) **Income tax @ 30% flat to be charged** against **UFIA for year ending on March 31st 2016 +onward.**
- (ii) **Income tax @ 30% flat to be charged** against **UFIA at Fair Market Value of assets as on time when AO is 1st time noticed.**
- (iii) **Education cesses + surcharge (both) not to be levied on amount of Income Tax under BMA, 2015.**



9. Allowability of Expenditures + Set off the losses [Section 5] in India

- Expenditures for earning UFIA + set off the losses for preceding to previous year + for relevant year (both) not permitted against UFIA under BMA, 2015.

10. Disclosure of UFIA under Foreign Asset (FA) schedule in ITR in India

- Already disclosure of UFIA in FA schedule in Income Tax Return (ITR) is not material for applicability of BMA, 2015
- Hence applicability of BMA, 2015 is permitted where source of UFIA is not 100% explained by taxpayer beside already disclosure of UFIA in FA schedule in ITR

11. Comparison between BMA, 2015 and ITA, 1961 in India

- BMA, 2015
 - BMA, 2015 is applicable against UFIA from July 01 2015 as notified by CBDT.
 - Notice under BMA, 2015 for assessment + reassessment (both) can be issued without any time limit like 3 year or 10 year under ITA, 1961.
 - Hence notice under BMA, 2015 for assessment + reassessment (both) can be issued without any time limit like after 100 year (also).
 - Interest is not to be levied on UFIA under BMA, 2015 similar to section 234A + 234B + 234C (all) under ITA, 1961.
 - Hence flat Income tax @ 30% (only) + minimum fine @ 100% or maximum fine @ 300% under BMA, 2015 (both) to be levied.
 - BMA, 2015 is not permitting any credit of tax paid on UFIA under DTAA + non DTAA (both) countries outside India against Income tax @ 30% to be paid under BMA, 2015 in India.
- ITA, 1961
 - ITA, 1961 is applicable against UFIA up to June 30, 2015 where AO is noticed the UFIA.
 - Notice under ITA, 1961 for reassessment can be issued in maximum 3 year or 10 year against non UFIA + 16 year against UFIA.



(iii) **Penal interest to be levied on UFIA up to June 30, 2015 under section 234A + 234B + 234C (all) under ITA, 1961.**

(iv) **ITA, 1961 is permitting 100% credit of income tax paid + income tax deducted (both) outside India on UFIA through DTAA + non DTAA (both) against income tax liability on UFIA in India.**

12. Imprisonment + Financial Penalty for UFIA under BMA, 2015 in India

- **Imprisonment under BMA, 2015**

(i) **Imprisonment against failure to furnish the ITR for UFIA is minimum 6 month or maximum 7 year**

+

(ii) **Imprisonment against failure to furnish any information for UFIA is minimum 6 month or maximum 7 year**

+

(iii) **Imprisonment against willful attempt to evade the Income tax for UFIA is minimum 3 year or maximum 10 year.**

+

(iv) **Imprisonment against Subsequent offence under BMA, 2015 is minimum 3 year or maximum 10 year**

+

(v) **Imprisonment against making false statement + delivers false evidence is minimum 6 month or maximum 7 year**

+

(vi) **Imprisonment against making + delivering the false return + books of accounts + financial statements + declaration (all) minimum 6 month or maximum 7 year.**

- **Financial penalty under BMA, 2015**

(i) (a) **Financial penalty against UFIA is minimum @100% or maximum @300% of Income tax liability under BMA, 2015.**

(b) **Hence maximum effective tax liability (including financial penalty) is @ 120% like Income Tax @ 30% + maximum financial penalty @90% = 120 % on current fair market value of UFIA.**

+



- (ii) **Financial penalty for failure to furnish the ITR for UFIA is INR 10 Lac**
+
- (iii) **Financial penalty for failure to furnish any information + furnish inaccurate particular for UFIA is INR 10 Lac**
+
- (iv) **Financial penalty for subsequent offence under BMA, 2015 is minimum 5 Lac or maximum 1 crore**
+
- (v) **Financial penalty for failing to answer any question + sign a statement (both) where taxpayer is legally bound + failed to produce books of accounts + supporting evidence (any) minimum 50 thousand or maximum 2 lac**

13. Source of information's for UFIA under BMA, 2015 in India

- (i) **European Commission (EC) + Swiss government (both) signed a landmark new tax transparency agreement for effectively ending the bank secrecy for European banks + to strengthen the fight against tax evasion + to prevent tax evaders from hiding UFIA in Swiss bank accounts.**
- (ii) **India has signed the Multilateral Competent Authority Agreement (MCAA) for Automatic Exchange of Information's (AEOI) with more than 100 countries.**
- (iii) **Switzerland's Official Gazette has revealed publicly the names of 7 Indian for tax evasion. Swiss Federal Tax Administration (SFTA) has asked 7 Indian to file appeal in 30 day for not sharing the details to Indian tax authorities in India. .**
- **However above mentioned 7 persons have not shared the details to Indian tax authorities in India like.**
 - (a) *Chaud Kauser Mohamed Masood*
 - (b) *Gurjit Singh Kochar*
 - (c) *Ritika Sharma*
 - (d) *Sangita Sawhney*
 - (e) *Sayed Mohamed Masood*



(f) *Sneh Lata Sawhney*

(g) *Yash Birla*

(iv) *France Govt. has given a list of 628 Indian in year 2010 where Indians were having bank accounts in HSBC's at Geneva.*

(v) *Govt. of India has power to enter into agreement with any foreign country + specified territory (both) like:-*

(a) *For exchange of information for prevention of tax evasion + tax avoidance under BMA, 2015 + similar law in corresponding country + territory (both)*

(b) *For investigation against cases as involving the tax evasion + tax avoidance (both).*

(c) *For recovery of tax under BMA, 2015*

(d) *For not to grant any tax relief in India + outside India (both) against UFIA + similar law in corresponding country + territory (both).*

14. Assessment procedures under BMA, 2015 in India [Chapter III]

(i) (a) *Taxpayer is not required to file a separate return under BMA, 2015 in India*

(b) *Hence taxpayer is required to fill the appropriate column in regular ITR to be filed under ITA, 1961 in India*

(ii) *AO under BMA, 2015 is required to issue a notice to taxpayer to produce the information's + documents + explanations as desired by him where AO has received any information from Income tax authority under ITA + under any other authority in any other law + any information as received by AO from any source like newspaper + electronic media + etc. (any) under BMA, 2015 in India*

(iii) *AO is permitted to get information through any source like legal + illegal + stolen data + etc. (any) under BMA, 2015 in India*

(iv) (a) *AO is permitted to issue notice for assessment or reassessment without any time limit as may be 100 year + more under BMA, 2015 in India.*



- (b) *However AO is required to give a reasonable opportunity for hearing + to furnish the evidence or document as based on principle of natural justice under BMA, 2015 in India.*
- (v) *AO is permitted to enquire + investigate any matter besides proceeding is not pending before him under BMA, 2015 in India.*
- (vi) *AO is required to complete the assessment or reassessment in maximum 2 year from end of financial year where notice is issued under Section 11 of BMA, 2015 in India.*
- (vii) *AO is required to issue 2 assessment order against single ITR under section 143(3) of ITA, 1961 + section 10(3) of BMA, 2015 for incomes as taxable under ITA, 1961 + income as taxable under BMA, 2015 in India.*
- (viii) *AO + taxpayer (both) permitted*
 - (a) *For filling of appeal before CIT appeal*
 - (b) *For filling of appeal before ITAT*
 - (c) *For filling of appeal before High Court*
 - (d) *For filling of appeal before Supreme Court*
 - (e) *For filling of rectification of mistake before AO*
 - (f) *For filling for Revision of order before CIT*

15. Recovery of Tax under BMA, 2015 in India

- (i) *AO or Tax Recovery Officer (TRO) is permitted to recover the outstanding demand under BMA, 2015 from taxpayer in accordance to different mode as specified.*
- (ii) *Specified modes for recovery of outstanding demands under BMA, 2015:*
 - (a) *Recovery from employer of taxpayer where employer is required to deduct the outstanding demand from salary of taxpayer as demanded under BMA, 2015 + to deposit with Govt. of India.*



(b) *Recovery from debtors of taxpayer where debtors are required to deposit against outstanding demand of taxpayer as demanded under BMA, 2015.*

- *However debtors are not required to deposit the amount as exceeding the outstanding debt against taxpayer.*

(c) *Debtors to be treated as assessee in default where debtors are failed to deposit the amount as outstanding against taxpayer.*

- *Hence AO or TRO to initiate the recovery proceeding from debtors as assesses in default.*

(iii) *Recovery of Tax from other person than taxpayer under BMA, 2015*

(i) *AO or TRO is permitted to recover the outstanding the tax amount from other person as treated for personal liability where outstanding the tax amount is not recoverable from taxpayer.*

→ *Other person includes:*

- *Manager (including a managing director) of company*
- *Partner of firm*
- *Member of AOP or BOI*

(b) *Manager of company + partner of limited liability partnership (LLP) not personally liable where non recovery of outstanding of tax as not attributed to neglect + misfeasance + breach of duty on his part against affairs of company or LLP*

(c) *BMA, 2015 is silent against liability of members of AOP + BOI.*

(iv) *Recovery of tax under BMA, 2015 from Indian assets:*

(a) *Appropriate Income tax authorities under BMA 2015 + RBI + Enforcement Director (ED) under FEMA, 1999 not permitted to take any penal action + prosecution for imprisonment without any proper enquiry where UFIA are legally held + already properly disclosed to Income tax authorities under ITA, 1961*



(b) *Appropriate Income tax authorities under BMA, 2015 + ED under FEMA, 1999 are permitted to directly seize Indian assets equivalent in value of tax under BMA, 2015 without asking any question.*

- *This provision is inserted through Finance Act, 2015 under BMA, 2015*

(c) *Abovementioned seizure of Indian assets is permitted as based on reason to believe or suspicion.*

- *Similar provision already included under PMLA, 2002. Now this provision is inserted through Finance Act, 2015 under BMA, 2015*



Published By



CA. Satish Agarwal

B.com (Hons.) FCA

Practicing Chartered Accountant Since 1985

+919811081957

9/14 (First Floor) East Patel Nagar, New Delhi- 110008

Email: satishagarwal307@yahoo.com

Website: www.femainindia.com

◆ Disclaimer

- 1. Contents of this **article are solely for informational purpose**. Neither this article nor information's as contained herein constitute a contract or will **form** basis of contract.*
- 2. Material contained in this article does **not constitute** or **substitute professional advice** that may be required before acting on any matter.*
- 3. While every care has been taken in preparation of this article to **ensure its accuracy at time of publication**.*
- 4. **Satish Agarwal assumes no responsibility for any error** which despite all precautions may be found herein.*
- 5. We **shall not be liable for direct, indirect or consequential damage** if any arising out of or in any way connected with use of this article or information's as contained herein.*

January - 2023

