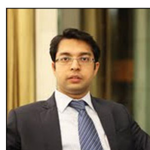
THE FINANCIAL EXPRESS

Tuesday, September 15, 2015

Tax: Why it is important to report your foreign assets and income

By: Amit Maheshwari | September 15, 2015 9:52 AM



Reporting and paying taxes on overseas incomes and assets come with their own set of challenges. Under the I-T Act, 1961, taxpayers are broadly categorised as Ordinary Resident, Not Ordinarily Resident (NOR) and Non-Resident (NR). Resident individuals are taxed on their worldwide income while NORs are taxed on Indian and foreign income, which comes from a business or profession controlled wholly or partly from India.

Non-Residents are only taxed on income derived or received in India. One of the key challenges faced by individuals is to avoid getting doubly taxed in respect of their foreign income. India has an extensve network of Double Taxation Avoidance Agreement (DTAAs) with several countries. If no DTAA exists between the two countries, the taxpayer may still be able to take credit of foreign taxes paid under the Act.

With DTAAs, double taxation can be avoided in two ways. One, in which the resident country exempts income earned in the foreign country and the other where it grants credits for the tax paid in the other country. The rules vary from treaty to treaty, but fall broadly in these two categories. Typically, the country where the income is generated has the right to tax it (of course, limited to the concessional rate provided under DTAA) and the country of residence gives credit for this tax and taxes the income at a lower rate as per the provisions of DTAA.

Another thing to be kept in mind is that foreign incomes may not be taxed in the same way as domestic income. One common example is that concessional rate of tax on capital gains on sale of listed shares/equity oriented mutual fund is not available for those listed on foreign stock exchanges. Consultancy income derived from abroad is usually taxed at a concessional rate of 10-15% in the foreign country. However, the foreign client may insist on a Tax Residency Certificate to provide the benefits of DTAA. A key aspect that many miss is that the income earned outside India has to be converted into Indian currency by using the SBI Telegraphic Transfer Buying Rate (TTBR) of the specified date. For example, for converting salary income of June 2015, TTBR of the relevant currency for May 2015 has to be used to convert the foreign income into rupees.

Reporting of overseas assets and income has become critical now. The ITR form has a compulsory requirement of disclosure of assets held outside India by Ordinary Resident individuals. Assets include foreign bank accounts, financial interest in entity, details of immovable property, capital asset or other assets located outside India. This reporting requirement is applicable whether or not the individual has taxable income in India. Even if the individual has no asset outside India, but has a signing authority in an account located outside India, disclosure is required. Several disclosures are also needed for income on which DTAA benefit has been claimed.

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, is applicable to all residents in India. Undisclosed foreign income or assets shall be taxed at the flat rate of 30%. The penalty for non-disclosure will be equal to three times the amount of tax payable thereon, i.e., 90% of the undisclosed income or the value of the undisclosed asset. This is in addition to tax payable at 30%. Further failure to furnish return in respect of foreign income or assets shall attract a penalty of R10 lakh. Therefore, it is imperative to correctly report your foreign assets and income.

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First Published on September 15, 2015 12:06 am