



# Evolution of UFIA

1. White paper on black money was prepared and submitted by Ministry of Finance- Department of Revenue – CBDT in May 2012
2. Various other bills (few became Acts) Lokpal, Judicial Accountability, Whistle Blower, Grievance Redressal, Public Procurement, Information Exchange Network broadening etc.
3. Black money means assets or resources that have neither been reported to the public authorities at the time of generation nor disclosed at any point of time during their possession.

• Cont....

## Evolution of UFIA

- 4. Further it could include legal/illegal income that is concealed from public authorities:
  - ✓ To evade payment of taxes (income tax, excise duty, sales tax, stamp duty, etc)
  - ✓ To evade payment of other statutory contributions
  - ✓ To evade compliance with the provisions of industrial laws such as the Industrial Dispute Act 1947, Minimum Wages Act 1948, Payment of Bonus Act 1936, Factories Act 1948 and Contract Labour (Regulation and Abolition) Act 1970; and / or
  - ✓ To evade compliance with other laws and administrative procedures.
  - \_\_\_\_\_

## Evolution of UFIA – Contd.. Recommended Strategies

1. Repatriation of money stashed abroad
2. Ratification of multi-lateral convention on mutual administrative assistance
3. Stolen Assets Recovery (StAR) (a partnership group between the World Bank Group and UNODC (United Nations Office on Drugs and Crime) and India has associated
4. VDS and Tax recovery
5. Agreement between countries for Revenue sharing
6. Confidentiality of information between DTAA and TIEA

# UFIA Overview

1. Act, Rules, Notifications & Circulars – a ready reckoner
2. Whom does this act apply to
3. Topographies – key features
4. Coverage - income or assets (with illustration)
5. One time compliance opportunity
6. Roadmap - cause & effect
7. Penalty & prosecution
8. Tax management
9. Potential risks
10. How to mitigate risk
11. Presenter's thought process

# 1. Act / Rules / Notifications / Circulars – A Ready Reckoner

## ACT - CHAPTERS & SECTIONS

Chapter Reference	Chapter Name	Sections
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# 1. Act / Rules / Notifications / Circulars – A Ready Reckoner

## Notification

Notification Ref	Date thereof	Contents
56	01.07.2015	Act to be effective from 01.07.2015
57	01.07.2015	Opening up the window for declaration (i) Declaration from 01.07.2015 to 30.09.2015 (ii) For remittance of tax & penalty on or before 31.12.2015
58	02.07.2015	Rules notified ( 1 to 12) Forms notified (1 to 7)

Cont ....

# 1. Act / Rules / Notifications / Circulars – a Ready Reckoner

## CIRCULARS

Circulars Ref	Date thereof	Contents
12	02.07.2015	Explanatory notes and declarations, pursuant to Chapter VI of the Act (including intimation by PCIT/CIT)
13	06.07.2015	Questions & Answers (1 to 32)

## 2. Whom does this Act Applies to

- ❖ Applicable to Assesseees, being persons
  - Resident (*other than Not Ordinarily Resident*) in India;
  - From whom any tax or any sum is payable in respect to undisclosed foreign income and assets

&

- Every person deemed to be an Assessee in default under this Act
  
- ❖ Person includes *Individual, HUF, Firm, LLP, Company, AOP & BOI & any other artificial judicial person*. Additionally includes *foreign company being resident in India*.

Cont ....

## 2. whom does this act applies to

Ordinarily residential status (others)

- ❖ HUF, Firm, AOP & others - Control & Management situated *wholly or partially* in India;
- ❖ Company – Indian company or where control & management situated *wholly* in India

### 3. Topographies

- ❖ Act enacted shall be in force from July 1, 2015 (**Notification no.56/2015, F.No. 133/33/2015-TPL**).
- ❖ Undisclosed foreign income includes undisclosed income earned from a source or asset located outside India;
- ❖ Undisclosed assets located outside India means assets (including financial interest) owned or beneficiary rights held by an assessee with no explanation or unsatisfactory explanation on source of investment;
- ❖ No penalty shall be levied if aggregate balance of all foreign bank accounts < INR 0.5 million at any time during the previous year.

Cont ....

### 3. Topographies

- ❖ Undisclosed Foreign Income & Assets ('UFIA') will be taxed at flat rate of 30 per cent together with 90 percent penalty.
- ❖ Money laundering Act 2002 will now include concealment of income and tax evasion as 'grounded offence'.
- ❖ Accountability in specific penalties & prosecution

Entity	Who is Accountable
Individual	Self
HUF	Adult Member
company	Director, Person managing affairs
unincorporated body	Director, participant

## 4. coverage – income or assets (with illustration)

- ❖ Total undisclosed foreign income & assets includes
  - Income earned but not declared in tax return;
  - Income earned but tax return not furnished;
  - Value\* of undisclosed assets located outside India
  
- ❖ Immunity of undisclosed incomes & assets from Income Tax Act ('ITA') & wealth Tax Act if covered under applicable provisions of UFIA;
  
- ***Value of asset will be fair market value determined as per the rules notified in this behalf – viz., Rule 3 of UFIA Rules, 2015.***

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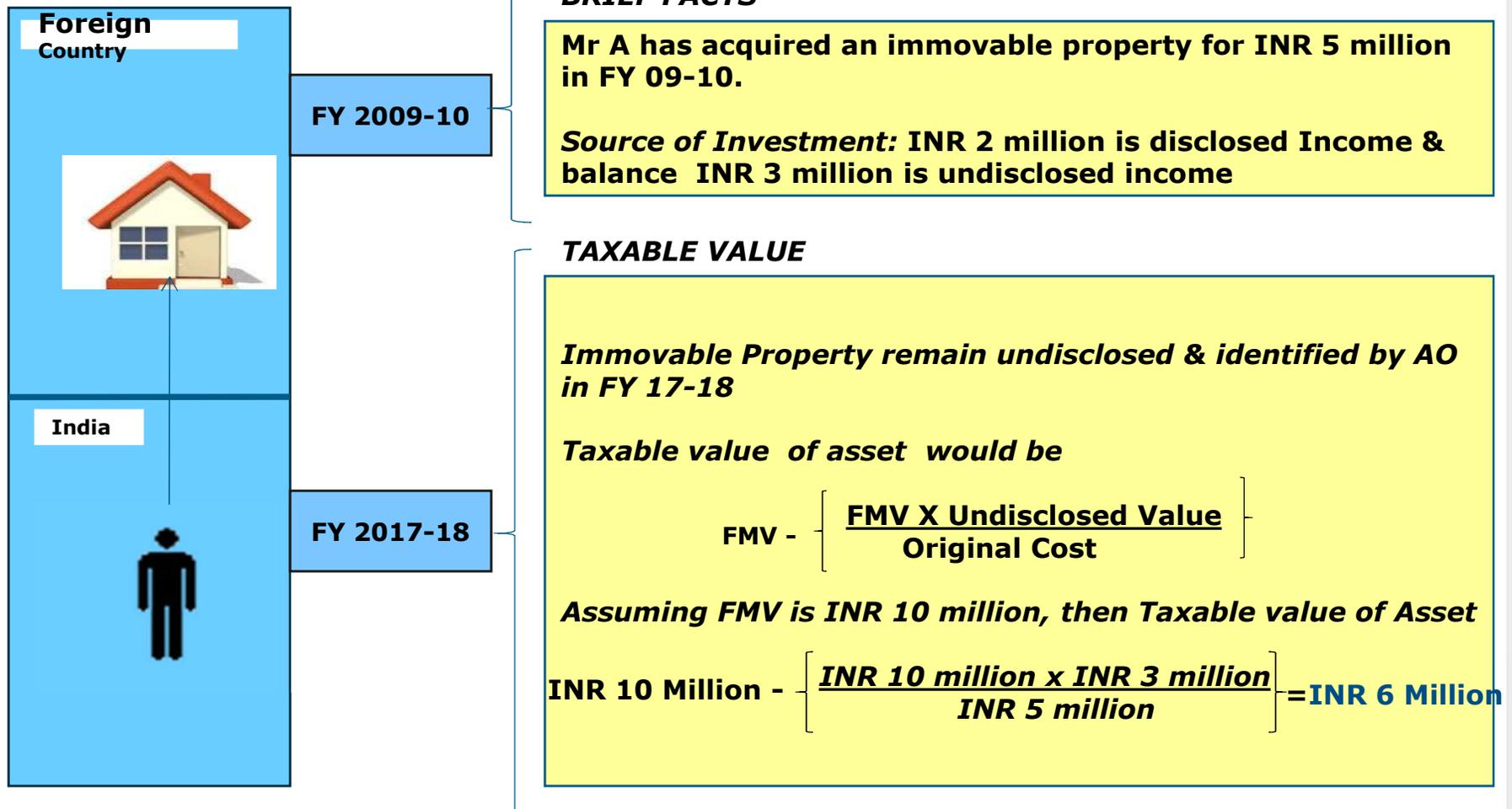
## 4. Coverage – Income or Assets (with illustration)

### ❖ While computing

- No exemption, deduction or set off of any carried forward losses.
- Income assessed to tax under ITA shall be reduced.
- Undisclosed Immovable property where source is disclosed partially in the tax return than as per the Act value of immovable property will be assessed proportionately.

Cont ....

## 4. Coverage – Income or Assets (With illustration)



## 5. one time compliance opportunity

- ❖ Declaration be filed by the assessee if he is opting to avail the One Time Window which has been opened up, pursuant to the Notification No.57 dated 1.7.2015, read with Circular 12 dated 2.7.2015
- ❖ Resident (Other than NOR) w.r.t undisclosed Foreign Asset
- ❖ The Special rate of tax and penalty (30+30) herein override any rates specified in IT Act and Annual Finance Acts
- ❖ Coming into force from 01.07.2015
- ❖ Window to be effective between 01.07.2015 to 30.09.2015
- ❖ Declaration to be in Form 6
- ❖ PCIT/CIT to intimate, on or before 31.10.2015, on receipt of declaration on the info received from Competent Authority (if such info is received prior to 30.06.2015)

## 5. one time compliance opportunity

- ❖ The declarant, within 15 days of such intimation, to file the revised declaration.
- ❖ The declarant shall remit tax and penalty (30+30) on or before 31.12.2015.
- ❖ On intimation by the declarant to PCIT/CIT of the remittance, an acknowledgement in Form 7 is issued. (15 days from such intimation)
- ❖ The designated PCIT/CIT herein is CIT Delhi.
- ❖ Ineligibility - Provision thereof (Cutoff Date - 30.06.2015)

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## 5. One Time Compliance Opportunity

### Effect Of Valid Declaration:

- ❖ The amount of declaration shall not be included for Income Tax for any assessment year.
- ❖ Content Of Declaration shall not be admissible in evidence in any. penalty/prosecution proceedings under:
  - i. Income Tax Act
  - ii. Wealth Tax Act
  - iii. FEMA
  - iv. Companies Act
  - v. Customs Act
- ❖ No wealth tax change on declared portion.
- ❖ Neither will affect finality of completed assessments nor will it give raise any claim for revision of the any orders passed earlier.
- ❖ Tax & penalty paid in pursuant to declaration shall not be refundable

Cont...

## DECLARATION TO BE SIGNED BY

S.No	Status of The Declarant	Declaration To Be Signed By
1	Individual	Individual; where individual is absent from India, person authorized by him; where the individual is mentally incapacitated, his guardian or other person competent to act on his behalf.
2	HUF	Karta; where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of the HUF
3	Company	Managing Director; where for any unavoidable reason the managing director is not able to sign or there is no managing director, by any director.

## DECLARATION TO BE SIGNED BY

S.No	Status Of The Declarant	Declaration To Be Signed By
4	Firm	Managing partner; where for any unavoidable reason the managing partner is not able to sign the declaration, or where there is no managing partner, by any partner, not being a minor.
5	Any other association	Any member of the association or the principal officer.
6	Any other person	That person or by some other person competent to act on his behalf.

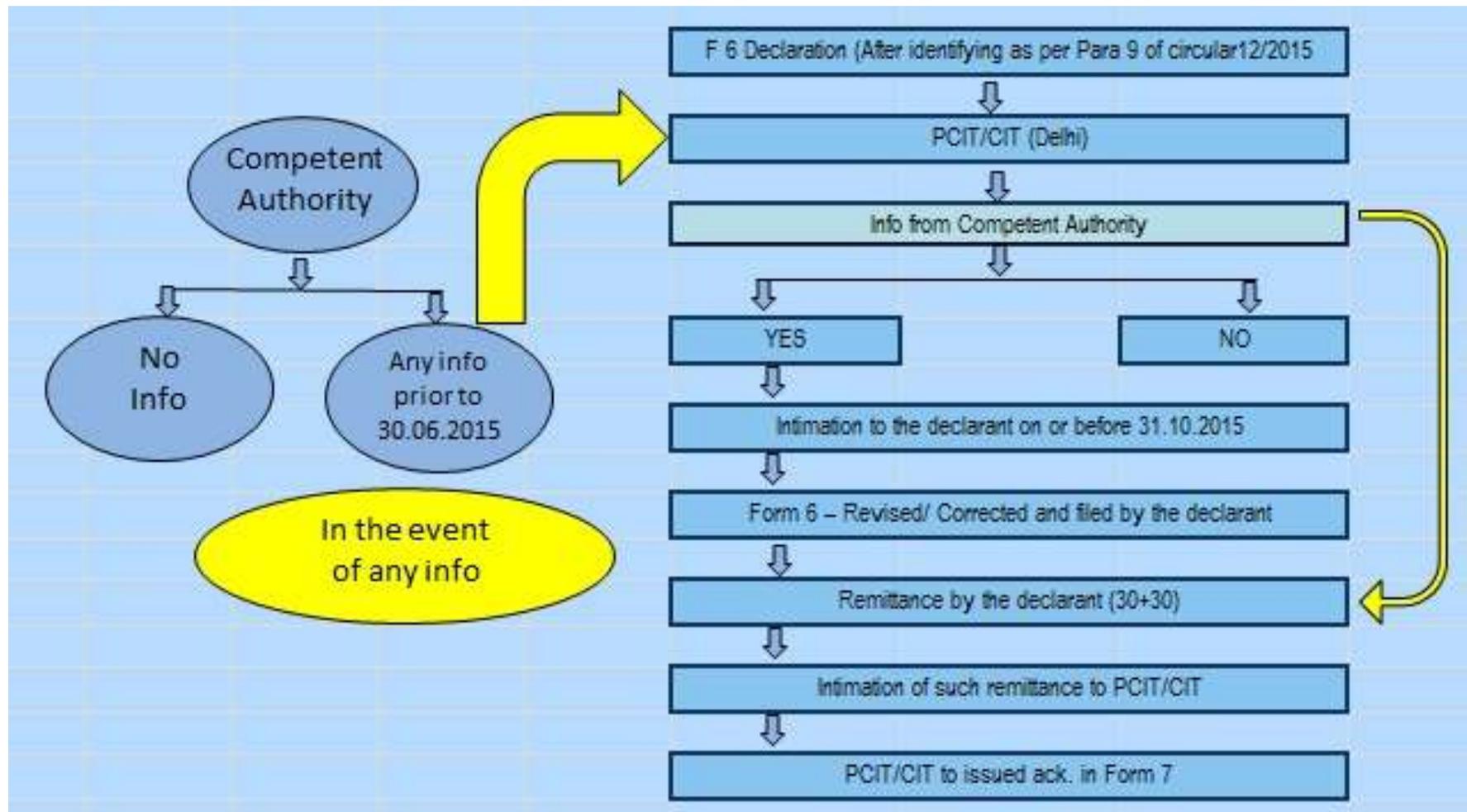
## 5. One Time Compliance Opportunity

### People Not Eligible By Scheme:

- If a detention order has been made under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
- Prosecuted for any offence under Chapter IX or XVII of Indian Penal Code, Narcotic Drugs and Psychotropic Substances Act, 1985, Unlawful Activities (Prevention) Act, 1967 & Prevention of Corruption Act, 1988.
- Notified u/s 3 of special court (Trial of Offences Relating to Transactions in Securities) Act, 1992.
- A proceeding is pending before the tax authority.
- Notice of assessment has not expired pursuant to search, requisition or survey.
- Information has been received under DTAA in respect of undisclosed asset (in case of undisclosed bank account, it may or may not have any balance).

## DECLARATION WINDOW

## A Process Flow Chart



## FAQS – A QUICK SCAN

➤ Immunity is restricted to

- i. Income Tax Act
- ii. Wealth Tax Act
- iii. Customs Act
- iv. Companies Act
- v. FEMA

[ A wild thinking reflected to Q & A 3 ]

➤ Further immunity granted in the case of involving PMLA , 2002

- Being the schedule of offence under PMLA [Vide Q & A 4 ]

➤ Capital Gains computation of declared asset in future

- [ Vide Q & A 5 ]

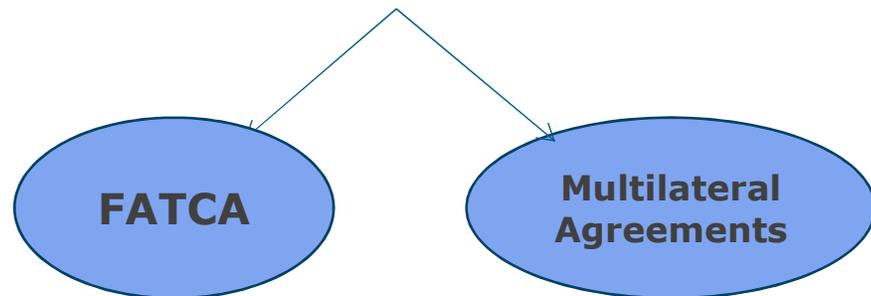
➤ If notices under Section 142, 143(2) , 148 /153A/153C not served by 30.06.2015

- Still eligible for declaration [ Vide Q & A 7 ]

– Cont...

## FAQS – A QUICK SCAN

- Assets acquired in multiple years both covered under Assessment and outside
  - Such years covered by the Assessments, need to be kept out
  - [ Vide Q & A 8]
  
- When assessments, pursuant to search /survey completed by not including such undisclosed assets
  - Yes – Declaration could be made [ Vide Q & A 11 ]
  
- If no declaration made under Chapter VI
  - How information collected – through AEOI [ Vide Q & A 14]



**Cont...**

## FAQS – A QUICK SCAN

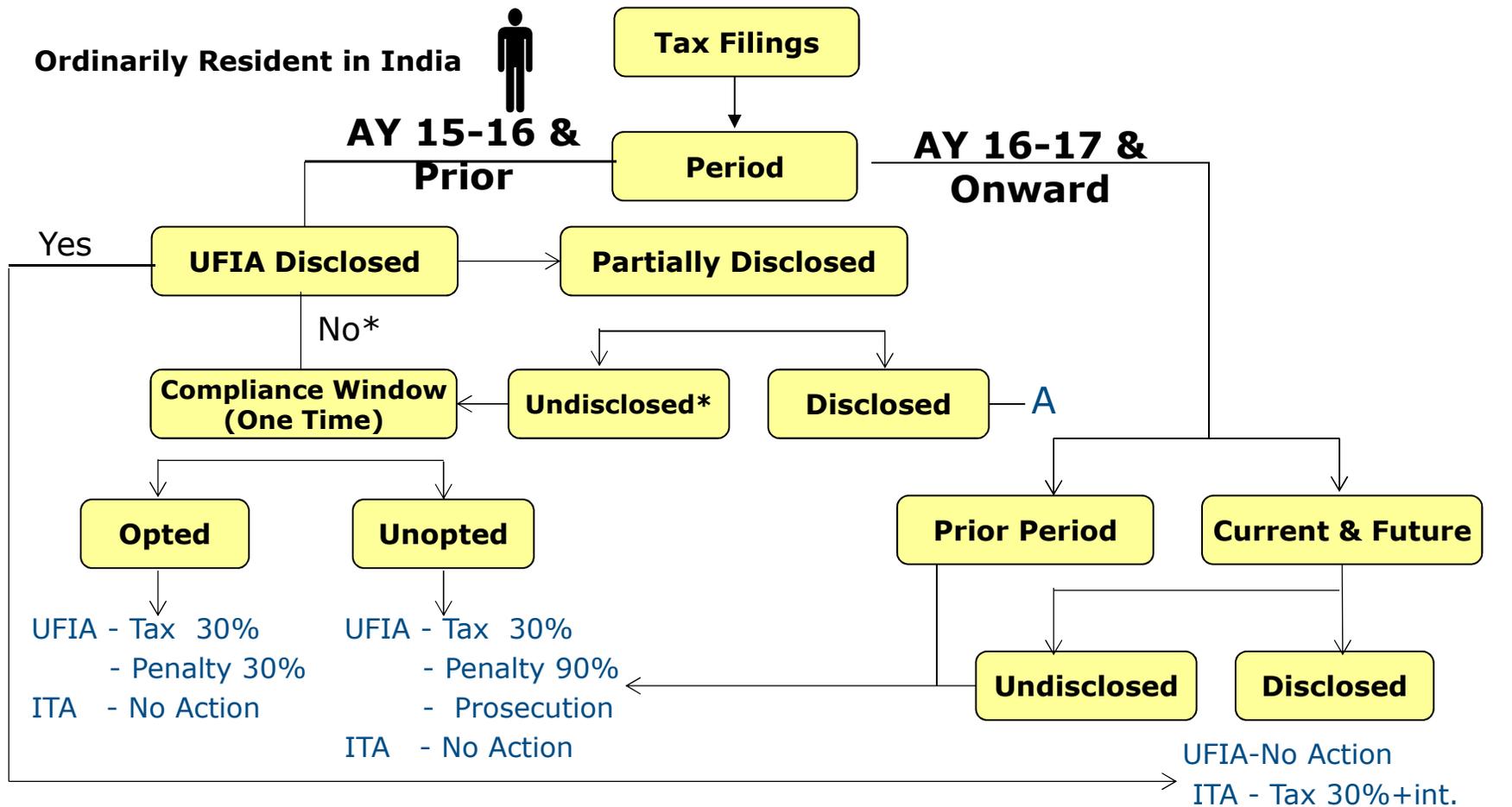
- If declaration includes certain ineligible assets
  - No action under this Act
  - Action will lie under Income Tax Act and Settlement Commission could be used for settlement
  - [ Vide Q & A 15, 16 ]
  
- Mere reporting in AY 2014-15 (revised) and AY 2015-16 of undisclosed asset – whether absolve the liability ??
  - Such items need to be proved with source [Vide Q & A 17 ]
  
- Non - reporting (fully disclosed) of foreign assets in fixed assets column (AY 2016-17)
  - Penalty under this Act - Rs.10 Lakhs [Vide Q & A 18 ]

Cont...

## FAQS – A QUICK SCAN

- Valuation vide Rule 3 to be in strict adherence
  
- Non – resident having acquired foreign assets when he was Resident.
  - Yes - Vide Section 59 [ Vide Q & A 23 ]
  
- Question & Answer no 26

# 6. Roadmap – Cause & Effect



\* UFIA for AY 2014-15 may be passed through ITA by ITR revision if beneficial considering provisions u/s 139 of ITA & scheme/rules as notified for operationalizing the Chapter VI of Act.

UFIA-No Action  
 ITA - Tax 30%+int.  
 - Probable Enquiry

Cont...

## 6. Road Map – Cause & Effect - Matrix

ITR Disclosures	Black Money Act			ITA
	Tax	Penalty	Prosecution	
<b><u>AY 2015-16* &amp; Before</u></b>				
<i>Fully Disclosed</i>	x	x	x	✓
<i>Non Disclosed**</i>	✓	✓	✓	x
<i>Partially Disclosed</i>				
- <i>On disclosed Portion</i>	x	x	x	✓
- <i>On Undisclosed Portion**</i>	✓	✓	✓	x
<b><u>AY 2016-17 &amp; After</u></b>				
<i>Prior to AY 2016-17</i>	✓	✓	✓	x
<i>AY 2016-17 &amp; onwards</i>				
- <i>On disclosed Portion</i>	x	x	x	x
- <i>On Undisclosed Portion</i>	✓	✓	✓	x

\* UFIA for AY 2014-15 may be passed through ITA by ITR revision subject to applicable provisions

\*\* one time compliance opportunity available under Chapter VI and if so the penalty is minimal and no prosecution

## 7. Penalty & Prosecution

Nature Of Default	Penalty	Prosecution
Non Disclosure of UFIA in the tax return	3 times	-
Penal consequences for willful default on: <ul style="list-style-type: none"> <li>▪ Furnish inaccurate particulars of UFIA;</li> <li>▪ Failure to furnish tax return;</li> <li>▪ Non Disclosure of UFIA in tax return</li> </ul>	INR 1 million	6M-7yrs (with fine)
Penalties on enquiries where assessee fails to <ul style="list-style-type: none"> <li>▪ provide explanation or sign statements;</li> <li>▪ attend meetings or provide evidence or produce books of account</li> </ul>	INR 0.05 to 0.2 million	-

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## 7. Penalty & Prosecution

Nature Of Default	Penalty	Prosecution
<p>Prosecution on specific offence (with fine)</p> <ul style="list-style-type: none"> <li>▪ Wilful attempt               <ul style="list-style-type: none"> <li>✓ evasion of taxes</li> <li>✓ evasion in payment of taxes</li> <li>✓ Subsequent conviction (all cases)</li> </ul> </li> <li>▪ Furnish false statements or accounts during verification</li> <li>▪ Abetting or inducing to make or deliver false return/account/statement or declaration relating to tax payable</li> </ul>	INR 0.5-10 million	3M-10yrs 3M-3yrs 3-10yrs 6M-7yrs 6M-7yrs

## 8. Tax Management

- ❖ Regulating & Judicial authorities remains akin to ITA;
- ❖ Tax determined under the provisions of this Act will attract the interest on default as applicable u/s 234A, B & C of ITA;
- ❖ Authorities may issue notice to assessee to explain the UFIA held and pass order within 2 years from end of financial year in which such notice was issued after providing opportunity of being heard;
- ❖ Should the assessee fail to provide explanation on UFIA, then AO may pass best judgment assessment and determine the tax payable;
- ❖ Revision/ rectification of order can be passed within 1/4 years;
- ❖ Right to appeal is available before appellate authorities.

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## 8. Tax Management

### ❖ Recovery procedures

- Tax officer will issue a notice of demand within 30 days (may extend up to 60 days) of service of notice.
- Allow assessee to pay amount in installments.
- Arrear of taxes can be recovered by various modes i.e. liquidation, asset attachment & others;

## 9. Potential Risk

- ❖ **HOW CAN TAX OFFICER KNOW ABOUT SUCH TRANSACTION?**
  - information is collected by tax officer from inward & outward remittances kicked in Indian & foreign bank accounts;
  - information is collected by tax officer through routine tax investigations;
  - information may be collected through agreements between the countries on exchange of information for prevention of evasion or avoidance of tax on undisclosed foreign income;
  
- ❖ **RISK OF NON-DECLARATION OF UFIA?**
  - besides payment of taxes & penalties, prosecution proceedings will be launched against the assessee which is non compoundable (non conversion to monetary penalties).

## 10. how to mitigate risk

Ensure the following compliances

- ❖ Ascertain your residential status
  - Monitor travel log
  
- ❖ Self declaration while filing income tax return
  - Review reported information in your past tax returns;
  - Complete declaration of all foreign income and assets;
  - Backup support documents for each declaration made;
  - Documents for claiming foreign tax credits such as withholding tax certificates & foreign tax returns.
  
- ❖ Undisclosed foreign income & assets
  - Opt for one time compliance opportunity

# 11. Presenter's Thought Process

- ✓ Whether this will lead to unintended and undesirable result by further lagging behind:
  - a. In the fight against stopping the generation and stashing
  - b. In attracting foreign entrepreneurs and managers to do business in India
- ✓ Fear of tax terrorism – This is slightly unprecedented and unparalleled.
- ✓ Department could use any search engine as a taxing tool
- ✓ Dissuade foreign entrepreneurs and managers to engage with India but also forcing Expats / few businesses with foreign linkages to leave India
- ✓ Confidentiality – Disclosure window attracting other laws

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# 11. Presenter's Thought Process

- ❖ Ability to pay – value as prescribed – Tax, penalty and prosecution as well.
- ❖ Constitutional Validity?
- ❖ Whether the election manifesto is addressed for giving credit of Rs 15Lac to every citizen of India

*Disclaimer: The contents detailed in above presentation are based on the Act and news articles published by various News agencies, please seek expert advice before adopting any of the information provided or while forming any legal expression or opinion.*