

Income Tax Penalty of Rs. 10 Lakhs if foreign shares, investments and assets not disclosed in your Income Tax Returns



The non-disclosure of foreign assets in your Income Tax Return (ITR) for Assessment Year 2025-26 (Financial Year 2024-25) can lead to significant penalties and prosecution under two main Acts in India viz. (i) the Income-tax Act, 1961, and the stringent (ii) Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (often referred to as the Black Money Act or BMA).

Who Must Disclose Foreign Assets?

All individuals who qualify as 'Resident and Ordinarily Resident' (ROR) in India for tax purposes must disclose their foreign assets in Schedule FA of their ITR, regardless of whether the asset generated any income or whether the income is taxable.

Common Foreign Assets that must be disclosed include:

- ✓ Foreign bank accounts (including those where you are a signing authority).
- ✓ Investments in shares, securities, and mutual funds outside India.
- ✓ Immovable property located outside India.
- ✓ Any financial interest in a foreign entity.
- ✓ Foreign trusts or other entities where you are a beneficiary.

Impact and Penalties for Non-Disclosure

Under India's **Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015**, non-disclosure of foreign assets or income can lead to severe penalties, including a flat tax rate, substantial monetary fines, and rigorous imprisonment.

Monetary Penalties

- ❖ **Flat Tax Rate:** Undisclosed foreign income or the value of undisclosed assets is subject to a flat tax rate of **30%**. No deductions, exemptions, or set-offs are allowed against this income.
- ❖ **Penalty on Undisclosed Income/Assets:** In addition to the 30% tax, a penalty equal to **three times the amount of tax payable** is imposed, effectively a 90% penalty on

the undisclosed value, bringing the total financial liability to 120% of the undisclosed amount.

- ❖ **Specific Penalty for Non-Disclosure in ITR:** A fixed penalty of **₹10 lakh** (INR 1,000,000) is applicable for failure to furnish a return of income, or for failure to provide information or furnishing inaccurate particulars about a foreign asset in the income tax return (Schedule FA), for each year of default.

Exceptions to the ₹10 Lakh Penalty

As amended by the Finance (No. 2) Act, 2024, the ₹10 lakh penalty and prosecution provisions do not apply to non-immovable foreign assets (e.g., bank accounts, financial instruments) if their aggregate value does not exceed **₹20 lakh** at any time during the financial year. Previously, this threshold was ₹5 lakh.

Prosecution and Imprisonment

Non-disclosure and willful evasion are considered serious offences under the Act and can lead to imprisonment:

- ❖ **Failure to Furnish Return or Disclose Assets:** Rigorous imprisonment for a term of **six months to seven years**, along with a fine.
- ❖ **Willful Attempt to Evade Tax:** Rigorous imprisonment for a term of **three years to ten years**, along with a fine.

Key Points

- The reporting requirement in Schedule FA is mandatory for Indian residents (excluding not ordinarily residents) holding foreign assets.
- The tax authorities are actively using information received from other countries under Automatic Exchange of Information (AEOI) agreements to identify cases of non-disclosure.
- Merely reporting an asset in the ITR (Income Tax Return) without explaining the source of investment does not automatically prevent it from being treated as an "undisclosed asset" if the source is unaccounted for.
- The penalties are designed to be stringent and apply even if the omission was unintentional, though recent amendments have introduced minor value thresholds for non-immovable assets to provide some relief for oversights.

Action taken by Central Board of Direct Taxes (CBDT)

Central Board of Direct Taxes (CBDT) regarding a targeted campaign for compliance on foreign assets and income. **Immediate action is required** for any client who has not fully disclosed their foreign holdings in their Income Tax Return (ITR) for Assessment Year (AY) 2025-26 (Financial Year 2024-25) and provide opportunities to the taxpayers to file their revised Income Tax Return on or before 31st December 2025 to avoid potential penal consequences.

Action to be taken by Taxpayers:

- **Check for Communication:** Be vigilant for SMS or emails from the Income Tax Department regarding non-disclosure of foreign assets.
- **Review Compliance:** Immediately review your ITR for AY 2025-26 to ensure all foreign assets and foreign source income (including bank accounts, shares, property, and financial interests outside India) have been accurately reported in **Schedule FA** and **Schedule FSI**.
- **File Revised ITR:** If any omission or inaccuracy is identified, you must file a **Revised Income Tax Return** with complete and accurate particulars.

Perficio Advisory Services Private Limited can act as a **specialised compliance and risk-management partner** for taxpayers having foreign assets or income in FY 2024–25.

By **accurately identifying all foreign holdings, structuring data for Schedule FA, and aligning disclosures with the Income-tax Act, 1961 and the Black Money Act requirements**, Perficio helps clients:

- ✔ Avoid harsh penalties and litigation for non-disclosure
- ✔ Maintain clean tax and regulatory records in India
- ✔ Confidently manage global investments with full compliance support