New black money law may apply to NRIs and their families' concealed income

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NEW DELHI: The proposed black money law aimed at cracking down on concealed income will not just apply to Indians. Expatriates and their families will need to pay close heed to observing its conditions if they're not to fall afoul of the legislation, which stipulates exemplary punishment.

Tax advisors have begun to receive queries from companies that employ foreigners, with some planning to lobby the government to relax the requirements. But relief seems unlikely since other countries such as the US impose similar obligations.

The Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015, which proposes harsh penalties and prosecution for non-disclosure of overseas assets defines assesses as including all persons who are residents of India. In the case of individuals, an exception has been made in the case of 'not-ordinarily residents' but expatriates usually become residents after a stay of 2-3 years.

"Expatriates who become residents, based on their physical stay in India, should be careful in disclosing their foreign income and assets in their Indian tax return going forward as non-disclosure or non-adequate disclosure could thereby trigger a dispute," said Vikas Vasal, partner, KPMG.

Currently, resident but not ordinarily resident individuals with bank accounts or assets in a foreign country are required to file their returns in India even if they do not have any locally taxable income. If an expatriate employee is accompanied by a spouse with assets in his or her home country, then the spouse is also obliged to file returns in India once he or she acquires this status.

"Now is the time to review overseas bank accounts and assets and ensure that they were properly reported in past returns. If not, now is also the time to correct the reporting because once the proposed legislation comes into force, there could be severe consequences," said Kuldip Kumar, leader, personal tax, PwC.

Currently, the Indian tax form requires disclosure of foreign assets such as bank accounts, interest in any entity, immovable property.

It also requires disclosure of investments, accounts in an institution where an individual has a signing authority, and trusts in which the person is a trustee, beneficiary or settlor.

Kumar cautioned that companies should share this information with their expatriate employees who are ordinarily resident in India or are to be posted to the country so that they are aware of their obligations.

Once the Bill becomes law, India will join the US and others in mandating such disclosures on the part of individuals, including expatriates who have become tax residents. India will also sign an agreement with the US that will facilitate exchange of information on their respective citizens. The proposal for a new black money law was announced by Finance Minister Arun Jaitley in his February 28 Budget speech. The Bill has been cleared by the Cabinet and is awaiting parliamentary approval.