AIS Meets AEOI: Why the Latest CBDT Move Could Transform Offshore Tax Compliance

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The Central Board of Direct Taxes (“**CBDT**”) recently issued orders authorizing the income-tax department to upload, in the ‘Annual Information Statement’ (“**AIS**”), information received under an ‘*automatic exchange of information*’ (“**AEOI**”) framework for the concerned taxpayer for the calendar years 2022-2025 within 90 days and future information receipts also in a time bound manner. This marks an evolution in the way offshore tax information is being integrated into India's tax compliance framework. Our article aims to provide its readers context for this recent development, as well as certain practical insights.

Overview of information exchange framework

Indian residents are required to pay income-tax on their global income. To accurately assess such income, tracking the global assets of such residents becomes crucial. The Government obtains such information primarily in three ways:

a. **Self-reporting**: Indian residents (who are ordinarily resident) are required to report details of foreign assets held by them while filing their Indian income-tax returns in Schedule FA. Non-compliance with this reporting potentially exposes the taxpayer to a penalty of INR 10 lakh for each year of non-compliance as well as other consequences under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (“**BMA**”).

b. **Information requests**: The Government can specifically request other countries (i.e., with which it has an information sharing arrangement / tax treaty) for information concerning a specific taxpayer. Such requests are processed through the Foreign Tax and Tax Research ("**FT&TR**") division, which functions as India's competent authority for exchange of information under tax treaties and information exchange agreements.

c. **AEOI:** The Government has entered into international agreements for AEOI, the notable ones being the inter-governmental agreement with the United States for implementing the *Foreign Account Tax Compliance Act* (“**FATCA**”) and the multilateral framework for implementing the *Common Reporting Standard* (“**CRS**”). As the name suggests, information under this framework is shared ‘automatically’, without requiring specific information requests.

Apart from tax liability under the Income-tax Act (“**IT Act**”), information concerning foreign assets is crucial to determine a taxpayer’s liability under BMA as well as the foreign exchange control regime.

Under the BMA, the fair value of an undisclosed foreign asset is taxable at 30% in the previous year in which such asset comes to the notice of the Assessing Officer. Furthermore, taxpayers could potentially also be required to pay a penalty equal to three times the tax amount, thereby leading to an effective payment of 120% of the foreign asset’s fair value plus interest on undisclosed incomes and prosecution as may be applicable under the BMA.

The quantum of penalty is graver under the Foreign Exchange Management Act, 1999 (“**FEMA**”), wherein non-compliant overseas investments can potentially attract a penalty of up to three times the amount involved in the contravention.

Cumulatively, penalties under the BMA and FEMA can erode the entire value of the foreign asset involved, making regulatory and reporting compliances even more important. In the ensuing paragraphs, we discuss the AEOI framework in greater detail.

CRS and FATCA

In a nutshell, the CRS and FATCA are automatic information exchange mechanisms by which a reporting obligation is imposed on a financial institution in respect of accounts maintained with it that is held or controlled by non-resident persons. These information exchange mechanisms were set up over the last ten years under bilateral agreements between Governments or the Multilateral Competent Authority Agreement administered by OECD.

The AEOI framework is complex, and there are detailed rules governing reporting for accounts held by various kinds of entities. At the risk of over-simplification, certain key aspects of the AEOI framework can be summarized as under:

- **Who is required to report**: The obligation of collecting and reporting information is imposed on ‘*financial institutions*’. This is defined to include banks, depository institutions, custodial institutions, investment entities, etc., subject to certain carve-outs.
- **What is required to be reported**: Details such as name, address, residential jurisdiction, tax identification number, account number, account balance / peak value, etc. are required to be reported for each ‘reportable person’ pertaining to an account.
- **When is reporting required**: A pre-requisite for reporting obligation to be triggered under these frameworks is that the account in question must be held / controlled (as applicable) by a ‘reportable person’. Broadly, a ‘reportable person’ is a person who is tax resident in a reportable jurisdiction from the perspective of the financial institution's jurisdiction (i.e., a jurisdiction with which an AEOI arrangement exists).

For example, a bank account held or controlled by an Indian tax resident person with an Indian bank would not require any reporting by the Indian bank under the CRS / FATCA.

However, if the bank account was held or controlled by a Singaporean tax resident, the Indian bank would be obligated to report such information to the Indian Government which would then be automatically exchanged with the concerned Singaporean authorities under the CRS framework.

In practice, financial institutions require their customers to self-certify these details at the time of onboarding them (i.e., as part of their KYC documentation). Therefore, providing accurate details at the on-boarding stage, and notifying the bank of subsequent changes, becomes crucial.

CBDT's direction

The AEOI framework has been operational for almost a decade now, and the Indian government has consistently been receiving information from other jurisdictions. To this extent, there is no change brought about by the recent directions issued by the CBDT. In other words, the nature and extent of reporting and information exchange continue to remain the same. The only change is that the AIS of taxpayers will now reflect their information received under the AEOI framework. This change has already been implemented, and the AIS section contains a tab 'Reports' for 'Foreign Assets Information'. This is a timely development as taxpayers will be filing their tax returns over the next few months in view of ensuing deadlines and such data disclosures will come in handy.

This change is a big step forward in the backdrop of government's *'nudge'* campaign which aimed at promoting voluntary compliance for reporting foreign assets. To this extent, the Government identified 'high-risk' cases where information pertaining to taxpayers was received under AEOI, but the information about a taxpayer's foreign asset or foreign bank account was not reported or appropriately disclosed in the taxpayer's income tax return. Messages and e-mails were sent by tax authorities to such taxpayers, advising them to review and revise their income-tax returns should they wish to.

What should I do if my AIS reflects foreign assets?

<u>Compliant taxpayers</u>

A taxpayer who has regularly been filing Schedule FA as part of the income tax return need not be concerned about the AIS reflecting a foreign asset, as there is no likelihood of non-compliance by the taxpayer. However, a careful scrutiny of the AIS would be warranted in case the information appearing in the AIS is incorrect or inconsistent to make appropriate reconciliation or rectification if required.

Inaccuracy of information can broadly be of two kinds – either the particulars of information appearing in the AIS are incorrect (for example, the 'value' of account), or the information is wholly not relevant to the taxpayer (for example, AIS reflects a bank account which the taxpayer neither holds nor controls). In the event of such inaccuracy, a taxpayer should immediately provide feedback and dispute the same on the AIS tab which is possible for any other transaction reported in the AIS.

In case of inaccurate information appearing in the AIS, it is advisable for a taxpayer to approach the concerned financial institution and highlight discrepancies. As stated earlier, financial institutions often rely on self-reporting by their customers for the purpose of collecting information under the AEOI framework. Therefore, the onus is on an account holder to intimate the financial institution of any key changes concerning taxpayer's basic information such as tax residency, passport, citizenship or address.

Depending on the tax department's scrutiny selection software, discrepancies between the income-tax return and the AIS may be flagged for further questioning or nudges or even issue of scrutiny notices. Effective and timely representation is key while participating in such proceedings and demonstrating (facts permitting) the inaccuracy of information reported. In case of a misreporting by the concerned financial institution, an acknowledgement by the institution to this effect would demonstrate the taxpayer's bona-fide as well.

Not so compliant taxpayers

Taxpayers who have missed or failed to comply with their reporting requirements under Schedule FA in the past may consider updating or revising their income-tax returns (i.e., for the assessment years where it is still permissible) and suitably report foreign assets. While such reporting could demonstrate a taxpayer's bona fides and mitigate exposure arising from non-reporting / inaccurate reporting in Schedule FA for such years (i.e., a penalty of INR 10 lakh) such reporting would not, by itself, provide immunity from the substantive tax and penalties under the BMA (i.e., of 30% tax on fair value, and a penalty of 3 times the tax) and much would depend on the facts of the case.

Additionally, a taxpayer should assess whether its investment structures are FEMA compliant. Information sharing routinely takes place between the income-tax department and other regulatory and enforcement agencies (including the enforcement directorate). Therefore, a taxpayer must proactively assess its exposure under FEMA for such overseas investment structures and consider suitable declarations / compounding for the same.

Equally important is recognising that differences between the AIS and the tax return should not automatically be viewed as evidence of tax evasion. International information exchange operates on standardised reporting formats prescribed under the CRS. These reports frequently contain limited contextual information. For example, a foreign financial institution may report the legal holder of an account without identifying the beneficial owner. Joint accounts may be reported in full against multiple account holders. Reporting obligations, investment values may differ because of interpretation of terms, exchange rate fluctuations, valuation dates or reporting methodologies and terminologies and interpretations adopted in different jurisdictions.

Certain taxpayers may also consider making a disclosure under the *Foreign Assets of Small Taxpayers Disclosure Scheme, 2026* ("**FAST**") which provides a limited window for an eligible taxpayer to make a disclosure of its foreign assets upon making the prescribed tax payment. While this scheme was announced vide the Finance Act 2026, the government is yet to notify effective date to make it operative and release forms and guidelines for making a disclosure or declaration under the scheme. Taxpayers looking to avail the scheme would be advised to evaluate whether they satisfy the eligibility conditions for FAST scheme. One hopes that all the data available with the government is updated while the FAST scheme is active so that a taxpayer ensures compliance with the law.

Conclusion

World over, tax regimes are moving towards an era of 'substance over form' and tax authorities and regulators increasingly scrutinize cross-border transactions and overseas investment structures. A taxpayer must therefore ensure that an overseas investment structure is compliant with applicable laws and regulations, and that appropriate disclosures are made in a timely manner rather than avoiding disclosures by purely relying on the prospect of undisclosed foreign assets staying out of the Government's detection radar.

The volume of financial information now being exchanged automatically and on a recurring basis between jurisdictions is enormous. Given the sheer scale of these data flows, manually analysing and extracting actionable insights from such information may not be practically feasible for tax authorities. At the same time, information received under tax treaties and information exchange agreements is governed by strict confidentiality and permissible end-use provisions. It is therefore imperative that any access to, or dissemination of, such information is undertaken in a manner that fully complies with these treaty-based restrictions and preserves the integrity of the exchange framework.

With the uploading of data obtained by tax authorities under AEOI, it is likely that the tax return processing systems will automatically trigger queries or notices pointing out concealment or insufficient reporting of offshore assets.

Historically, tax disputes have not necessarily arisen because taxpayers deliberately concealed offshore assets; rather, they often stemmed from interpretation issues, incomplete reporting, legacy accounts opened while residing abroad, jointly held accounts, dormant investments, differing beneficial ownership positions, changes in residential status or misunderstanding regarding reporting requirements. Making foreign financial information available through the AIS provides taxpayers with an opportunity to identify such discrepancies before they can become contentious.

*****Views expressed, if any, are personal views of the authors and not of the firm.***