FOREIGN INCOME & OVERSEAS ASSETS

Getting Your ITR Disclosures Right

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2nd July 2026

As the income tax return filing season gathers pace, Resident and Ordinarily Resident (ROR) taxpayers with overseas income or foreign assets face heightened disclosure obligations. The Income-tax Department is deploying technology-driven risk-profiling tools, and with the global exchange of financial information intensifying, accurate and complete reporting for foreign income and overseas assets has moved from a routine exercise to a critical compliance imperative. This article sets out the legal framework, disclosure requirements, and practical safeguards that ROR taxpayers should be mindful of.

Residential Status – The Threshold Question

The obligation to disclose foreign assets and income under the Income-tax Act is directly tied to residential status determined under Section 6. The disclosure framework applies exclusively to individuals qualifying as ROR in India. It is, therefore, imperative that taxpayers first establish their residential status for the relevant previous year before proceeding to assess their disclosure obligations.

Summary of Reporting Obligations by Status

ROR Taxpayers	RNOR / NR Taxpayers
– Global income taxable in India – Mandatory Schedule FA disclosure – Foreign tax credit available via Schedule FSI / TR – Form 67 filing required	– Indian-source income taxable – No Schedule FA disclosure required – Treaty benefits may apply

Disclosure Requirements – An Overview

ROR taxpayers are required to make comprehensive disclosures of the following categories of foreign assets and income:

ROR Taxpayers disclosure requirements
– Foreign bank accounts — including dormant accounts and low-balance accounts that generated no income during the year. – Overseas investments — equity shares, mutual funds, bonds, debentures, and other financial instruments held in foreign entities. – Foreign retirement, pension and social security accounts (such as 401(k) plans), Individual Retirement Accounts (IRAs), superannuation funds, etc., where applicable. – Equity compensation — stock options (ESOPs), restricted stock units (RSUs), and other forms of employer equity compensation whether vested, unvested or partially exercised. – Foreign immovable property — residential, commercial, or agricultural property held directly or through a nominee.

- Interests in foreign trusts or foundations — including beneficial interests, settlor interests, and trustee positions.
- All foreign income — irrespective of whether taxes have already been withheld or paid in the source country.

A common misconception is that the absence of income from a foreign asset eliminates the disclosure obligation. This is incorrect. The Act mandates disclosure of the asset itself, regardless of whether it generated income during the year.

Applicable schedules and reporting mechanics

The ITR forms applicable to taxpayers with foreign assets and income are ITR-2 and ITR-3. The relevant disclosure schedules and their scope are as under:

Schedule	Purpose	Key Requirements
Schedule FA	Foreign Assets	Disclose all foreign assets held at any time during the calendar year ending 31 December of the relevant previous year[1] — not merely at the last date. Valuation at cost of acquisition or as prescribed.
Schedule FSI	Foreign Source Income	Report income earned from each foreign source, with country-wise bifurcation. Reference Schedule FA assets where applicable.
Schedule TR	Foreign Tax Relief	Claim credit for taxes paid overseas. Must be supported by valid evidence and filed alongside Form 67.
Relevant Income Scheme	Salary / Capital Gains / Other Sources	Foreign income must also be disclosed in the relevant income head schedule in addition to Schedule FSI.

Foreign tax Credit – Critical compliance steps

Taxpayers seeking to claim a Foreign Tax Credit (FTC) must comply with the following procedural requirements:

FTC availment and compliance obligations

- File prescribed Form 67 for claiming FTC on or before the due date for furnishing the return of income.
- Documentary evidence — Obtain and retain the original tax deduction certificate, tax payment receipt, or foreign tax assessment order evidencing the taxes paid overseas.
- Currency conversion — Convert foreign currency amounts to Indian Rupees using the Telegraphic Transfer Buying Rate (TTBR) of the State Bank of India as on the last day of the month immediately preceding the month in which the taxes were paid or withheld.

[1] Unlike most income schedules in the ITR, Schedule FA follows the calendar year (1 January–31 December) and not the Indian financial year (1 April–31 March).

- Country-wise computation — FTC must be computed separately for each country and each head of income, and may not exceed the Indian tax liability on the relevant foreign income.

Consequences of non-disclosure

Non-compliance with foreign asset disclosure requirements carries disproportionately severe consequences under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ('Black Money Act'):

Consequences of non-disclosure

- Tax at a flat rate of 30% on the value of undisclosed foreign income or assets — without the benefit of any exemption, deduction, or set-off.
- Penalty equivalent to 3 times the tax so computed — resulting in an effective levy of 4 times the tax on the undisclosed asset.
- Prosecution with rigorous imprisonment ranging from 3 to 10 years, along with a fine.
- Penalty under the Income-tax Act for non-disclosure — which, in specified cases, may extend up to Rs. 10 lakh per year of default under Section 43 of the Black Money Act read with Rule 18D of the Income-tax Rules.

Critically, the Black Money Act applies even where the foreign asset was acquired from legitimate, tax-paid funds. The non-disclosure itself constitutes the violation. Given the automatic exchange of financial information with India under CRS by over 100 jurisdictions, the detection risk is materially higher than taxpayers may perceive.

Document checklist before filing

To ensure completeness and accuracy of disclosures, taxpayers should compile and reconcile the following documents prior to filing:

Pre-filing checks

- Foreign bank account statements for the full previous year (April to March).
- Brokerage and investment account statements reflecting holdings as on 31 December of the previous year (required for Schedule FA under specific sub-items).
- Employer equity compensation statements — annual summary of ESOP grants, RSU vesting, exercises, and tax withheld.
- Foreign tax deduction certificates, tax payment receipts, or assessment orders.
- Foreign income tax returns filed in the source country, if applicable.
- Acquisition documents for foreign immovable property or investments.
- Trust deeds, foundation charters, or declarations of beneficial interest, where applicable.
- Exchange rate statements (TTBR of SBI) for relevant dates.

Conclusion

India's participation in the Automatic Exchange of Information (AEOI) framework has fundamentally altered the information asymmetry that may have previously existed between taxpayers and the Revenue. Over 100 jurisdictions now automatically transmit financial account data — including account balances, interest, dividends, and sales proceeds — to the taxpayer's country of tax residence. The Income-tax Department's risk management systems cross-reference the data against ITR filings to identify mismatches. A taxpayer who has not disclosed a foreign account that appears in the data transmitted to

India is highly likely to receive a notice for scrutiny of tax return.

Proactive and complete disclosure, therefore, is not merely a legal obligation but a sound risk management strategy.

Accordingly, we strongly recommend that taxpayers approach foreign income and overseas asset disclosure requirements with all seriousness and caution. Taxpayers must initiate the document collection and reconciliation exercise well before the filing deadline, and should not hesitate to seek specialist guidance where cross-border structures, treaty positions, or complex equity compensation arrangements are involved.

Disclaimer: This article is intended for informational purposes. It does not constitute legal, tax, or professional advice. Readers are advised to seek specific professional guidance based on their individual facts and circumstances.

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