

Foreign Assets Disclosure Scheme (FAST-DS 2026): Income Tax Relief vs FEMA Risks - What Every Individual Must Know Before Disclosure

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The Union Budget 2026 introduced a one-time Foreign Assets Disclosure Scheme (**FAST-DS 2026**) to provide a compliance window to individual taxpayers for regularising past non-disclosures of overseas income and assets. The scheme permits voluntary disclosure of undisclosed foreign income and foreign assets up to ₹5 crore and cases involving mere reporting lapses, where income has already been offered to tax in India but the corresponding foreign assets were not disclosed, up to ₹1 crore. Eligible individuals can regularise such defaults by paying the prescribed tax and penalty and obtain immunity from prosecution and penal consequences under the Income-tax Act and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. The scheme is strictly restricted to individuals and does not extend to companies, LLPs, firms, trusts, or other non-individual entities.

While the scheme offers significant relief from an income-tax standpoint, tax regularisation does not automatically translate into regulatory regularisation, particularly under the Foreign Exchange Management Act, 1999 (FEMA). The framework for tax regularisation and that of exchange-control compliance operate in distinct, albeit intersecting, domains.

It therefore becomes crucial prior to opting for disclosure, that taxpayers carefully assess whether the transactions leading to the acquisition, holding or transfer of such foreign income and assets are compliant with FEMA and the rules and regulations framed thereunder, as immunity granted under the scheme does not extend to FEMA contraventions.

In this article the authors have attempted to address potential violations that may arise in connection with acquisition, holding, or transfer of such foreign assets, along with the possible remedies under FEMA. In the concluding segment, the article briefly examines the avenues available for regularisation of such breaches.

A. Foreign Bank Account and Deposits

An individual disclosing balances lying in foreign bank accounts or fixed deposits abroad, triggers critical examination under Regulation 7 of the Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015 and, Paragraph 17 of the Master Direction on Liberalised Remittance Scheme (**LRS**), which delineate the obligations in relation to repatriation and surrender of foreign exchange imposed on persons resident in India.

The provisions mandate that a person resident in India is required to surrender any foreign exchange received, realised, unspent or unused, to an authorised person within 180 days from the date of such receipt, realisation, purchase, acquisition or from the date of his return to India, as applicable.

Where a resident individual parks funds in a foreign bank account or fixed deposit beyond the stipulated period, such continued retention of funds, would constitute a contravention of FEMA. The provision also extends to incomes earned from investments; and such income would need to be re-invested or repatriated within this period of 180 days, in accordance with applicable guidelines.

B. Overseas Investment

Overseas Direct Investment in Foreign Entities having Step-Down Subsidiaries

Under Paragraph 1 of Schedule III of the Foreign Exchange Management (Overseas Investment) Rules, 2022 (**OI Rules**), a resident individual is permitted to make ODI (**ODI**) in a foreign entity, with a caveat that such foreign entity must not have any step-down subsidiary (**SDS**).

In other words, whilst individuals are permitted to acquire control in a foreign entity, permission is expressly denied where such foreign investee entity itself acquires control in another foreign entity, thereby creating a layered corporate structure. That said, the rules carve out specific exceptions for acquisition by way of inheritance, qualification shares, sweat equity shares, shares under employee stock ownership plans or employee benefit schemes.

Thus, resident individuals who have utilized their own funds for investment in foreign start-ups or have invested in offshore holding companies operating through multi-layered structures may inadvertently violate India's exchange control regime. Such structures, while globally accepted as commercial practice, breach the restriction on step-down subsidiaries, thereby rendering the ODI transaction non-compliant ab initio.

Overseas Direct Investment in Foreign Entities engaged in Financial Services Activity

Paragraph 1 of Schedule III of the OI Rules places an embargo on ODI by resident individuals in foreign entities engaged in financial services activity.

A foreign entity will be considered as engaged in the business of financial services activity if it undertakes an activity, which if carried out by an entity in India, would necessitate registration with or regulation by a financial sector regulator in India (such as Reserve Bank of India, Securities and Exchange Board of India, Insurance Regulatory and Development Authority of India, etc.).

Notwithstanding the foregoing, acquisition by way of inheritance, qualification shares, sweat equity shares, shares under employee stock ownership plans or employee benefit schemes is expressly permitted, even if the foreign entity is engaged in the financial service activity.

Individuals often invest in overseas fintech platforms, lending start-ups, trading applications, investment advisory ventures and crypto exchanges, without recognising their classification as financial service entities under FEMA. Consequently, what may appear to be commercially viable investments legally permitted in the host country, may result in a contravention of the ODI framework.

Mode of Funding - Non-Compliant Remittance Routes

Regulation 8 of the Foreign Exchange Management (Overseas Investment) Regulations, 2022 (**OI Regulations**) mandates that overseas investment be made only through permitted routes, including inter-alia banking channels, swap of securities or debits to accounts maintained in accordance with FEMA. The framework strictly precludes funding transactions through cash payments, informal settlement mechanisms or non-banking routes.

Common non-compliances that have surfaced in the context of ODI funding include:

- Cash funding through overseas associates, friends or relatives
- Third-party funding structures
- Informal fund transfers through hawala arrangements
- Personal overseas account transfers outside the recognised banking system, including transfers made through fintech platforms

Such funding structures, often adopted in the interest of speed or operational convenience, can result not only in procedural lapses, but also substantive contraventions of the governing regime.

Failure to comply with reporting obligations and submissions for ODI

As per Regulation 9 of the OI Regulations, a person resident in India making ODI shall obtain a Unique Identification Number (**UIN**) before sending outward remittance or acquisition of equity capital in a foreign entity, whichever is earlier, by submitting Form FC along with prescribed supporting documentation to the Authorised Dealer (**AD**) bank.

The Regulation also prescribes submission of share certificates or other documentary evidence as proof of ODI to the designated AD bank within 6 months from the date of remittance/investment.

A recurrent compliance lapse arises in the delayed filing of Form FC, particularly in cases involving newly incorporated entities. Under the ODI regime, investment / financial commitment is consummated upon incorporation itself, on subscription to the charter documents of the foreign entity, and Form FC is required to be filed contemporaneously with such incorporation. In practice, however, opening of the overseas bank account may take time. As a result, filings are typically deferred until the remittance of funds, when the bank account is operational, resulting in inadvertent delay in submission of Form FC and generation of UIN.

Another common procedural oversight pertains to delay in furnishing share certificates or other documentary evidence of investment within the prescribed timeline to the AD Bank; thereby tainting an otherwise compliant capital transaction with procedural non-compliance.

C. Acquisition of Overseas Immovable Property

Mode of Funding – Funding through channels not specified

Regulation 21 of the OI Rules states that overseas immovable property may be acquired:

- From a person resident in India: By way of inheritance, gift or purchase
- From a person resident outside India: By way of inheritance, purchase out of foreign exchange held in Resident Foreign Currency (**RFC**) Account, remittances under LRS, joint acquisition with a relative who is a person resident outside India or income/proceeds of assets (other than ODI) acquired as per law.

In this context, borrowings from overseas banks/foreign entities or funds mobilised through friends, associates, third parties or informal non-banking channels do not qualify as legitimate routes for funding and could have ramifications under FEMA.

Acquisition of Overseas Immovable Property on Deferred Payment / Instalment Basis

Transactions involving acquisition of property on a deferred payment / instalment basis may be construed as financing arrangements creating an obligation outside India for the resident individual and being a capital account transaction is therefore not permitted without prior RBI approval. One

would need to examine whether setting out clear construction milestones linked to payment of instalments could mitigate the characterisation of the transaction as a financing arrangement.

Concluding remarks

The instances discussed above are only illustrative and not exhaustive, and potential FEMA non-compliances arising from foreign asset disclosures may vary widely depending upon the structure and regulatory classification of overseas transactions. While the existence of a FEMA contravention does not restrict or bar disclosure under the FAST-DS 2026, such disclosure invariably necessitates a parallel evaluation of FEMA compliance exposure.

It is pertinent to note that relief under Section 6(4) of FEMA is granted to residents to hold, own, transfer or invest in foreign currency, foreign security or overseas immovably property, if the same was acquired when the individual was a person resident outside India or inherited from a person resident outside India.

Taxpayers proposing to avail the scheme should adopt a holistic compliance approach, viewing disclosures not only from an income-tax lens, but also from a FEMA perspective. Where gaps are identified and concerns arise, FEMA provides mechanisms and avenues for regularisation, such as payment of Late Submission Fees (LSF) and compounding of contraventions. It is also relevant to note that FEMA and income tax law operate independently; and non-participation in the FAST-DS 2026 does not, in itself, resolve contraventions under FEMA. Accordingly, while a coordinated review may be advisable, the existence of potential FEMA considerations should not be viewed as a deterrent to making a bona fide disclosure under the scheme.

The views expressed are strictly personal and cannot be regarded as an opinion. For any queries or feedback please write to shilpijain@hnaindia.com and stephaniemendonza@cnkindia.com.