

# Challenges Faced with Freezing and Seizing Assets Abroad

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# Definition of Asset Freezing and Seizure

The FATF provides guidance on asset freezing and seizure measures as part of its recommendations. According to the FATF's recommendations,

- **“Asset Freezing”** refers to the temporary prohibition of transfer, disposal, or movement of assets, either in whole or in part, by competent authorities. It is typically done as a preventive measure to preserve the assets pending an investigation or legal proceedings.
- **“Asset seizure”** refers to the permanent confiscation or forfeiture of assets by competent authorities following a successful legal process. It involves the transfer of ownership or control of the assets to the state or another authorized entity.

# Importance of Seizure and Freezing of Assets in Tax Crime investigations

Asset seizure and freezing are the essential tools in tax crime investigations:-

- allowing authorities to preserve assets,
- disrupt illegal operations,
- trace the proceeds of crime,
- strengthen investigations and prosecutions,
- facilitate asset recovery, and
- enhance deterrence against tax evasion and fraudulent activities.

# Legal and Jurisdictional Challenges

- **Variations in legal systems**: Different countries have different legal frameworks and procedures for freezing and seizing assets, making coordination and cooperation complex.
- **Jurisdictional issues**: Determining which country has jurisdiction over the assets can be challenging, especially in cases involving multinational corporations or individuals with assets in multiple countries.
- **Differences in laws and regulations**: Countries may have different laws and regulations regarding asset freezing and seizure, leading to inconsistencies and difficulties in enforcement.
- **Mutual legal assistance treaties (MLATs)**: MLATs provide a mechanism for international cooperation, but they have limitations, such as lengthy processes and the need for bilateral agreements.

# Identification and Valuation Challenges

- **Hidden or offshore assets:** Individuals or entities may employ complex schemes to hide assets in offshore jurisdictions or through intricate financial structures, making their identification challenging.
- **Concealment techniques and money laundering:** Illicit activities, such as money laundering, can be used to obscure the true ownership and source of assets, making it difficult to trace and seize them.
- **Valuation of assets:** Determining the value of assets accurately is essential for freezing and seizing, but the valuation process can be complex, particularly for illiquid or unique assets.
- **Expertise and resources:** Asset identification and valuation require specialized knowledge, investigative skills, and sufficient resources, which may not be readily available in all cases

# Political and Diplomatic Challenges

- **Diplomatic sensitivities**: Asset freezing and seizure can have political implications and strain diplomatic relations between countries.
- **Cooperation and conflicts**: Cooperation between countries is crucial for effective asset freezing and seizure, but conflicts of interest, political tensions, or lack of cooperation can hinder the process.
- **Geopolitical factors**: Assets may be located in countries with strategic importance, making it challenging to enforce freezing and seizure measures due to political considerations.

# Technological and Cybersecurity Challenges

- **Technological advancements:** Advances in technology make it easier for individuals to hide and transfer assets, especially in digital forms, increasing the difficulty of tracking and freezing them.
- **Securing digital assets:** Digital assets present unique challenges as they can be easily moved or concealed, requiring robust cybersecurity measures to prevent unauthorized access or hacking attempts.
- **Cyber-attacks and hacking risks:** Sophisticated cybercriminals can target assets, compromising their security and complicating asset freezing and seizure efforts.
- **Tracking digital assets:** Identifying and tracking digital assets, such as cryptocurrencies or offshore accounts, requires specialized knowledge and tools.

# Enforcement and Recovery Challenges

- **Challenging legal processes:** The legal procedures for enforcing asset freezing and seizure orders can be time-consuming, involving multiple court proceedings and potential appeals.
- **Obstacles in asset recovery:** Assets frozen or seized abroad may face resistance from foreign governments or entities, leading to delays or hindrances in the recovery process.
- **Lengthy legal proceedings:** Legal proceedings for asset recovery can be protracted, causing delays in repatriating or returning the assets to their rightful owners.
- **International Cooperation:** Collaboration between countries is crucial for successful asset recovery, but differences in legal systems, lack of trust, or conflicting interests can impede cooperation efforts



# Recommendations

Keeping in mind the complexity and multi-faceted nature of freezing and seizing assets abroad Tax administrations require :

- A robust legal frameworks, SOPs, Guidance notes.
- Specific Powers, Authority & Mandate to be given in Domestic Legislations.
- Due process ,natural justice & Legal Safeguards
- International cooperation- bilateral and Multilateral agreements with other jurisdictions,
- Training and capacity building of Tax Crime Investigators
- Updating people and systems about technological advancements, and
- Dedicated resources to overcome them effectively.
- Audit cum Feedback and appraisal methodologies about legislation, procedure & framework

# The India Experience : Procedure and Law for Freezing and Seizing assets abroad

In India, the procedure and law for freezing and seizing assets abroad involve a combination of domestic legislation, international cooperation, and legal frameworks.

## Domestic Legislation:

- The primary legislation in India is the **Prevention of Money Laundering Act, 2002 (PMLA)**.
- The PMLA empowers the Enforcement Directorate (ED) to investigate money laundering offenses and take actions to freeze, seize, and confiscate assets involved in such offenses, including those located outside India.
- In case the total value involved in the offence is more than one hundred Crores the Fugitive Economic Offenders Act, 2018 (hereinafter, FEOA) can also be a recourse to attach a property in a foreign jurisdiction.

International Cooperation: India engages in international cooperation to freeze and seize assets located abroad.

- **Mutual Legal Assistance Treaties (MLATs)** play a crucial role in facilitating cooperation between India and other countries. MLATs provide a legal framework for requesting assistance in freezing and seizing assets, sharing information, and conducting joint investigations.
- India has signed MLATs with several countries to enhance cooperation in combating financial crimes and facilitating asset recovery.

# The India Experience : Procedure and Law for Freezing and Seizing assets abroad

**Freezing of Assets**: The process of freezing assets abroad typically involves the following steps:

- **Initiation of Investigation**: The ED initiates an investigation into money laundering offenses based on credible information or a complaint.
- **Provisional Attachment Order**: The ED can issue a provisional attachment order under the PMLA to freeze the assets suspected to be involved in money laundering. The order temporarily prohibits the transfer, disposal, or alienation of the assets.
- **Adjudication**: The matter is then adjudicated by the Adjudicating Authority under the PMLA, which decides whether the provisional attachment should be continued or revoked.

# The India Experience : Procedure and Law for Freezing and Seizing assets abroad

- In India the process of seizing and confiscating assets abroad involves the following steps:
  - **Investigation and Evidence Collection**: The ED conducts a thorough investigation to gather evidence of money laundering and the connection of assets to the offense.
  - **Prosecution and Trial**: The evidence collected is used for prosecution in a court of law. If the court finds the accused guilty, it can order the seizure and confiscation of the identified assets, including those located abroad.
  - **Asset Recovery**: The seized assets are managed and preserved until the confiscation order is executed. The process of recovering assets located abroad involves coordination with the relevant foreign authorities, as per the provisions of MLATs and international agreements.
  - **Judicial Proceedings and Appeals**: Legal proceedings related to freezing and seizure of assets abroad are conducted through courts. The affected parties have the right to challenge the provisional attachment or confiscation orders through legal remedies, including filing appeals at higher courts

**Thank You**