

De Jure

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Crusaders Against Black Money



CONCERN AREA

The menace of black money stares the Indian economy in its face because of the wide-spread and rampant circulation of unaccounted money in the country, in form of cash.

Cash transactions are predominantly undertaken to evade payment of taxes (*income tax, excise duty, sales tax, stamp duty, etc.*) especially as seen in the real estate sector where considerable amount of the transaction value of the deal, usually referred to as "black component" of such deal, is paid in hard cash.

In certain other cases, the cash transactions are done to avoid statutory payments, compliance requirements under law and also to avoid other administrative procedures. It is also a known fact that large sum of money is used in illegal pay-offs (*such as those involving payments for bribery, corruption, use of huge cash during elections and including financing various terrorist activities, to name the few*). Part of this money is also utilized for hoarding or investment.

As per estimates, the money involved in illegal transactions (parallel economy) is estimated to account for anywhere between 20% and 50% of the country's GDP¹.

Realizing that most black money transactions are in cash and cannot be traced easily, the Special Investigation Team (**SIT**) felt a need to put an upper limit to cash transactions and regulate the cash transactions. In this regard, SIT has made certain recommendations and submitted its (fifth) report to the Supreme Court on methods to curb black money in the economy.

SIT RECOMMENDATIONS

Before looking at the recommendations of SIT, it will be worthwhile to understand the existing provisions which are there to deal with circulation of the unaccounted money.

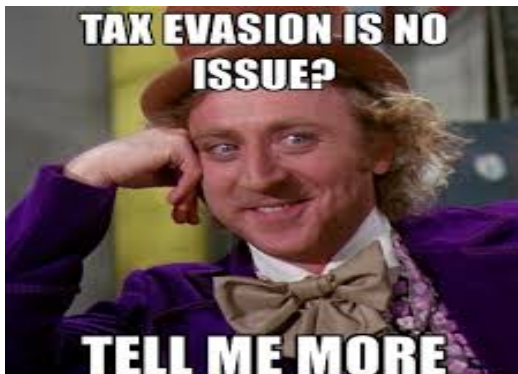
¹ <http://flame.org.in/knowledgecenter/blackmoney.aspx>

As per the provision of the Income Tax Act, 1961 (Income Tax Act), the assessing authority is empowered to disallow deduction of any expenditure in respect of which payment, exceeding the prescribed limit of Rs.20,000, is made otherwise than through prescribed mode (*cheque, demand draft, etc.*).

In order to deal with black money issue in immovable property transactions, the Income Tax Act provides that no person shall accept, from any person, any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is Rs.20,000 or more. Even the repayment of deposit, loan, specified sum of Rs.20,000 or more is required to be processed through the prescribed mode (*i.e. through an account payee cheque or account payee bank draft or by electronic clearing system through a bank account*).

During the last few years, the Tax Department has taken a number of steps to ensure and establish an audit trail of transactions. In this regard, the quoting of Permanent Account Number (PAN) is made mandatory for all transactions above Rs.2 lakhs (*irrespective of the mode of payment*). It has also stipulated that cash payments for hotel bills exceeding Rs.50,000 and purchase of cash/prepaid instruments aggregating to more than Rs.50,000 a year will have to quote PAN. Measures are also being taken to link Aadhaar with the PAN number to eliminate the instances of multiple PANs.

In the event there is any failure in compliance with the provisions of the Income Tax Act, there are also penalties prescribed for the same.



Although several provisions are introduced to curb the circulation of black money, unaccounted money is still used in the transactions without bothering for tax deduction or penalty levied under the Income Tax Act. This is mainly because often the cash transactions undertaken by a person are difficult to trace by the Income-Tax Department in a country where thousands of such transactions take place on a routine basis.

Considering that the existing provisions have failed to control or have any effect on circulation of unaccounted money, the SIT has recommended that there should be a complete ban of cash transaction

of more than Rs.3,00,000. In this regard, SIT has also recommended that adequate provisions should also be made under law to declare such transactions as illegal, invalid and punishable under the law. The proposed ban on cash transactions above Rs. 3 lakhs is likely to hit luxury goods markets, jewellery sales, sale of luxury cars, travel booking, hotel booking and real estate in a big way, since a huge sum of amount change hands in cash for these transactions.



Further, it has been recommended that if there is cash withdrawal of more than Rs.3,00,000 from any bank, then the bank should consider it as a suspicious activity and should report it to the Financial Intelligence Unit (FIU) and the concerned Income-Tax Department.

SIT has also proposed to enforce a cap on holding cash to the maximum limit between Rs.10 lakhs to 15 lakhs. In case, if any person or industry requires holding of more cash, SIT report provides that such person shall be required to obtain necessary permission from the Commissioner of Income-tax of the area. The SIT report however also observes that limitation on cash holding would have its deterrent effect on persons holding more unaccounted money who would like to disclose the unaccounted money as per the "Income Declaration Scheme (IDS)" which began from June 1, 2016 for such disclosure.

In our view, if there is a limit of cash holding and direction is issued to the banks to report suspicious transactions, then this would certainly help to prevent and control fraud and money laundering within the country and discourage stashing of money overseas. While people in general will be discouraged from doing large cash transactions, the restrictions would make it considerably difficult for those conducting a huge number of

small transactions in cash to meet working capital requirements of the business. However, it is still not very clear whether the prescribed cap of Rs.3 lakhs is applicable to a single deal or multiple deals, involving the same underlying transaction.



SIT has also suggested amending the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (Black Money Act), by incorporating a provision that the right, title and interest of every Indian National in any undisclosed foreign income and assets would stand transferred to and vested absolutely in the Union of India. In the event, it is held under the law that the property vests in the Union of India, the person who is holding the said income or property outside the country shall have to prove that it was acquired legally and/or held after obtaining necessary permission from the Reserve Bank of India. The proposed amendment will certainly act as a deterrent to all concerned holding undeclared black money overseas or at home.

OUR VIEWS

Several countries like France, Hungary, Portugal, Czech Republic, Spain, Bulgaria have already successfully implemented provisions which not only regulate cash transactions and prescribe limit for cash holding but also make provisions for suitable penalties, which in some cases is a minimum of €3,000 per transaction.

Taking cue from other countries, if the recommendations of the SIT are implemented in letter and spirit, it will certainly help to regulate the business transactions and to prevent use of unaccounted money, financing of terrorist activities, tax evasion and other financial crimes. However, to make this a reality, India must also ensure transparent, time-bound, seamless, single window delivery of services to the extent possible coupled with, may be by providing incentives for making payments through electronic mode, instead of levying additional charges. Moreover, until the country could move towards eliminating currency circulation in favour of secure electronic transactions and the financial community can provide an alternative that is as widely accepted, convenient and breach-proof as cash, implementing the recommendations may practically prove to be a challenge.

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