

Recovery of Black Money

There is a legal framework regulated by the Reserve Bank of India for the opening of bank accounts overseas by Indian residents and for outward or inward remission of funds through authorized channels.

The existing legal framework for dealing with illicitly generated funds transferred overseas and measures for the attachment and repatriation of such illegal assets to India and provision for penalties for offenders are:

- A. Under the Prevention of Money Laundering Act, 2002 (PMLA), money laundered out of predicate scheduled offences can be attached and seized and individuals and other legal entities found to have indulged in money laundering can be prosecuted. PMLA provides for imprisonment of minimum of 3 years (which can be extended up to 7 years) and a fine of up to Rs.5 lakh and the tainted proceeds parked overseas can be recovered through Mutual Legal Assistance Treaties. India has such treaties with 26 countries.
- B. Under the Foreign Exchange Management Act, 1999 (FEMA), cases relating to contravention in foreign exchange transactions by Indian residents can be adjudicated with penalty up to a maximum of 3 times the amount involved. Further, FEMA empowers the confiscation of the amounts lying abroad and directing their repatriation.
- C. Under both statutes (FEMA and PMLA), investigation is taken up against specific persons, both natural and legal, and on the basis of specific information.
- D. Section 105A of the Cr. PC provides for reciprocal arrangement and procedure for attachment and forfeiture of properties generated from the commission of an offence. Where such properties are situated overseas and treaty arrangements exist between Government of India and the other country, Letter Rogatories can be issued to a court / authority of the other country for execution of such an order.

- E. Under the Income Tax Act also, income earned and not disclosed is taxable and also subject to penalty and interest, as well as prosecution. The amount recovered may even exceed the entire undisclosed income. This is in effect confiscation of such income / property.

Actions at hand

- I. India has negotiated / renegotiated Double Tax Avoidance Agreements and finalized Tax Information Exchange Agreements with 44 countries so as to strengthen the exchange of information relating to tax evasion, money laundering and other criminal / illicit activities.
- II. Agencies enforcing these laws have been strengthened and action is being taken in all cases where credible information is available. In the last two years, over Rs 33,000 crore of mispricing has been detected in international trade and over Rs 30,000 crore of tax evasion detected domestically.
- III. Government has commissioned a study, to be completed within 18 months, by three national-level institutes to assess the extent of black money inside and outside the country and its impact on national security. The study will also indicate the sectors and mode of generation of black money and recommend measures for its prevention and control.
- IV. The Direct Taxes Code Bill, as introduced in Parliament, contains provisions for mandatory declaration of assets held abroad by taxpayers in India. It also contains provisions such as General Anti Avoidance and Thin Capitalization Rules to combat illicit transfer of money and assets abroad through complex financial arrangements and instruments.
- V. A Directorate of Criminal Investigation has been created in the Central Board of Direct Taxes as a dedicated unit to track financial transactions relating to illegal / criminal activities and bring such activities to justice.
- VI. A High Level Committee has been constituted under the Revenue Secretary for effective sharing of information among Law Enforcement Agencies for coordinated investigation / prosecution of economic offences.

Mauritius Treaty

1. A Joint Working Group (JWG) was constituted in 2006 for the purpose of renegotiating the Direct Taxation Avoidance Convention with Mauritius and its last meeting was held in 2008. Thereafter, India has successfully used the mechanism of the Peer Review Group (PRG) of the Global Forum for Transparency and Exchange of Information for Tax Purposes – of which India is Vice Chair – to leverage arguments with the Mauritian side to be more open in furnishing tax related information to India.
2. Recently, during the visit of President of Mauritius in end-April, an indication was received that Mauritius would resume the Joint Working Group dialogue on the DTAC. Further, Foreign Minister of Mauritius has conveyed that his government will give a fresh mandate for the resumed negotiations to their experts. This position has been further confirmed by the Prime Minister of Mauritius to the Indian Minister of State for External Affairs on 16th May 2011 during her visit to Mauritius.
3. Hon'ble Supreme Court in the case of Azadi Bachao Andolan Vs Union of India (2003) endorsed the Mauritius route for investments into India for availing of the capital gains tax exemption. Hence, any change in the law relating to Mauritius can only have prospective application and can be in respect of future holdings/accounts/entities in Mauritius.

Proposed Action

In order to strengthen existing laws relating to black money, the government has constituted a Committee to consult all stakeholders and submit its report within a period of six months. The Committee will examine the measures to strengthen the existing legal and administrative framework to deal with the menace of generation of black money through illegal means including, inter alia,

- a) Declaring wealth generated illegally as national asset;
- b) Enacting / amending laws to confiscate and recover such assets;
and
- c) Providing for exemplary punishment against its perpetrators.

Any further suggestions in this regard will be duly considered.

Collection of details regarding people who go frequently to 'tax havens'.

Government proposes to expand its Immigration/Emigration databases and build a database of Indians going frequently to foreign countries considered to be tax havens and returning to India.

Lok Pal Bill

A Joint Drafting Committee, consisting of Government and civil society representatives is already looking into the provisions of the Bill. Government is committed to the widest possible consultation on the Lok Pal Bill before its introduction in Parliament and subsequently until the passage of the Bill. As a first step, State Governments and political parties are being consulted. Further consultations with the public will follow.

Stronger punishment for the corrupt

This is also under consideration of the Joint Drafting Committee. The maximum punishment for cases of corruption would be increased substantially. It may be noted that money secured through corrupt modes can now be confiscated under the Prevention of Money Laundering Act and some cases have already been taken up under these provisions. Besides, the Department of Personnel is also considering the inclusion of a chapter in the Prevention of Corruption Act to provide for confiscation of ill-gotten wealth.

Special Courts for dealing with corruption cases

Government has already decided to set up 71 new special courts for trial of CBI cases. The number of public prosecutors, inspectors, head constables and stenographers for additional special courts has been increased. Government is open to the idea of more special courts to speed up trial of corruption cases.

Public Services Delivery Act

Various initiatives have already been taken by Government, including Citizens' Charters, Sevottam and the recently introduced performance management & evaluation system. The Central Government is prepared to introduce a Public Services Delivery Bill in Parliament at the earliest and to prepare a Model Bill for adoption by State Governments. The Central Government will encourage State Governments to adopt the Model Bill to improve the quality and timeliness of public service delivery.

Technical Education in Indian Languages

The Commission for Scientific and Technical Terminology has been set up with a mandate of providing more regional language material in technical subjects. The Commission's work will be strengthened and speeded up. The National Translation Mission under the Central Institute of Indian Languages, Mysore will also be strengthened. It may be noted that the Civil Services Examination is now held in Hindi as well as in regional languages. Similarly, Hindi is a medium for writing the IIT-JEE examination. The All India Engineering Entrance Examination, in which more than 11 lakh students appear each year, also offers Hindi as a medium. NCERT provides text books in Hindi and Urdu. In Tamil Nadu, Tamil is a medium of instructional examination for degree courses for technical education. Similarly, in the States of Rajasthan, Uttar Pradesh, Haryana, Bihar and Madhya Pradesh, the regional language is a medium of instruction and for examination in diploma level courses in technical education.

In addition to all these initiatives, the Ministry of Human Resource Development has asked AICTE, which is charged with the duty of determining and maintaining standards of technical education in the country to constitute a Committee of Experts to draw up a concrete plan for measures to be taken to increase the use of Indian languages in technical education. This Committee will submit its report in 3 months.

Land Acquisition Act

The Act is in the process of amendment and any suggestions regarding its provisions can be considered for inclusion. Government is committed to wide public consultation on the amendments to the Land Acquisition Act.

Agriculture

Government has already initiated several projects for promotion of organic farming and the use of bio-pesticides and bio-fertilizers. This includes the National Project on Organic Farming, National Horticulture Mission and the Rashtriya Krishi Vikas Yojana. As a result, organic farming which only covered 42000 hectares in 2004-05, now covers 10.8 lakh hectares. Nine States have drafted organic farming policies. There has been substantial increase in production of compost, bio-fertilizers and development of vermiculture. To sustain agricultural productivity in the long run and to address soil health issues, Government is giving special thrust to organic farming under the National Mission on Sustainable Agriculture and is promoting farming practices like green manuring, biological pest control and so on. These measures will be further strengthened and outlays increased.

Minimum support prices are even now based on cost calculations. Elaborate studies are conducted by the Commission on Agricultural Costs & Prices each year before Government finalizes the minimum support prices. These cost studies form the basis of the minimum support prices that are announced. The labour put in by the farmers is also part of the costs. Government will facilitate explanation of the methodology followed by the Commission at the technical level.