

MEASURES TAKEN BY GOVERNMENT TO TACKLE BLACK MONEY

There is no reliable information about the money of Indians in undisclosed bank accounts outside the jurisdiction of the country. There are various estimations based on various assumptions and presumptions which may not be correct. Further there is a marked difference in the amount of these estimates.

A proposal for getting a study conducted to estimate the quantum of black money both inside and outside the country has already been approved by Union Finance Minister. The following Government institutes have been approved in March, 2011 for conducting separate studies on black money:

- a) National Institute of Public Finance and Policy (NIPFP);
- b) National Institute of Financial Management (NIFM); and
- c) National Council of Applied Economic Research (NCAER).

Memorandum of understanding has been signed between CBDT and each of three institutes on 21.03.2011. The study will be completed within a period of 18 months from the date of MOU.

Government has formulated a five pronged strategy to tackle the menace of black money which is as below:

- (i) Joining the global crusade against black money,
- (ii) Creating an appropriate legislative framework,
- (iii) Setting up institutions for dealing with Illicit Funds,
- (iv) Developing systems for implementation (new manpower policy); and
- (v) Imparting skills to the manpower for effective action (constant training for skill development).

In line with above strategy, the Government has taken several steps in the last two financial years, the details of which are discussed in the following paragraphs.

1. Joining the global crusade against black money:

1.1 Black money does not limit itself to the geo- political boundaries. It transcends borders and has become a global problem. The countries across the world have started a concerted global effort and as a part of global effort against black money, India has played a proactive role in pointing out deficiencies in the assessment of various countries by the Peer Review Group of the Global Forum. Government is also playing an active role in ensuring that these countries remove the deficiencies to bring more transparency.

1.2 India has joined the **Task Force on Financial Integrity and Economic Development** in order to bring greater transparency and accountability in the financial system.

1.3 India has joined as the 34th member of **Financial Action Task Force (FATF)** on 25th June 2010. FATF membership is important as it will help India to build the capacity to fight terrorism and trace terror funds and to successfully investigate and prosecute money laundering and terrorist financing offences.

1.4 India has joined the **Asia Pacific Group (APG)** against Money laundering. The 14th annual Plenary of Asia Pacific Group (APG) was held in Kochi from 18-22 July, 2011. More than 320 delegates from 41 jurisdictions, observers and various organisations attended the Plenary which was inaugurated by the Union Finance Minister. India is the co-chair of this forum till July 2012.

1.5 India has gained Membership of the Eurasian Group (**EAG**) in December 2010.

1.6 India has joined the **Egmont Group** which is an international network fostering improved communication and interaction among Financial Intelligence Units (FIU).

1.7 India is an active member of **G 20** and has played a key role both in identifying issues and drafting communiqués. In the G 20 Seoul Summit, November 11-12, 2010, a clause *“countries to further enter into Tax Information Exchange Agreements wherever required by the partner country”* was incorporated in the communiqué at the instance of India.

2. Creating an appropriate legislative framework:

The Government has been constantly trying to strengthen the legislative frame work to control generation of black money in the country as well as control the flight of such illicit fund to foreign shores.

2.1 In pursuance of this India has so far completed negotiations of **22 new Tax Information Exchange Agreements** with various tax heavens. Nine of these agreements have also been approved by the cabinet. (**Annexure- I**)

2.2 India has initiated process of negotiation with **75 countries** to broaden the scope of Article concerning Exchange of Information to specifically allow for exchange of banking information and information without domestic interest. As on date, it has completed negotiation with 18 **existing Double Tax Avoidance Agreement (DTAA)** countries to update this Article. These agreements have also been initialled. **22** new DTAA's have also been **finalised** where the Exchange of Information Article is in line with the international standards. In short **negotiations/re negotiations** of DTAA's with **40 countries** have been completed. DTAA's with Switzerland (amendment), Norway (revised), Mozambique (new), Colombia (new), Ethiopia(new), Georgia(new), Taipei(new), Lithuania(new) and Tanzania(revised) have been signed. (**Annexure-II**).

2.3 The protocol amending our tax treaty with **Switzerland** was signed on 30th August 2010 and has been approved recently by the Swiss Parliament (on 17th June 2011). After following the mandatory constitutional process the DTAA will become operational. It will enter into force when Switzerland completes its internal process. Upon entry into force it will allow India to obtain banking information (as well as information without domestic interest) from Switzerland in specific cases for a period starting from **1st April 2011**.

2.4 There are certain countries or territories outside India which do not effectively exchange information with India as an anti-avoidance measure. The Government has enacted legislation to prescribe a tool box of counter measures against these non-cooperative jurisdictions. For this purpose, section 94A has been inserted into the Income-tax Act through Finance Act, 2011. This section gives an enabling power to the Central Government to notify any country or territory outside India, having regards to lack of effective exchange of information by it with India, as a notified jurisdictional area. Once the country/territory as such is notified as a non-cooperative jurisdiction, transactions with residents of such country/territory are subject to higher withholding, certain disallowances and the transactions are also subject to transfer pricing regulations.

2.5 The Government has proposed the following specific new measures for unearthing black money in the **Direct Taxes Code Bill**:

2.5.1 For the purpose of levy of wealth tax, taxable assets have been defined to include deposits in banks located outside India in case of individual, unreported bank deposits in case of others, interest in a foreign trust or any other entity (other than foreign company) and any equity or preferential shares held in a controlled foreign company.

2.5.2 The General Anti Avoidance Rule (**GAAR**) has been incorporated to deal with aggressive tax planning devices used to circumvent tax laws.

2.5.3 Specific Controlled Foreign Company (**CFC**) rules have been incorporated to bring to tax passive income earned by residents from substantial shareholding in companies situated in low tax jurisdictions.

2.5.4 A reporting requirement has been introduced making it obligatory on the part of resident assesseees to furnish details of their investment and interest in any entity outside India in the form and manner as may be prescribed.

2.6 According to the Global Financial Integrity Report, major channel for illicit outflow is transfer of funds through mispricing which accounts for 77.6% of total illicit outflows. The existing transfer pricing provisions of the government, which were introduced in the year 2001 are not detailed provisions as compared to transfer pricing provisions of developed countries. It was felt that there is need to upgrade these transfer pricing provisions to meet the challenges of growing intangible economy and various complex cost sharing arrangements. As per directions of FM, DGIT (International Taxation) has constituted a committee to look into the issue of revising the transfer pricing provisions. The committee has already submitted its interim report which is under consideration.

2.7 The Prevention of Money Laundering Act (**PMLA**) was amended on 1st June 2009, whereby the predicate offences listed in the Schedule of the Act were substantially increased. This amendment has tremendously widened the scope of Money Laundering Investigations.

3. Setting up institutions for dealing with Illicit Funds;

3.1 Government has decided to set up Exchange of Information **(Eoi) Cell** for an effective exchange of information to curb tax evasion. Efforts are on to put the cell in place under Foreign Tax Division of CBDT.

3.2 Government has approved the creation of the **Directorate of Income Tax (Criminal Investigation)**, in the Central Board of Direct Taxes. The DCI will perform functions in respect of criminal matters having any financial implication punishable as an offence under any direct tax law.

3.3 Government has set up Income tax Overseas Units in **two** Indian Missions abroad. **Eight** more such units are being setup in the current Financial Year to strengthen information exchange mechanism.

3.4 In order to augment the reach of the **Directorate of Enforcement**, the Government has approved upgradation of five existing Zonal offices as Regional offices and five existing Sub Zonal offices as Zonal offices. It has also approved creation of a new Zonal office and 16 new Sub zonal offices of Enforcement Directorate across the country.

3.4.1 The Process of filling up the additional posts sanctioned by the Government as also for upgradation of the existing offices and setting up of new offices of Enforcement Directorate has started. As per the Action Plan, the Ministry of Finance is filling up the Group A posts of the Directorate in three phases.

4. Developing systems for implementation:

4.1 Government has **doubled the strength of Foreign Tax Division**, which deals with the work of exchange of information.

4.2 The Directorate of International Taxation and Transfer Pricing in the Income Tax Department have also been strengthened as major part of the flow of illicit money outside of India takes place through mispricing of international transaction.

4.3 In a bid to strengthen the Enforcement Directorate, the Government has approved creation of 1318 new posts at various levels. The process of filling up of these posts has already been started by the Deptt. of Revenue.

5. Imparting skills to the manpower for effective action:

5.1 As a part of capacity building and skill development, **51** senior Officers were sent abroad for specialized training in the field of International Taxation and Transfer Pricing in F.Y. 2010-2011.

5.2 Since skill up gradation in international tax and transfer pricing require substantial time and resource, a posting policy has been approved which provides that officers may be posted in the Directorate for the period not less than five years.

Apart from the above the Government has also taken the following measures-

6. The Government has constituted a Committee on 27th May, 2011 under the Chairmanship of Chairman, Central Board of Direct Taxes (CBDT) to **examine ways to strengthen laws to curb the generation of black money in the country, its illegal transfer abroad and its recovery.** The Committee include Member (L&C), CBDT, Director Enforcement (ED), Director General of Revenue Intelligence (DRI), Director General (Currency), Joint Secretary (FT&TR), CBDT; Director,(FIU-IND) as Members.

The Committee will examine 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.

The Committee will also consult all stakeholders and submit its report within a period of six months.

6.1 The second meeting of the Committee on the Black-Money was held on 29th July, 2011 and it has been decided that the Committee would hold its next meeting in September 2011 and in the meanwhile;

(i) Letters have been written to various Industry Associations, Voluntary Organizations, ICAI, ICWAI and NASSCOM requesting them to give suggestions/views on existing legal and administrative framework available under the various laws to deal with the menace of generation of black money through illegal means,

(ii) More than 3300 comments on the issue of black money have been received from the public via-e-mail which are being examined.

(iii) Suggestions for improving the respective laws sent by the organizations, as well as gist of useful suggestions received through email, would be compiled and circulated.

(iv) Reminders will be sent to industry and trade associations, ICAI and ICWAI for expediting their suggestion.

(v) Letters have also been issued to Chief Commissioners of Income Tax (Cadre Controlling Authorities), Director Generals of Income Tax (Training), National Academy of Direct Taxes, requesting them to give suggestions/views on existing legal and

administrative framework available under the various laws to deal with the menace of generation of black money through illegal means.

7. In order to **examine certain suggestions on Income tax demand classified under the categories “Assessee not traceable” and “No assets/inadequate assets for Recovery”**, a committee has been constituted by the Central Board of Direct Taxes (CBDT).

The terms and conditions of the committee will be as follows:-

- (a) To suggest modalities for utilization of the information available with FIU-IND and the Directorate of Income Tax (Systems) for the recovery of outstanding demand in such cases.
- (b) To examine the possibilities of engaging the outside agencies to locate the whereabouts of non-traceable assessee of their assets and also unknown/undisclosed assets owned by the assessee with inadequate assets vis-à-vis the outstanding demand.
- (c) To process a reward scheme for informants who supply information about such tax defaulters and which results into collection of the outstanding demand.
- (d) To propose a scheme regulating such outsourcing to outside agencies for its administration by the field formation.
- (e) To examine the feasibility and methodology of putting the names of chronic tax defaulters in public domain.

The committee shall submit its report within two months of its constitution.

8. As per the direction of the Apex Court a **High Level Committee** under the chairmanship of Revenue Secretary has been constituted to coordinate multidisciplinary probe in important cases like Hassan Ali by various enforcement agencies. As of now the case of Hassan Ali and cases of persons having account in LGT bank have been discussed by the committee for coordination of investigation/prosecution by Law Enforcement Agencies.

8.1 The Hon'ble Supreme Court of India has passed an order dated 04.07.2011 in the Ram Jethmalani & Other vs. Union of India [Writ Petition (Civil) No. 176 of 2009]. In the instant case, the Hon'ble Supreme Court has ordered creation of a Special Investigation Team (SIT) with the responsibilities and duties of investigation, initiation of proceedings and prosecution, whether in the context of appropriate criminal or civil proceedings, relating to cases involving stashing of unaccounted money in foreign banks by Indians or other entities operating in India as well as the cases relating to Hassan Ali Khan group.

The Hon'ble Supreme Court, vide paragraph 49 of the order dated 4th July, 2011, in Writ Petition (C) No. 176 of 2009, has directed that the High Level Committee constituted by the Union of India be forthwith appointed with immediate effect as Special Investigation Team (SIT) and SIT so constituted shall include, Director, Research and Analysis Wing. It has been also directed by Hon'ble Supreme Court that the SIT be headed by and include the following former eminent judges of the Supreme Court:

- (i) Hon'ble Mr. Justice B.P. Jeevan Reddy as Chairman; and
- (ii) Hon'ble Mr. Justice M.B. Shah as Vice-chairman.

The Government has filed an application in the Hon'ble Supreme Court for modification of the order dated 04.07.2011 and for setting aside the directions given in paragraphs 49 and 50 regarding the setting up of SIT and the consequential orders in relation to this.

9. Efforts made to obtain information about illicit money of Indian Citizen parked outside:

The Government is pursuing all the relevant leads in this regard. Information about Indian citizens having bank accounts in LGT Bank from Germany has already been collected. Similar issues with other countries

are also being pursued. In addition, information is requested from various countries in specific cases where the information is needed for investigation/assessment.

10. Due to the five pronged strategy and other efforts made by the government in last two financial year, **we have achieved substantial success both in getting information of illicit money parked outside the country and in stopping transfer of illicit money outside the country** as detailed below:-

10.1 In last 24 months Income Tax Department have collected 7704 discrete items of information from treaty countries containing details of payments received by Indian Citizen in various countries besides information of LGT Bank Accounts. This information is in various stages of processing and investigation.

10.2 Based on the prosecution by CBDT of the LGT bank accounts holders the Enforcement Directorate is also taking further necessary action under FEMA.

10.2.1 Out of the 17 cases referred to the Directorate by the CBDT, statements in four cases have been recorded and further information/documents have been called for by the Directorate from the Income Tax Department. Efforts are also being made to record statements in other cases.

10.2.2 In respect of LGT Bank Account cases, statements have been recorded in two more cases by Directorate of Enforcement. Summons were issued to eight persons in Mumbai on 01.07.2011. However, none of them appeared but sent letters in reply to summons. One of the persons has claimed that he had been a non resident Indian for the last eight years. These replies are under examination.

10.3 The Government has made more than 175 requests to our treaty partners in case of specific taxpayers in the last Financial Year.

10.4 Government's sharp focus on mis-pricing, which is one of the main and new method of transfer of illicit funds outside the country has resulted in detection of mis-pricing of Rs.33,784 crore in the last two financial years as against detection of trade mis-pricing of Rs.14,655 crore in last five Financial Years.

10.5 Special attention on cross border transactions and business deals has resulted in collection of taxes of Rs 22,697 crore in the last financial year. CBDT has also raised demand of Rs.11,218 crore in case of Vodafone involving a cross-border deal with a tax haven country out of which tax of Rs.2500 crore has been collected in this month.

10.6 The government has also conducted focused searches to detect unaccounted income of Rs10,649 crore in the last financial year, Rs 8101Crore, Rs 4613 crore and Rs 4160 crore in F.Y. 2009-2010, 2008-09 and 2007-08 respectively.

10.7 Based on the information received from German Tax Office tax assessment has been completed in the case of 18 individuals. Penalty notices u/s 271(1)(c) of Income tax Act,1961 for concealment of income have been issued in these cases. Prosecutions for tax evasion have been launched in 17 cases (1 person is deceased). CBI and ED have been provided information to carry out further investigation.

10.8 The Directorate of Enforcement initiated investigation in the Hassan Ali case under FEMA/PMLA upon receipt of information from the Income Tax Department, LRs have been sent out to five foreign jurisdictions. Part replies have been received from some of them and further supplementary Letters of Request are also being issued.

On the basis of investigations conducted so far, Show Cause Notices have been issued to Shri Hassan Ali Khan & Ors. for various FEMA contraventions. However, the Adjudication proceedings in respect of Show Cause Notices have been kept in abeyance in view of an

assurance given to the Hon'ble Supreme Court during the course of hearing in writ petition (C) No. 176 of 2009.

10.9 The Directorate also conducted searches at various premises of S/Shri Hassan Ali Khan, Kashinath Tapuriah, Philip Anandraj and others on 07.03.2011. S/Shri Hassan Ali Khan and Kashinath Tapuriah were arrested by the Directorate under PMLA on 07.03.2011 and on the intervention of the Hon'ble Supreme Court, they were remanded to the custody of the Directorate of Enforcement initially. They were later remanded to judicial custody.

10.10 On 12.08.2011, the Hon'ble Bombay High Court pronounced grant of bail to Shri Hassan Ali Khan in the open court. The Directorate of Enforcement has filed an SLP in the Hon'ble Supreme Court on 15.08.2011 against the Order dated 12.08.2011 of Bombay High Court praying for cancellation of bail granted to Hassan Ali Khan and for stay of the High Court Order. On 16.08.2011, the Hon'ble Supreme Court granted stay upto 18.08.2011, which was further extended upto 24.08.2011 and the main petition is slated for hearing on a later date. On 25.08.2011, the Hon'ble Supreme Court extended the stay of High Court order granting bail to Hassan Ali Khan upto 01.09.2011. Mrs. Rheema Hassan Ali Khan appeared before the Directorate of Enforcement on 28.07.2011, 01.08.2011 and 03.08.2011 when her statements were recorded. Further investigations in the matter are in progress.

10.11 Two Provisional Attachment Orders (PAO) have been issued under PMLA on 30.06.2011:-

- (i) Pertaining to Shri Hassan Ali Khan and Smt. Rheema Ali Khan attaching their movable and immovable properties worth Rs. 16.30 Crore.

(ii) Pertaining to Shri Kashinath Tapuriah, Shri Vujay Kumar Mundhra and M/s R. M. Investments & Trading Co. Pvt. Ltd. attaching immovable property worth Rs.27 Crore.

Annexure-I***Negotiation and Signing of Tax Information Exchange Agreements (TIEA) with no tax or low tax jurisdictions***

We have written to 22 prioritized countries/jurisdictions to enter into TIEA. The current status of these 22 requests is as under:

Negotiation completed (16): Argentina, Bermuda, Bahamas, British Virgin Islands, Cayman Islands, Congo, Costa Rica, Gibraltar, Guernsey, Isle of Man, Jersey, Liberia, Macau, Marshall Islands, Monaco, Saint Kitts & Nevis.

Revenue Secretary has already requested Foreign Secretary to expedite the response.

Countries/jurisdictions which want DTAA instead of TIEA(4): Liechtenstein, Panama, Seychelles and Bahrain: We have included this issue in G 20 communiqué.

TIEA signed (5):Bermuda, Bahamas, British Virgin Island Cayman Islands and Isle of Man.

Entered into force(4): Bahamas, Bermuda, British Virgin Islands, and Isle of Man

Annexure-II***Broadening of scope of Article concerning exchange of information with DTAA countries.***

The issue was taken up in 75 treaties and current status is as under:

Negotiation completed(22): Armenia, Australia, Bangladesh, Brazil, Finland, Indonesia, Kenya, Luxembourg, Malaysia, Malta, Nepal, Netherlands, Norway, Romania, Singapore, South Africa, Spain, Sweden, Switzerland, Tanzania, Uzbekistan, Zambia

Signed: Finland, Norway, Singapore, Switzerland, Tanzania

Entered into force: Finland, Luxembourg.

No of countries with whom we are negotiating new DTAA where EOI provision has been finalised(18): Albania, Bhutan, Chile, Croatia, Colombia, Estonia, Ethiopia, Georgia, Hong Kong, Iran, Latvia, Lithuania, Mexico, Mozambique, Senegal, Taiwan, Uruguay, Venezuela.

Signed: Colombia, Ethiopia, Georgia, Mexico, Mozambique, Lithuania, Taiwan.

Entered into force: Mexico, Mozambique.

Negotiation underway (18): Austria, Czech Republic, Germany, Bangladesh, Egypt, Korea, Kuwait, Malaysia, Mauritius, Morocco, New Zealand, Oman, Qatar, Saudi Arabia, Sri Lanka, Tajikistan, Thailand and UAE.

Under Consideration (9): Serbia, Belgium, Italy, Ireland, China, Kazakhstan, Myanmar, Syria and Turkmenistan.

Countries which have acknowledged our request but will come back later (3): Jordan, Belarus, Turkey.

Countries which have sought revision of other Articles or full DTAA (10): Bulgaria, Denmark, Japan, Poland, Russia, Slovenia, UK, USA, Canada and Mongolia.

Response awaited (15): Cyprus, France, Greece, Hungary, Montenegro, Portuguese, Trinidad and Tobago, Ukraine, Botswana, Kyrgyz Republic, Libya, Philippines, Sudan, Uganda and Vietnam.

Revenue Secretary has already requested Foreign Secretary to expedite the response.