Black Money Menace: Government on War-footing

Dilasha Seth

The Indian government has significantly stepped up efforts to unearth black money from the system, which is only set to expand going forward with the help of technology such as Project Insight. While the efforts using technology are in the right direction, the focus must be on discouraging cash transactions and encouraging card payment in the economy. This will be the key to curb black money circulation

Even at two hours to midnight on September 30th, people were seen streaming into various tax offices across the country while many others were glued to their computer screens to declare all the unaccounted wealth and assets they owned and come clean. They were amongst the 64275 individuals who availed the 'one-time opportunity' offered by the government and made black money disclosures under the four-month window that opened on June 1. The midnight hustle guaranteed the declarants a comfortable sleep in future amid government's war-like approach to fight the black money menace. The declarants will escape prosecution under the Income Tax Act, Wealth Act and Benami Act. Although the government will get close to Rs 30,000 crore in taxes by September next year from the Income Declaration Scheme (IDS), which is 45 per cent of the Rs 65250 crore worth of declarations that came in, it may well be just a tip of the iceberg. Incidentally, the Prime Minister has taken up the task of unearthing black money on a mission mode. It could be made out from his statement last month warning evaders of 'tough decisions after September 30.'

Of the over 120 crore population in the country, less than 5 per cent or 5.43 crore individuals pay taxes. Honest taxpayers face a steep tax burden on account of non-compliance by a significant chunk of individuals who do not declare income. Although, it is difficult to ascertain the quantum of black money flow in the economy, various estimates and reports peg it at anywhere between 20 per cent and 70 per cent of the size of India's 2 trillion-dollar economy. According the Swiss government, till the end of 2010, there were deposits worth Rs 9500 crore in all Swiss banks by Indian citizens. Of about Rs 8 lakh crore worth direct tax revenue, the collections are significantly skewed in favour of corporation tax, which had a 60 per cent share and personal income tax a 40 per cent share. This highlights the potential of widening of the tax base. Of the 25 crore PAN card holders in the economy, only 5.43 crore pay taxes. Government's toughened stance against black money, in line with its electoral promise is set to make the going difficult for tax evaders within the economy and those with unaccounted wealth stashed overseas.

The government is working on a multi-pronged strategy to tackle the black money menace. Besides IDS, a slew of other measures includes

The author is a Special Correspondent with Business Standard newspaper and covers Ministry of Finance. With over five years experience in field, she has written on a range of economy and policy related issues such as macroeconomic data, international trade, WTO, GST, taxation and FDI among others. Earlier she was with The Economic Times and covered the Ministry of Commerce and Industry.

Foreign Assets Disclosure window, constitution of Special Investigative Team (SIT) for black money, reworking bilateral tax treaties, making PAN card mandatory for transactions over Rs 2 lakh, Project Insight and signing information exchange treaties with various countries. The introduction of one of the biggest taxation reforms-goods and services tax (GST)- from next financial year will also make it tough to evade indirect taxes, which is likely to improve the overall compliance rate. The GST will subsume various indirect levies of Centre and states like Service Tax, Excise Duty, Octroi, Value Added tax, among others and create an input tax credit chain for refunds.

Non-Intrusive Target Evaders

According to the Ministry of Finance, Rs 16, 000 crore have been collected by using non-intrusive measures using third party information and quoting of PAN on account of upgraded IT database.

At present, about 92 per cent of the tax department's revenue comes from tax deducted at source (TDS), advance tax and self-assessment tax, while the remaining 8 per cent comes after scrutiny. This looks set to change.

Stepping up tech support to nab evaders, the big ticket 'Project Insight' with the help of L&T Infotech will allow the government to collate all information available with the Income Tax Department from various sources and systematically profile people using permanent account number (PAN) details. Through profiling, all transactions by a person including purchase of immovable property, jewellery and vehicles will be available with the tax department in a systematized manner, making identification of tax evaders simpler. The project is also expected to rank tax evaders based on the amount of tax that could be recovered, so that the authorities could go after the highest value targets first. Several government departments like Central Board of Direct Taxes, Intelligence Bureau and others are working closely on the project.

Unearthing Black Money

The government has also made it mandatory to furnish PAN for all transactions over Rs 2 lakh through all payment modes from January 1, 2016. It has also revised monetary limits for furnishing of PAN for gold jewellery to above Rs.2 lakh from the earlier limit of Rs 5 lakh. All fixed deposits with post offices, cooperative banks, Nidhis, Non-Banking Finance Companies will also need PAN.

A quantum jump in the searches and survey has resulted in the seizure of Rs 1,986 crore as well as undisclosed income of Rs 56,378 crore in the last two and half years. Most seizures by the income tax department were in the medical and education sector.

Currently, seven third-party sources have to mandatorily report transactions and file an Annual Information Return (AIR). These include banks that accept cash deposit of Rs 10 lakh or more in a year from any person; bank or a company issuing credit cards where payment against bills exceeds Rs 2 lakh in a year for any person; mutual funds collecting Rs 2 lakh or more for sale of units by any person; company receiving Rs 5 lakh or more against issue of shares, bonds/debentures and registrar/sub-registrars in respect of sale/purchase of immovable property exceeding Rs 30 lakh and the RBI for issue of bonds exceeding Rs 5 lakh.

I-T Lens Widens

A quantum jump in the searches and survey has resulted in the seizure of Rs 1,986 crore as well as undisclosed income of Rs 56,378 crore in the last two and half years. Most seizures by the income tax department were in the medical and education sector.

In what underlines the department effectiveness in using third party information, the CBDT issued 7 lakh letters to individuals to come clean under IDS. This was based on information of 90 lakh pieces of information of transactions without PAN.

It has scrutinized the Annual Information Returns (AIR) for high value transactions which have divulged cash deposits of over Rs 10 lakh in a savings bank account, sale/purchase of immovable property valued at Rs 30 lakh or more, and many of these transactions do not have PAN.

The Prime Minister, in his address to tax officers a few months ago, had pointed out that if 42,000 officials of CBDT are engaged for ensuring direct tax revenue, then the tax net should increase further.

The Central Board of Direct Taxes (CBDT) has also instructed officers to scrutinize production details and tax returns filed by the companies

engaged in mining activities and take appropriate action in case of discrepancy found.

In case of indirect taxes, the enhanced enforcement measures have helped unearth tax evasion of Rs 50,000 crore of indirect taxes and undisclosed income of Rs 21,000 crore.

SIT for Capping Cash Transactions:

The special investigative team on black money constituted in 2014 and chaired by former Supreme Court Judge MB Shah has called for a complete ban on cash transactions over Rs 3 lakh to curtail black money circulation in the economy and a limit of Rs 15 lakh on cash holdings in its recent report. The suggestions if accepted, made after examining provisions in various countries, may make transacting or holding cash over the said amount illegal and punishable under law.

It was felt that the limit of cash transaction could only succeed if there was a limitation on cash holding. It suggested that if any person of industry required holding more cash, they may obtain necessary permission from the Commissioner of Income tax of the area.

The SIT has suggested that an Act be framed to declare such transactions as illegal and punishable under law. It is being deliberated by the Ministry of Finance.

The panel has asked the Reserve Bank of India (RBI) to develop an institutional mechanism, in consultation with the revenue department, to share export-import and foreign exchange (forex) transaction information with investigative agencies, to curb illicit financial flows out of the country. It called for a mechanism to allow sharing of information of RBI databases with enforcement authorities – the Department of Revenue Intelligence (DRI) and Enforcement Directorate (ED) - for verification.

It has also asked the Directorate of Revenue Intelligence (DRI) to take action against those companies which had claimed duty drawback without bringing earnings from exports to India. In such cases, the country loses on two counts — first by not getting export proceeds and then by wrongful claim of duty drawback.

Unaccounted Money Stashed Abroad:

The information exchange pacts with other countries will make it further challenging to stash black money in overseas accounts. The Indo-US Foreign Account Tax Compliance Act (FATCA), which came into effect last year is aimed to ensure that tax is paid on income generated from wealth abroad. India has already started receiving under Automatic Exchange of Information (AEOI) under FATCA. The government will start receiving information from other countries under AEOI route from 2017 onwards.

The government is on a spree to revise the double taxation avoidance agreement with these countries and gain taxation rights over capital gains, which currently rests with these low or no tax jurisdictions. India has revised DTAA with Mauritius and Cyprus and is close to amending the pact with Singapore.

Although, it will provide information prospectively from the time of coming into effect, it may help the tax department to detect audit trail for an entity's past transactions.

The government has filed 164 prosecution cases of the 175 cases of black money stashed overseas in a HSBC bank's accounts worth Rs 8,000 crore. Based on investigation by International Consortium of Investigative Journalists (ICIJ), undisclosed deposits in foreign accounts worth Rs 5000 crore have been detected by the government and 55 prosecution cases have been filed.

Similarly, investigation in the Panama Papers has led to 250 references being made to other countries asking for details about tax evaders, bank accounts, etc.

In the compliance window in 2015 for undisclosed assets stashed abroad, the government received disclosures worth Rs 4147 crore, and the 60 per cent tax translated to Rs 2428 crore in revenue.

The Panama Papers leak revealing over 11 million documents figured names of at least 500 Indians who flouted rules and regulations. These documents pertain to 214,000 offshore entities and span almost 40 years. The papers originated from Mossack Fonseca, a Panama-based law firm with offices in more than 35 countries.

In the light of the Panama leak, the SIT has suggested amendment of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 where an assesee must inform the concerned jurisdictional commissioner of Income Tax Department of the state before investing any amount or purchasing any property overseas, even if the permission of the Reserve Bank of India was not required.

Revising DTAAs:

Tax evaders have often exploited loopholes in the existing tax treaties with low or zero tax jurisdictions like Mauritius, Singapore and Cyprus, ensuring complete tax avoidance. This ensures that unaccounted money kept overseas is routed back to India disguised as foreign capital. While Double Taxation Avoidance Agreements (DTAA) are aimed to ensure that taxpayers do face the burden of double taxation in both countries, evaders have managed to avoid taxes in both countries. The government is on a spree to revise the Double Taxation Avoidance Agreement with these countries and gain taxation rights over capital gains, which currently rests with these low or no tax jurisdictions. India has revised

DTAA with Mauritius and Cyprus and is close to amending the pact with Singapore.

Mauritius and Singapore are the top two FDI sources in India, making up for about half of total direct investments into the country. Total FDI from Mauritius over the last decade and a half stands at US$95.9bn, while that from Singapore is about US$45.8bn. Cyprus is eighth on the list with investments worth US$8.5bn.

Ahead of General Anti Avoidance Rule (GAAR) being rolled out from April 1, 2017, these low tax jurisdictional economies have, in fact voluntarily come forward to revise treaties to plug these loopholes. GAAR is a set of rules designed to give Indian authorities the right to scrutinize and tax transactions which they believe are structured solely to avoid taxes.

India amended the DTAA with Mauritius in April, allowing New Delhi to impose capital gains tax on shares. Companies routing funds into India through Mauritius from the next fiscal will have to pay short-term capital gains tax at 50 per cent prevailing rate during a two-year transition period beginning April 2017. The short term capital gains tax rate is 15 per cent at the moment. The full rate will be imposed from 2019 onwards. The concessional rate of 50 per cent would be subject to fulfilment of conditions in newly-inserted Limitation of Benefit (LOB) which is an expenditure of at least Rs 27 lakh in Mauritius in the previous fiscal. The Singapore treaty amendments are being negotiated by the two sides. It will automatically be amended from April 1, 2017 as it is under the same protocol as Mauritius.

India has Double Tax Avoidance Agreements with 82 nations, including all popular tax haven countries. Of these, India has expanded agreements with 30 countries which requires mutual effort to collect taxes on behalf of each other.

Cyprus has also agreed to give India taxation rights over shares in return for removal from the blacklist. Companies based in Europe and the US routed investments into India, deriving complete tax avoidance as the tax treaty provided for zero capital gains tax and a low withholding tax rate of 10 per cent on interest payments made to entities based in Cyprus. India has agreed to take Cyprus off the blacklist. Cyprus was declared a non-cooperative jurisdiction by India in 2013 over not sharing information related to Indian account holders. It was the first tax jurisdiction to be labeled that by India, leading to a 30 per cent withholding tax on all payments made to Cyprus and greater scrutiny of Indian entities receiving funds from there requiring additional disclosures, including the source of the money. Indian entities with investments from Cyprus also have to forego deductions on account of expenditure and allowances.

With all major economies of the world uniting against the cause of eradication of black money, seen from Base Erosion and Profit Sharing (BEPS) agreement and multilateral information exchange pacts, it will become very difficult to carry out tax evasion. The free exchange of information between countries will now provide more leads to tax officers to pin down offenders.

Benami Transactions Act:

The Benami Transactions (Prohibition) Amendment Act approved by the Parliament in August saw widening of definition and increase in penalty and punishment for those who hold assets in the name of other person or in fictitious name to avoid taxation. The legislation is intended to effectively prohibit benami transactions and thereby prevent circumvention of law through unfair practices. The definition of a benami transaction has been widened to include a transaction made in a fictitious name; where the owner is not aware of or denies knowledge of the ownership of the property; or the person providing the consideration for the property is not traceable.

Investment in property or real estate is used commonly to park unaccounted money. A significant number of transactions in real estate are not reported or are under-reported.

The Bill has made the penalty and prosecution provisions more stringent. The penalty under the amended Act will be rigorous imprisonment of one year up to seven years, and a fine which may extend to 25 per cent of the fair market value of the benami property as against imprisonment up to three years or fine or both in the current legislation.

The penalty for providing false information will be rigorous imprisonment of six months up to five years, and a fine which may extend to 10 per cent of the fair market value of the benami property.

Way Forward:

With all major economies of the world uniting against the cause of eradication of black money, seen from Base Erosion and Profit Sharing (BEPS) agreement and multilateral information exchange pacts, it will become very difficult to carry out tax evasion. The free exchange of information between countries will now provide more leads to tax officers to pin down offenders. The Indian government has significantly stepped up efforts to unearth black money from the system, which is only set to expand going forward with the help of technology such as Project Insight. While the efforts using technology are in the right direction, the focus must be on discouraging cash transactions and encouraging card payment in the economy. This will be the key to curb black money circulation. ❑

(E-mail:dilashaseth@gmail.com)