

TAX TERRORISM & BLACK MONEY: TAXATION PERSPECTIVE

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Introduction

The concept of tax was laid down in India to utilize the money of public for public welfare. The system was such that some amount of money is taken from public and the same is been utilised for the public welfare purposes. Such as maintenance of public roads, drainage system, improvement of public amenities etc.. The tax taken from the public is also used for the revenue of the government. The revenue helped government to run a state smoothly as a welfare state. The revenue collected from the public is used for the public purposes only. There was a proper allocation of the revenue for each department and the same was utilised for the purpose. The system used to function very smoothly and people used to lead a very good lifestyle. Traders used to perform their duties according to the procedures established and laid down by the Government and the King. The concept of tax was introduced formally by the British Government in year 1799. There are many responsibilities of the state to its countrymen. State is represented by the government. Hence, the government of any country performs a number of activities in order to maintain law and order, peace and security, satisfying with the requirement of basic needs and public utilities etc. It also initiates various development programmes and maintains diplomatic and friendly relation with other nations in the world. But later on as the time progressed the people changed and the habit of greed in them was developed. They tried to save the money and evaded themselves from not paying the taxes which

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they were supposed to do. This habit took its actual shape in British Empire and colonial rule in India during the regime of East India Company and became more rapid. People indulged themselves more and more into the corrupt practices. And since then it gradually increased and the condition now is that it has increased up to a considerable limit. People have involved themselves into the money laundering, converting their black money into white by putting it into charity works, depositing their money outside the India in Swiss Bank account etc. These practices are not only the drawback of the tax system in India but also to some extent it also leads to the failure of the constitutional machinery of the state. My research paper would discuss and deal with the recent tax reforms and the reasons which led to the emergence of black money and tax terrorism in India with the help of the relevant case laws in regard of the same. Towards, the end of the paper it would also discuss the reforms which is purported in existing tax reforms and by inculcating which our tax system would become more stringent. Thus, the inference can be drawn initially that tax terrorism, tax heaven can be brought broader ambit and black money a part of it.

Tax Terrorism And Black Money-A Propositius Quest!

Since past years it is been hard to figure out the actual reason behind the black money and tax terrorism around the world globally. Different authors and scholars have laid down different theories in order to carve out the reason behind the tax terrorism. Overall tax terrorism is a broader concept and black money is just a part of it which is leading to evil practices in world like corruption and all which has led to the failure of the constitutional machinery eventually sometimes. The recent steps taken by Government which includes the GST (Goods And Services Tax) is a very nice initiative by the Government of India and Ministry of Finance to curb tax terrorism specifically. Further, the steps taken such as IDS (Income Declaration Scheme) was a brilliant step towards the control of the black money which

brought by Rs.65, 200 crores in Indian revenue. The concept of the black money justifies the thought of the Karl Marx which says that rich becomes more rich and poor becomes poorer. The entire black money is desire for more and more wealth but through acquiring of undeclared income and assets which end up in Black money. The intention is not bona fide behind acquiring that wealth people have their ulterior motive hidden. At present in any organization from peon to its highest official is corrupt to the core. So, in order to eradicate the differences one must take step to remove all the things. Efficient schemes should be brought such as Lokpal Act which ensures a lokapal or whistle blower who would ensure the applicability of the same and would maintain required decorum in the office.

Source Of Black Money:

Some Indian corporations practice transfer mispricing, by under-invoicing their exports and over-invoicing their imports from tax haven countries such as Singapore, UAE, and Hong Kong. Thus the promoters of the public limited companies who hold rarely more than 10% of share capital, earn black money abroad at the cost of majority share holders and tax income to the Indian government. Politicians, political parties and corrupt higher officials of government and its institutions take bribes from foreign companies and park or invest the money abroad in tax havens for transferring to India when needed. Many times locally earned bribes, funds, and collections are also routed abroad through hawala channels for evading from Indian tax authorities and consequent legal implications.²

² Editorial, "GST bill is an important step to get rid of tax terrorism", The Economic Times, Aug.9,2016

Role Of Fema In Facilitating External Trade And Check On Black Money

On the 1st of June, 2000, FEMA came into force replacing the Foreign Exchange Regulation Act (FERA), which was formulated in 1973. Extensive economic reforms were undertaken in India in the early 1990s and this led to the deregulation and liberalization of the country's economy. Foreign Exchange Management Act (FEMA) was thus formulated in order to be compatible with the policies of pro- liberalization of the Indian government.

Government On Black Money: Exerpts From A Prgressive Research Report

The Finance Minister tabled the White Paper on Black Money (the Paper) in the Lok Sabha on May 21, 2012. According to the Paper, black money is a serious issue because it has a 'debilitating effect' on governance and public policy and this affects the poor disproportionately.³

- The Paper defines black money as: 'assets or resources that have neither been reported to the public authorities at the time of their generation nor disclosed at any point of time during their possession'.
- Black money can be generated through
(i) illegal activities like crime, drug trade, terrorism and corruption or
(ii) failing to pay dues to the public exchequer in one form or another. In the second case, activities might be legal but the

³ Vishnu Padmanabhan, PRS Legislative Research, <http://www.prsindia.org/parliamenttrack/report-summaries/white-paper-on-black-money-2345/> (Last visited: 12.11.2016, 7:45 PM)

perpetrator may simply have failed to report the income generated to avoid paying tax.

- Land and real estate, bullion and jewelry, financial markets, public procurement, the non-profit sector, informal sector and cash economy have been ascertained as more vulnerable to black money issues.
- It fails to provide an estimate of the amount of black money currently generated in India.
- The Paper highlights the issue of Indian assets held abroad, particularly in Swiss banks. In 2010, liabilities in Swiss Banks towards India were Rs 7,924 crore and this was 0.13% of Swiss banks' total liabilities.
- The Paper describes the institutions currently in place responsible for dealing with black money issues. These include the Central Board of Direct Taxes (CBDT), the Enforcement Directorate (ED), the Financial Intelligence Unit (FIU-IND) and the Central Board of Excise and Customs (CBEC). The Central Economic Intelligence Bureau (CEIB), the National Investigation Agency (NIA), and the High Level Committee (HLC) act as coordinating agencies.
- The Paper also describes the framework the Government of India has employed to tackle black money. It is a five pronged strategy which involves:
 - (i) joining the global crusade against black money,
 - (ii) creating an appropriate legislative framework,
 - (iii) setting up institutions for dealing with illicit money,

- (iv) developing systems for implementation, and
 - (v) imparting skills to personnel for effective action.
- The Paper stresses the need for any long term strategy to be based on public acceptance, political consensus and the commitment to implement it.
 - The Paper proposes a strategy to curb black money generation from legitimate activities based on four pillars:
 - **Reducing disincentives against voluntary compliance** – this could involve measures like rationalization of tax rates and reducing transaction costs by providing electronic and internet-based services to pay tax.
 - **Reforms in sectors vulnerable to generation of black money** – the Paper proposes various policy initiatives to prevent black money generation in certain vulnerable sectors of the economy. For instance, in the area of real estate, the Paper proposes deducting tax at source on payments made on real estate transactions. In the cash economy, the Paper recommends that the Government provide tax incentives for use of credit/debit cards.
 - **Creation of effective credible deterrence** –policies should create enough disincentives for black money generation. The Paper believes the introduction of the Goods and Service Tax (GST) will be an important step in this process. Other measures proposed include strengthening the direct tax

administration, strengthening of the prosecution mechanism and enhancing exchange of information.

- **Supportive measures** – some of the measures suggested by the Paper include creating public awareness and public support, enhancing the accountability of auditors and participating in international efforts. With regards to repatriation of money overseas, the Paper suggests a onetime partial benefit of immunity from prosecution for voluntary disclosure.

Measures Taken By Government To Tackle Black Money

The present Government has taken various decisions and steps to curb the menace of black money both within and outside the country in last two years. Some of the major decisions and actions taken in this regard are given below:

1. Sustained steps taken for curbing black money:-

- (a) A new Black Money Act has been enacted with strict penalty provisions.
- (b) Special Investigation Team has been constituted which is chaired by ex-Supreme Court Judge Justice M.B. Shah vide notification dated 29th May, 2014.. Many recommendations of SIT have been implemented since then.
- (c) A new Income Disclosure Scheme is formulated for domestic black money.
- (d) Enhanced enforcement measures have resulted in un-earthing of tax evasion of approximately Rs 50,000 Crore of indirect taxes and undisclosed income of Rs 21,000 Crore (Prov.). The value of goods seized on account of smuggling activities has increased to Rs 3,963 Crore in the last two years (32% increase over corresponding two previous years).

(e) Prosecution has been launched in 1466 cases as against 1169 cases in the previous two years (25% increase).

2. Amendments made in Prevention of Money-laundering Act, 2002, vide Finance Act, 2015 :

- The definition of proceeds of crime under PMLA has been amended to enable attachment and confiscation of equivalent asset in India where the asset located abroad cannot be forfeited.
- Section 8(8) has been inserted in PMLA providing for restoring confiscated property or part thereof, on the directions of Special Court to claimants with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offences of money laundering.
- Section 132 of Customs Act which deals with offence relating to false declaration / documents in the transaction of any business relating to Customs has been made predicate offence under PMLA to curb trade based money laundering.
- The offence of willful attempt to evade any tax, penalty or interest referred to in section 51 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 has been made a scheduled offence under PMLA.

3. Recent Notification under PMLA

In connection with risk mitigation in DNFBP Sector, Revenue Department has taken some steps, which are described as below:

- Insurance Broker has been notified on 15.4.2015 under Section 2(1)(sa)(vi) of PMLA as person carrying on designated business or profession.
- Registrar or Sub-registrar has been notified on 17.4.2015 under Section 2(1)(sa)(ii) of PMLA as person carrying on designated business or profession.

4. Foreign Exchange Management Act (FEMA), 1999 has been amended vide Finance Act, 2015. The amendments provide for seizure and confiscation of value equivalent, situated in India, in case any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, in contravention of Section 4 of FEMA.⁴

Milestones Achieved By Government Of India In Curbing Black Money

- **Income Declaration Scheme, 2016**

Income declaration scheme was the huge success by the Government of India which was launched in month of July and ended up was September 30, 2016. It brought around Rs.65, 200 crores in the Indian banks. The scheme was about those people who had undisclosed income can do disclose it as earlier as possible and bring into the knowledge of Government. The scheme said the person should surrender their money to the Government and in lieu of which Government will not reveal their identity and if they deposit the money as in prescribed way they will have to pay just 45% tax and they will be set off from the liability. This scheme became a huge success and people voluntarily participated in it ending up in increasing government revenue. This scheme was one of the most influential and unique scheme launched by the Government of India. The scheme said that all 'persons', such as individual, HUF's, companies, firms, Association of Persons (AOP's), etc., are eligible to make declaration under the scheme.

Where undisclosed income invested in any asset is declared under the Scheme & tax, surcharge and penalty are duly paid on its fair market value as on 01.06.2016 then, any capital gains arising upon its sale in future will be

⁴ Press Information Bureau, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=145129> (Last visited: 12.11.2016, 8:26 PM)

computed by adopting such fair market value as on 01.06.2016 as the cost of acquisition and the period of holding shall also start from that date.⁵

- **Goods And Services Tax (Gst) Bill,2016**

The introduction of Goods and Services Tax (GST) would be a very significant step in the field of indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax, it would mitigate cascading or double taxation in a major way and pave the way for a common national market. From the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods, which is currently estimated to be around 25%-30%. Introduction of GST would also make Indian products competitive in the domestic and international markets. Studies show that this would have a boosting impact on economic growth. Last but not the least, this tax, because of its transparent and self policing character, would be easier to administer.⁶

- **Demonitization Denomination Of Cuurency 2016: A Remarkable Step By Government Of India And Reserve Bank Of India**

Recently on 9th November, 2016 Prime Minister of India addressed the nation in which he told that denomination of Rs.500 and Rs.1000 will not be a legal tender from the midnight. This news broke like a shock to those persons, political leaders and businessmen who possess the black money in cash form in their houses, offices. The scheme was all about invalidating the tender bearing Rs.500 and Rs.1000 and it is no more a Indian currency but was just a piece of paper. Further, the scheme talked about that only these places would be accepting old currency viz. Airports, bus stations, railway stations,

⁵ Income Declaration Scheme,2016. Web Module.

Available at: https://www.icsi.edu/webmodules/IncomeDeclarationScheme_2016_PPT.pdf

⁶ Goods and Services Tax, GST-Concept and status. Available at:

http://www.cbec.gov.in/resources//htdocs-cbec/deptt_offcr/status-gst-01102016.pdf

Government hospitals etc. There was a cap in depositing the money in banks which was upto Rs.4000 and maximum withdrawal from ATM's was Rs.2000. Thus this step is really remarkable and it was appreciated by World's bank President that "*Every country should have leader and prime minister like Narendra Modi.*"

Counter Tax Terrorism And Insurgency In 21st Century: The International Perspective Of Tax Terrorism

Very broadly speaking, tax terrorism is applying the tax laws harshly following the letter of the law rather than the spirit. The tax officials issue tax notices to even those who comply with tax laws, refuse to give tax benefits or refund excess tax, resulting into unnecessary litigation and the resultant economic costs. Recent examples include Vodafone Tax Case, Nokia Case, Shell Case etc.

Reasons:

- 1) Indian tax laws have been more oriented towards maximising collection by increasing tax assessments, rather than looking towards the need of the tax payers.
- 2) Exemption based tax structure adds complexity and provides a breeding ground for tax terrorism.
- 3) Tax Inspectors are prone to enquiries in possible cases of under assessments. As a result, they issue tax notices, just to be on safe side.
- 4) Tax targets are imposed on tax inspectors without any consultation.

Consequences

- 1) Ease of doing business ranking is a testimony to the tax terrorism. Foreign investors fear such tax terrorism.

2) This has resulted into non-compliance even by the entrepreneurs who are willing to comply since either way they are prone to litigation.

3) Such opaqueness about tax obligations results in lack of predictability in incomes and hence, difficulty in charting out future plans.

The recommendations of Tax Administrative reform Commission are apt in this regard. There is a need to move towards simpler tax regimes, keeping into mind the needs of tax payers to establish synergy. IT services can play a major role in bringing transparency.

Hence, 'Make in India' needs to complimented with an improved morale in the business communities so that it does not remains a mere rhetoric.

Relevant Case Laws:

1. *Vodafone International Holdings v Union of India* ⁷

The Supreme Court of India pronounced the landmark judgment in Vodafone International Holding (VIH) v. Union of India (UOI). The Bench consisting of Chief Justice S.H Kapadia, K. S. Radha krishnan and Swatanter Kumar quashed the order of High Court of demand of Rs 12000 crores as capital gain tax and absolved VIH from liability of payment of Rs 12000 crores as capital gain tax in the transaction dated 11.2.2007 between VIH and Hutchinson Telecommunication International Limited or HTIL (non-resident company for tax purposes).

Held:

The court held that in Indian revenue authorities do not have jurisdiction to impose tax on an offshore transaction between two non-residents companies

⁷ Vodafone International Holdings v Union of India [(2012) 6 SCC 613]

where in controlling interest in a (Indian) resident company is acquired by the non-resident company in the transaction.

2. *Vineet Narain v Union of India*⁸

This case concerns the historic Hawala scandal in India, which uncovered possible bribery payments to several high-ranking Indian politicians and bureaucrats from a funding source linked to suspected terrorists. Following news coverage of the scandal, members of the public were dismayed by the failure of the Central Bureau of Investigation (CBI) to initiate investigations of the officials with the apparent intent to protect certain implicated individuals who were extremely influential in government and politics. This litigation was the result of public interest petitions filed on these matters with the Court pursuant to Article 32 of the Indian Constitution (which empowers the Supreme Court to issue directions for the enforcement of fundamental rights contained in the Constitution).

Held :

The Court in this case had struck down the validity of a directive issued by the Ministries and Departments in the Central Government that required the CBI to seek approval of the Central Government before pursuing investigation against bureaucrats of the level of Joint Secretary and above on grounds that it violated the independence of the investigative process. However, the Central Vigilance Commissioner Act, 2003, reinstated this requirement. This directive was again struck down by the Supreme Court in the course of another judgment in 2014 on the basis that it violated the right to equality guaranteed by the Constitution.

⁸ Vineet Narain v Union of India [AIR 1997 SC 889]

The primary purpose of the case was to compel a proper investigation into the scam, however this never happened. The focus of the judgment on the future and autonomy of the CBI may have been a way to divert attention from the issue of the scam. And as regards the directions of the court relating to the CBI, these were heavily diluted by politicians during implementation which resulted in the CVC being essentially toothless and controlled by the government. Nothing substantial changed in the aftermath of the case and today, scams continue with impunity.

Black Money And Tax Terrorism: Issues And Challenges

Circulation of the black money and money laundering in India along with the tax terrorism is a challenge in India and at global level as well. The cases of same are increasing day by day leading to the economic offenders. This is not the case in India but at global level as well. So in order to curb it stringent and unique steps should be taken by the Government of India which would curb these practices at the global level. Recently such step has been taken by the Government of India along with Reserve Bank of India demonetisation of denomination which has marked a revolution in the country. This step was a shock to those who have kept the black money in their homes and offices as they don't have any recourse left because the scheme was initiated and enforced from very next day w.e.f 10th November, 2016. People have no idea where to send their money. Some issues and challenges regarding the same which I came out through this research:

- The step which has been taken by Government of India regarding demonetisation of denomination was nevertheless a remarkable step. But it was badly executed and managed after it is implemented. There is shortage of cash in ATM's due to which common man is facing

problems day by day. Government should have taken adequate measures to avoid this situation of chaos and confusion.

- Few people who are below poverty line and are uneducated should be made more aware about the scheme as most of them are still unaware about the scheme of the Government and have no clue what to do. It should be done through the means of campaigning regarding the awareness about this scheme. As it has been done for a very good cause but the issue is that when people are taking their money into the banks for getting it exchanged they in order to getting it faster are giving their old legal tender who are sort of brokers and they take old denomination and give them the new currency to them deducting some amount as the commission. The govt. should keep a check on these people and they are straightaway send to the prisons if they have been found doing this.
- In my opinion the scheme should be enforced of first day and brought w.e.f. from next month so that people who have day to day work and have a business which involved day to day exchange of currencies such as people who are in courts, labourers who get their daily wage etc. At least they should have saved their time. The problem is that they leave their work and go to banks for getting their tenders changed which is effecting their reduction in working hours and due to which they are losing their wages That is its reduction in their earning capacity.
- In order to avoid chaos and confusion among the people about this sudden step. Government should have taken measure to control it by making efficient policies in regard of it. Government should have allowed old legal tender as valid legal tender for the last date of the month and the people who transacted higher amount of money should be imposed a cap and they should need to produce certain valid proof

of their transaction such as PAN card for the same which automatically have told that they had black money. And rest of the scheme should have remain the same of withdrawing and depositing the money.

- Banks should have been directed to deposit denominations of lesser value into the ATM's such as of Rs.20. So as to maintain ease and calm among the people.
- Payment of electricity bills and all other essential commodities should have been allowed to pay in old legal tenders at least till last of the month.

Conclusion And Suggestions

Government of India in recent years have taken very stringent and strict move regarding the control curbing black money and tax terrorism. The schemes which have been launched by the government has brought a remarkable change in the Indian market. Indian economy has boosted up to high limit. It has been noticed that GDP has started increasing gradually. Various sectors which were neglected by the previous government has brought forward and their development has been done. Many new infrastructure projects have been started. Through this research I have come to the conclusion that draining out of black money and tax terrorism have started which was the need of the hour and efficient schemes have made it possible. It should be kept as it is and made more stronger with reforms needed time to time.

Few suggestions which I would like to suggest through my research paper :

- ≥ As schemes which was introduced to curb black money was brought. The schemes in regard to Benami Property should also be brought.
- ≥ People who have their account in swiss and other foreign banks should be recognised and money should be brought out drain out from there. And a separate criminal charges should be made against those persons.

- ≥ Persons who have absconded from India and have same charges Enforcement Directorate along with Govt. of India should take strict actions against them and should speed up their investigation and recognise those person as early as possible. Also the Government of India should request the Govt. of that country in which those persons are currently residing.
- ≥ Every other forms of corruptions should be controlled by enactment of new laws.
- ≥ People who give information about the black money of others. Their identity should be kept undisclosed and should be given protection for the same.
- ≥ In order to control black money E-Governance and other E-portals should be increased more.
- ≥ Lastly, Government should be more transparent in their work and the share the relevant information on Government websites. So that people get more and more aware about the schemes, works and achievements of the Government

