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Electoral bonds for political donations likely to fail the tax test

Tax experts point out that the I-T Act needs to be amended to give electoral bonds tax-exemption status

Sudipto Dey January 08, 2018 Last Updated at 00:21 IST

Amidst the divided opinions on whether electoral bonds as a tool will be effective in curbing the use of black money in the election process, there appears to be a question mark over their tax-exemption status. Donations made through an electoral trust, a section 25 not-for-profit company, are eligible for tax deduction under section 80GGB/80GGC of the Income-Tax (I-T) Act. “We are not sure whether donor of electoral bond will get tax exemption,” says Anil Verma, head, Association for Democratic Reforms (ADR).

Tax experts point out that the I-T Act needs to be amended to give electoral bonds tax-exemption status. “As of now, donations through electoral bonds are not eligible for any tax deduction in the hands of the donors,” says Amit Singhania, partner, Shardul Amarchand Mangaldas & Co. For the recipient parties, contribution received through electoral bonds would be excluded from their “taxable income”.

However, not everyone is convinced about the change in tax treatment between electoral trusts and electoral bonds. Ashish Sodhani, at Nishith Desai Associates, argues that buying of electoral bonds should not result in any tax implications for the companies. Hundred per cent deduction is allowed on contributions made to an electoral trust or to any political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951). “Therefore, the amount of contribution made by it to the political party is allowable as a deduction to the company when it pays its taxes,” he says.

Experts, however, feel that corporates may not be comfortable donating through electoral bonds given the ambiguity over tax treatment. According to Himanshu Sinha, partner, Trilegal, both electoral bonds and electoral trusts are mechanisms for facilitating greater corporate participation in election funding. “They need to be on a par when it comes to the tax treatment,” he says.

TRACKING ELECTORAL BONDS

- Electoral bonds were first announced through the Budget speech for 2017-18
- The Finance Act, 2017, contained the necessary provisions for amendment of the Representation of the People Act, the Companies Act 2013, the Income-Tax Act and the Reserve Bank of India Act, in light of introduction of these bonds

What sceptics don't like about the bonds:

- Political parties are not required to maintain records of the donors
- The donor is not required to disclose the name of the political party while purchasing electoral bonds
- The limited requirement of having KYC from the donor's bank is insufficient to track the trail of the money used to buying electoral bonds
- Lack of clarity around tax treatment may make corporates uneasy about taking this route

What works for the bonds:

- There is no cap on the amount of donations made through such bonds

Experts note that electoral trusts as a vehicle for making political donations have been gathering momentum over the past few years with 18 of them getting registered with the Election Commission of India. But, the recently released data on the contributions made by various companies through such trusts to different political parties made several donors nervous. There was some apprehension of harassment to donors by the political parties. Following this, there was a demand from a section of corporate India to make such political donations anonymous. According to the electoral bond scheme announced by the government, political parties are not required to maintain records of the donors contributing through this route. Further, the donor, subject to meeting KYC (know your customer) requirements of the bank, does not need to disclose the name of the political party while purchasing the electoral bond.

Experts, however, point out that the anonymity cloak under the bond scheme is not impregnable. “The issuer bank and the bank that receives the bond for conversion into cash always know the purchaser,” Sodhani says.

ADR’s Verma says, if the donor prefers anonymity at the cost of not getting tax exemption, they will go for electoral bonds. But, if the donor is prepared to disclose identity and avail tax exemption, they would take the electoral trust route, he says.

Further, the Finance Act, 2017, made several relaxations in the Companies Act, 2013, when it comes to “Prohibitions and restrictions regarding political contributions”. It has done away with the requirement to disclose the name of the political party to which the corporate has made a donation. The only requirement is to mention “total amount contributed” in the profit and loss account. The government has also removed the cap on political donations by companies. Earlier, companies were permitted to donate up to 7.5 per cent of average net profit of the last three years. Now, companies are allowed to contribute as much as they want, irrespective of whether they are profitable or loss-making.

Experts point out that one of the distinctive features of electoral bonds is that there is no cap on the amount of donations made through such bonds. This, along with the relaxations, may open the door for unmonitored funding of political parties by corporates, say some experts.
These changes and relaxations by the government have been challenged through public interest litigation in the Supreme Court that is being heard by a three-judge Bench, headed by Chief Justice Dipak Misra. “It would be interesting to see what the Supreme Court has to say in this regard,” says Sudipta Bhattacharjee, partner, tax controversy management & contract documentation, Advaita Legal.