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HIGHLIGHTS

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India's Rajya Sabha, the upper house of Parliament, on May 13 passed an anti-tax-evasion bill that would levy a flat tax on undeclared foreign income and assets and impose stricter noncompliance penalties, a move Prime Minister Narendra Modi called a ''historic milestone.'' The upper house also delayed passage of a constitutional bill that would pave the way for a national goods and services tax regime.

The Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015, also known as the ''black money bill,'' was submitted March 20 to the Lok Sabha, the lower house of Parliament, which passed the bill May 11. Once the bill receives presidential assent, it will become law.

Under the law, which would affect all resident persons in India, a 30 percent tax will apply to all undeclared offshore income and assets, including financial interest in any entity. Failure to comply with the tax would result in liability for a penalty of three times the amount due in addition to the tax itself. Also, ''willful attempt to evade tax'' on foreign income or assets could carry a prison term of three to 10 years. (Prior coverage: *Tax Notes Int'l*, Mar. 30, 2015, p. 1151.)

The bill is in line with the 2014 election manifesto of Modi's Bharatiya Janata Party, which promised to tackle India's massive tax evasion problem and bring back undeclared funds hidden in foreign accounts.

''Personally, I am very delighted,'' Modi said in a statement welcoming the bill's passage. ''It indicates the priority we attach to the issue.''

However, some members of Parliament expressed their doubts, saying the bill does little to discourage tax evasion. ''The problem is the generation of black money,'' said Sitaram Yechury of the Communist Party of India (Marxist), during a May 13 parliamentary debate. ''This bill deals with the demand side of the problem, not with the supply side.''

Yechury urged the government to reexamine its tax treaties with other countries, particularly those that don't charge capital gains tax, which can lead to CGT dodging. ''This is absolutely necessary if you are serious about curbing the black money,'' he said.

India has previously raised concerns about round-tripping, a strategy where Indian companies secretly transfer funds into a country that doesn't charge CGT, such as Mauritius, to establish residency and then bring the money back to India as foreign investment.

Ravishankar Raghavan of Majmudar & Partners agreed that the bill doesn't do much to prevent tax evasion, but he told Tax Analysts he is concerned that expatriates, nonresident Indians, foreign companies, and trusts that have a business connection in India could fall in the tax department's cross hairs by becoming residents in India on a technical basis. ''Therefore, appropriate clarifications and guidelines should be prescribed by the government,'' he said.

Mukesh Butani of BMR Legal said the bill was a ''tough-nosed'' piece of legislation with a zero-tolerance approach comprising stringent penal and prosecutorial consequences for noncompliance. ''Well-defined rules for imposition of penalty and prosecution lend more teeth to the draft legislation,'' he said, adding that the government could have taken a liberal approach by decreasing the penalties for past noncompliance.

According to Megha Ramani of Nishith Desai Associates, practitioners should keep in mind that the bill's enforcement may be speedy and forceful and that the bill isn't meant to target only resident Indian nationals but those who qualify as tax residents under Indian income tax law. Therefore, there may be persons who are technically considered residents but may not meet the liability requirements under the bill, which may lead to administrative difficulties, according to Ramani. ''Practitioners will have to adequately hand-hold them through the process,'' she told Tax Analysts.

Practitioners will also have to assist clients ''who fall squarely within this bill and wish to take advantage of the short-term compliance window,'' Ramani said.

Moreover, practitioners must be aware that the bill imposes liability on them for abetting or inducing another to willfully attempt to evade tax or to make false statements or declarations related to foreign income and assets, Ramani warned. ''In this regard, they must conduct their own due diligence and maintain internal risk assessment procedures to ensure they act within their rights,'' she added.

GST Delay

A bill that would clear the way for a national GST stalled in the Rajya Sabha.

The Constitution (122nd Amendment) Bill, 2014, which the Lok Sabha passed May 6, would allow federal and state governments to draft GST legislation, and it would create a GST council to advise on tax rates, exemptions, and threshold limits. The proposed GST regime, which would streamline India's complex indirect tax system, would take effect April 1, 2016. (Prior coverage: *Tax Notes Int'l*, May 11, 2015, p. 528.)

Finance Minister Arun Jaitley on May 12 referred the bill to a parliamentary select committee for further consideration after the political opposition demanded additional legislative scrutiny. The bill is expected to be resubmitted to the Rajya Sabha in July.

''The opposition to the Constitutional Amendment Bill in the Rajya Sabha was not unexpected,'' Amit Bhagat of PricewaterhouseCoopers India told Tax Analysts. However, he expressed optimism about the future of the bill.

''Looking at the softened stance of the opposition and the support that bill got in the Lok Sabha from other parties, it is reasonable to expect that the Bill should sail through Rajya Sabha,'' Bhagat said. ''There may be a delay due to such deferment, but it does not mean its [scheduled] rollout is at all unrealistic.''

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