


Chasing black money!

Published on Sat, Feb 12 15:24, Updated at Sat, Feb 12 at 23:22
Source : Moneycontrol.com | Watch Video : 

The BJP Task Force 2009 pegged it at between 500 billion to 1.4 trillion dollars. A recent study by Global Financial Integrity points to USD 462 billion. India's Finance Minister says there are no reliable estimates of black money outside the country. How then can India follow the money trail and bring this money into the tax net? Faced with an ongoing case in the Supreme Court, political pressure and the unearthing of scams – the Indian government has announced a 5 pronged strategy. But Payaswini Upadhyay reports that tax treaties and information exchange agreements are the best bait to catch the black money fish. And maybe even voluntary disclosures.

78 Double Taxation Avoidance Agreements in all. And yet information on unaccounted money held in offshore bank accounts continues to elude India. That's because in the current form, the DTAA's provide for certain carve outs in the process of information exchange. For instance Exchange of information is permitted in case of tax evasion but not money laundering

Nishith Desai, Founder, Nishith Desai Associates

"The articles relating to the agreement relating to tax exchange information with the Treaty partners are not that tightly worded. And that leaves significant leeway or discretion with the other treaty partner country not provide or cooperate sufficiently for tracking down the tax evasion whereas the TIEAs with the tax haven countries do permit Indian government to demand lot more information in a systematic manner and it provides for conditions under which information has to be provided by the other country."

Last year at the G-20 meeting in London, India promised to strengthen the information exchange process, especially with 12 Non-sovereign States which are the more popular tax havens. To date, Tax Information Exchange Agreements have been inked with Bermuda, Isle of Man and reported British Virgin Islands. This allows the Indian Government to access more information, even examine people in these foreign jurisdictions.

Sunil Jain, Partner-Tax, J. Sagar Associates

"The agreements clearly provide lots of flexibility for us to be able to generate information that has missed us so far. The number of exceptions are very limited so the supplying country cannot refuse information under the clause that was there in our tax treaties. TIEAs virtually obliges them to share information with us and going forward if we are going to amend our Exchange of Information clauses as well, we are trying to arrive at a situation where the supplying country is obliged to supply this information without taking recourse to the secrecy laws in those countries. And if the competent authorities in those countries were to permit us, we will be able to use this information for not only dealing with tax cases but also dealing with money laundering.

Nishith Desai, Founder, Nishith Desai Associates

"There would be a few limitations. One, you can't do fishing expedition. You cannot say, for example, country 'X' handover all the information relating to all the Indians residing all over the world to us. Some of the conditions will require you to identify a particular person on whom you are carrying out investigation. I have to give some basic information relating to that investigation. Number two; you cannot demand any information that requires trade or commercial secret. You cannot demand information which may be in the nature of communication between a lawyer and his client and even if you get that information, you can only use it for purposes of tax evasion or tax related matters. You cannot use that information to track down the exchange control violations."

But international precedent shows that jurisdictions are doing more than just signing TIEAs – remember the USA-UBS case last year – the first time Switzerland made an exception to its famous privacy laws! UBS was forced to provide the United States government with identities and account information for 300 United States customers. UBS also agreed to exit the business of providing banking services to United States clients with undeclared accounts and finally paid \$780 million in fines and penalties.

Nishith Desai, Founder, Nishith Desai Associates

"I think in the US one situation is very simple that all US citizens are taxed on their worldwide income. And they are expected to report all their foreign bank accounts to the department. And so one might be able to say that if there is any account of a US citizen, then information be provided. So that becomes easier. In the Indian context, simply because you are an Indian citizen, you are not taxed on the income in India. But if you are an NRI in the US and earning income there, India cannot say that we will tax you. That is why there is little difference in system of taxation that exists in India and in the US."

To bridge that gap India is working to amend the treaty with Switzerland and improve the article dealing with exchange of information.

Sunil Jain, Partner-Tax, J. Sagar Associates

"In the past, it has not been able possible for us to get information on banking and ownership of the accounts which will now be possible under the amended protocol. The threshold for obtaining information has been on "as is necessary basis". The threshold now stands reduced to foreseeable relevance that the India tax authorities perceive in getting that information. And the ability to use that information for the purpose of tax assessment and collections, if the competent authorities of the supplying State permits, the information can also be used for purposes other than tax to carry out prosecution and investigation or any other suitable action like Prevention of Money Laundering etc. Information can be obtained by India even if there is no direct economic interest and the downer that is there that information can be obtained in prospective matters, only in case of prospective violations and the past cases on which a lot of bytes have been generated, we would not be able to obtain information on that."

There are "no instant solutions" says even the Prime Minister. Amending tax treaties, introducing TIEAs, following the money trail – its all lots of hard work.

So is there an easier way to bring that black money into the tax net. Easier yes, morally acceptable; may be not! And yet several countries resort to it often – I'm talking amnesty schemes!

Italy has announced one in every two years, they are a big favorite in Germany and in 2009 the UK announced its second offshore tax amnesty scheme!

Sudhir Kapadia, Tax Market Leader, Ernst & Young

"They introduced for the customers of the five largest UK banks the offshore disclosure facility where offshore bank accounts could be disclosed. Again you would pay tax; you would pay interest and a reduced penalty of 10% as opposed to a penalty of 100%. And the UK government's claim is that resulted in an incremental tax collection of close to 500mn pounds. Interestingly there was no specific immunity against criminal prosecution but the reality is that not one of the millions of taxpayers who availed of this facility were visited with any criminal proceedings. So it was pretty much in substance immune from criminal prosecution. The UK has now extended this facility to even customers of smaller banking institutions and they are hoping to garner another 500 million pounds through this measure."

YP Trivedi, Senior Counsel, Supreme Court

"If Voluntary Disclosure Scheme becomes absolutely imperative, then a proper framework can be created. Those who are getting the money should pay the tax. Pay the tax which can be graduated in the sense that those who bring it immediately after the announcement of the scheme, they might pay at the rate of 25%, those who bring in the next month might pay 27% and those who pay thereafter will pay at the rate of 30%. The scheme should close within 3 months. Bearer bond should be given, total immunity should be given. In the earlier schemes, immunity was given from various other legislations but not from Prevention of Corruption Act. And if these monies are parked there by bureaucrats and politicians, they would require immunity from Prevention of Corruption Act.

Whether it's an offshore disclosure facility or bearer bonds to fund infrastructure projects, there's no denying that the buzz around amnesty schemes is back this Budget.

Bad news for honest taxpayers but let me tell you even the world's most powerful economy is resorting to voluntary disclosure. USA announced its first offshore disclosure scheme in 2009 and the second one as recent as last week. Will we resort to the same can India do better?