



BLACK MONEY ACT, 2015 - BLACK MONEY CONTROL ISSUES IN INDIA

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Abstract

Black money is one of the biggest problems in many countries and one of the biggest problems when it comes to countries like India. This problem is not new to India and has been around for a long time. Before we get to the heart of this question, we need to understand its true meaning. "Black money is money earned from illegal activities controlled by government regulations." This money is usually converted into cash through various activities and is not used to pay taxes. The term "black money" appeared in the early 1920s. When the country starts to develop, i.e. in the post-independence era, black money was in the spotlight, but in modern times, black money has become a major issue, guiding national policies, defining new economic activities, and sometimes defining national laws. To address this issue, the Black Money (Undisclosed Foreign Income and Assets) and Tax Act was passed in 2015 to control and restrict India's informal economy. However, the law still faces many obstacles in its implementation. The following research paper aims to examine the provisions and omissions of the relevant laws.

KEYWORDS: *Black Money, Income Tax Act, Tax Evasion, Indian Economy.*

Introduction:

In modern times, there is a high level of social and legal anomie and postmodernism. Too many people feel free from all social and legal obligations to the state and society. This anomie introduced a number of shortcomings in the socio-legal system and prevented state bodies from controlling the illegal activities of money dealers. Tax evasion, tax evasion and tax evasion are the result of this weakening and the lack of normative standards of behavior associated with tax liabilities. The problem of black money and tax evasion or tax evasion is not new or unique to India, but it is a global and as old problem as the tax system itself. The severity of the problem varies from country to country and system to system. However, the problem of tax evasion is more serious for direct taxes than for indirect taxes, since direct taxes are paid by the first payer, while indirect taxes are usually deferred, carried forward or reversed. For black money, direct tax evasion is a top priority.

Since taxation is a necessity of a civilized society, it is God's duty, as is every man's

duty, to pay real tax debts. Judge Holmes was right when he said, "Taxes are what we pay for civilization" and "I am happy to pay taxes to buy civilization." In this context, it can be argued that if taxpayers do not comply with tax laws, they have not fulfilled their obligations to society and the state to the extent required.

Barriers to black money (non-disclosure of foreign income and assets) and tax laws of 2015:

It has been six years since the president approved the bill. But even after almost five years, laws, rules and procedures lack the clarity required by tax laws. The legislature and the government of Black economy problems are ingrained in almost all high tax jurisdictions and have been the subject of discussion in almost every global forum. All countries feel the need to reduce the production and outflow of black money to other tax jurisdictions. Initiatives are gaining momentum at various levels to support information sharing, law enforcement and extradition.

In this context, on March 20, 2015, the Black Money (Foreign Income and Assets Not

Disclosed) Act and the Tax Response Bill of 2015 were introduced in the National Assembly, which the Speaker called the Money Act and passed after deliberation on May 11, 2015. was the Lok Sabha. The Sabah bill was sent to the Rajya Sabha for recommendation and on May 13, 2015 the bill was debated and returned to the Lok Sabha without recommendation. The bill was approved by the President and entered into force on May 26, 2015, exactly one year after the formation of the NDA government. There are several references to the Income Tax Act of 1961, but that act appears to be a separate code. Much of the language used in the law also appears to be taken from the Income Tax Act.

India must make appropriate changes for the effective implementation of this law. Because it has signed information exchange agreements with several tax authorities in the past, the burden of the Black Money Act may increase in the near future.

Constitutional force of the retroactive application of Black Money and Tax Laws 2015:

Article 20(1) of the Constitution of India prohibits, inter alia, punishing individuals for offenses other than criminal offenses under applicable law. While a violation has occurred that says:

Article 20 (1) of the Constitution of India, inter alia, imposes bar on conviction of a person for an offence, which was not a violation as per the law in force at the time of the commission of the offence, and reads as under:

Article 20 (1) - Protections in respect of conviction for offences

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence....."

The conditions precedent for the application of the aforesaid provision is – (i) commission of an offence and (ii) such offense is not violative of law in force at the relevant time.

Article 367 of the Constitution provides that, reference can be made to the General Clauses Act for interpretation of any part of the Constitution, which defines the said word as "any act or omission made punishable by any law for the time being in force."

Courts have consistently argued that the word "punishment" used in the paragraph above, along with section 20(1), applies to offenses and not offenses punishable solely by fines. Any non-compliance with statutory obligations, other than raising taxes, imposing fines, etc., may also lead to the prosecution of appraisers in accordance with articles 49, 50 and 52 of the Law. Therefore, non-compliance with the law would be considered a "criminal offense", and therefore the drafters considered this law to be in violation of section 20(1) of the Constitution. While we have discussed above that it is a crime to disobey the law, another requirement of section 20(1) is that the punishment must not exceed the "law" in force at the time the act was committed. Courts interpret "applicable law" to mean that it is not a law that has been "adopted" and is considered to be in force, but rather a law that was or was in effect at the time. then this. The Supreme Court also rejected the retroactive effect of the new law in accordance with section 20(1) of the Constitution. In this regard, the intention of the legislator is to impose harsher penalties on the party whose law is being considered, retroactively or retroactively to a law that violates section 20(1) of the Constitution.

In this case, as discussed above, foreign income not disclosed under Article 3(1) can only be valued in accordance with the law. AY 2016-17. Retrospective/retroactive questions only apply to undisclosed foreign assets that were acquired before the effective date but were sold or held on or after April 1, 2015. Ownership of foreign assets that was not disclosed prior to 2015-16 AH could be invalidated under the then-current provisions of the Property Tax Act 1957, repealed after 2016-2017 AH. Where the provisions of article 20(1) apply, the author considers that foreign assets (whether sold or held) acquired prior to 2016-2017 can only be tracked in accordance with the property tax provisions and are not subject to taxation. . Legal limitations of this black money law.

In this regard, there is a strong objection to the retroactive application of the Black Money Act. Therefore, if a notice is issued stating a tax reason for undisclosed income or undisclosed property acquired/acquired prior to AY 2016-17, it is recommended that you seriously object to the issuance of such

notice and, if necessary, submit to jurisdiction. Such notification may be appealed to the Supreme Court in accordance with section 226 of the Constitution.

Conclusion: Embezzlement and illegal taxes that undermine the social and moral foundations of the Indian economy undermine socio-economic goals and lead to conspicuous and wasteful consumption. Black money and tax evasion contribute to the concentration of economic power in the hands of undesirable groups in the state. Deregulation and relaxation of exchange rate controls opened up new opportunities for tax evasion. Globalization has reduced the cost of this complex method, making it easier to obtain illicit money. A multifaceted strategy can solve the problem of receiving black money and illegal money transfers abroad by the central and state governments.

References:

- 1) Anil Kumar Jain, Tax Avoidance, Tax Evasion: the Indian case, 21(2) Modern Asian Studies (1987) pp. 233-235.
- 2) <https://www.mondaq.com/india/income-tax/962514/black-money-law-prospective-and-not-retrospective-or-retroactive-an-arduous-plea>,
- 3) Central India Motors vs. C.L. Sharma, Assistant: 1980 46 STC 379 MP
- 4) Rao Shiv Bahadur Singh vs. State of Madhya Pradesh 1953 SCR 1188 (SC), West Ramnad Electric Distribution Co. Ltd. vs. State of Madras AIR 1962 SC 1753 (SC), Biswanath Bhattacharya vs. Union of India (2014) 4 SCC 392
- 5) State of Maharashtra vs. Kaliar Koil Subramaniam Ramaswamy (1977) 3 SCC 525