Making a Show: The Black Money Bill

The Black Money Bill aims to get holders of black money abroad to exploit the amnesty window.

During the Budget Session, Parliament passed the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Bill, 2015, paving the way for imposition of tough penalties and jail terms on Indian residents’ unaccounted incomes and wealth holding in foreign locations that have avoided the taxman’s scrutiny. The Bill, it must be noted, is limited in scope, since it applies only to illegal money held or earned abroad, though there is the promise of a separate bill for unaccounted/unreported incomes held in different forms within the country.

The 2015 bill legalises the right of the government to impose a 30% tax on undisclosed income or the value of an undisclosed asset held abroad by a resident assessee, starting from assessment year 2016–17 (tax year 2015–16). If the sum involved has been “earned” or invested in a year prior to the year immediately preceding the assessment year, it would be subject to penalties of up to 90% and a jail term that can go up to 10 years. In sum, as and when undisclosed income from a source is discovered, it would come under the purview of the law irrespective of when in the past that income had been earned and remained undisclosed in a return. Since only a small fraction of the taxable but unreported income or the assets acquired with it would have been earned or acquired in 2015–16, almost all such undisclosed income would be subject to the maximum penalty and its holder subject to criminal prosecution.

Implementing the law, of course, requires identifying undisclosed income stashed or invested in a foreign location. That, as past experience reveals, is neither easy nor rigorously pursued. In an effort to show that the government is “bringing back black money” held abroad, the new law has an amnesty clause. It provides for a short “compliance window” during which those holding such unreported incomes or assets abroad can declare them and pay the 30% tax and an additional 30% penalty. Since a 120% tax-cum-penalty that would operate once the window is closed is equivalent to confiscation and the imposition of a fine, besides imprisonment, the thrust here is to get holders of black money abroad to exploit the amnesty window. The benefit being offered to them is that they would lose only 60% of this wealth in return for exemption from confiscation, an implicit 20% penalty and the ignominy and hardship of jail, if discovered.

It must be noted that even as of now the taxation laws and those relating to the management of foreign exchange allow for the prosecution of those residents holding undisclosed incomes and assets abroad, and the imposition of taxes and penalties on those monies. The problem is that little of such incomes and assets have been identified since independence. Hence, despite the law, the process of transferring unreported incomes (often illegally acquired and therefore unreportable) abroad through illegal channels has continued. Though the government (whether under the United Progressive Alliance or the National Democratic Alliance—NDA) has in recent years made a show of exploiting new opportunities to collect information on money held in foreign (especially Swiss) bank accounts by Indian residents, its seriousness has been in question; the nature of information received has been largely kept out of the public domain and action taken visible more by its absence.

The current government’s claim to be striving for access to more information is not convincing. Not much is being gleaned from official international sources, and getting the new bill to authorise the government to negotiate with foreign agencies for information is unlikely to yield very much more. It is not clear whether the Special Investigation Team to hunt down black money and its sources, set up in compliance with a Supreme Court order, has thus far obtained more information than the government already has. And the attempt of the new bill to frighten those who have violated the law to voluntarily furnish incriminating information by threatening to impose penalties on the non-filing of returns is little more than wishful thinking.

Seen against this background, the Black Money Bill seems to be just another headline-grabbing effort at making a show that the NDA government is keeping to its campaign promise of bringing back black money held abroad by Indians (even if it cannot keep the promise of distributing the money to all citizens!). If at all this law is to make any material difference it would largely be because the threats of confiscation and arrest push offenders into accepting the amnesty offer. This could also perhaps explain why the bill on undisclosed incomes and assets held abroad is separated from that which would apply to the large amount of such assets and incomes circulating in the country. If the amnesty on sums held abroad works to some extent, the government can claim that it has delivered on its promise to bring black money back. If it does not, the government can hold that the bill reflects its resolve, but the process is
too complex and too dependent on the cooperation of foreign agencies to yield quick results.

The real advantage the government has is that none can claim they are not for a campaign aimed at unearthing black incomes and assets. That explains why this was one of the few bills that the government could get through Parliament with relative ease. But experience shows that it is not the weakness of the law that results in the accumulation of the black money, but the failure of the monitoring and prosecuting mechanism to prevent the generation of illegal incomes and identify tax evasion even on legally earned incomes. In fact, the way the tax laws and the system are structured, merely unearthing what is black and making it white would not, in itself, make much difference to the nature and the outcome of India’s development trajectory.