

Tax Amnesties in India

By S S Khan

Mr. S.S.Khan, a 1972 batch IRS officer, retired as Member (Income Tax) of the Central Board of Direct Taxes. For his contribution to the e-governance initiatives of the Government of India, Mr. Khan was honoured with the Prime Minister's Award for Excellence in Public Administration for Integrated Tax Payer Data Management System (ITDMS) for the Year 2009. Mr. Khan is a sought after member of various committees and expert groups. Currently, he is a Member of the Technical Advisory group on Unique Projects, Empowered group for IT infrastructure for GST, Committee for restructuring Central Economic Intelligence Bureau, amongst others.

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Government has been offering tax amnesties practically every ten years on the premise that the citizens need to be given an opportunity to come back to path of rectitude and contribute their mite to the grand adventure of nation building. The last couple of Schemes were described as the “very last opportunity”. It will be instructive to have a brief look at the past schemes.

The process started before independence when in the closing stages of World War-II black marketing was rampant and many a businessman made a killing taking advantage of war time shortages and political uncertainties of the time. Therefore, in 1946, high denomination (HD) notes were demonetised to immobilise black money held in currency notes.

Voluntary Disclosure Scheme, 1951

In 1951 came first Voluntary Disclosure Scheme, also known as Tyagi Scheme. Under this assesseees were allowed to bring into books unaccounted cash before August 31, 1951 after giving intimation to the ITO and paying tax on it without any fear of penalty or prosecution under the tax law. It resulted in disclosure of Rs 70 crore and collection of tax of Rs. 11 crore. The reason for its failure was said to be that the people were not confident about the assurances of immunity from penalties and prosecution.

Voluntary Disclosure Scheme, 1965

Thereafter, in the backdrop of Chinese invasion of 1962 came another disclosure scheme vide the Finance Act, 1965. This came to be known as **Sixty-Forty Scheme**, as it allowed disclosure of unaccounted incomes by paying tax @ 60% and retaining 40%, with immunity from penalties and prosecution. The disclosures were kept confidential and tax could be paid in two instalments over six month. Courts were prohibited from compelling production of these declarations in any proceedings. The Scheme could bring out black money of a mere Rs. 52.11 crore and tax of Rs. 29 crore. Apparently the tax rate of 60% was regarded as too high by the tax evaders.

Second disclosure scheme of 1965

As the above Scheme could not fetch much revenue Government the terms the by another scheme vide Finance (No.2) Act, 1965. This allowed the evaders to disclose their unaccounted incomes of any year up to March 31, 1966. It became known as the "**Black Scheme**" because under it tax was payable on the disclosed incomes for various years taken as a single block, at slab rates applicable for 1965-66 and not at a flat rate of 60%. The tax could be paid in instalments extending over four years. The Scheme was well received and brought out black money of Rs. 145 crore but tax collected was a mere Rs 20 crore as most disclosures were made in the names of spouse, children, etc to take benefit of the lowest slab rate. Notably, the Wanchoo Committee estimated tax-evaded incomes in 1965 to be of the order of Rs 1000 crore.

National Defence Gold Bonds

Yet another scheme came the same year vide Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1965. It provided for complete exemption of undisclosed income invested in National Defence Gold Bonds. Persons subscribing to these were assured that their names shall be treated as confidential and no court shall be entitled to require any public servant to disclose the name or other details. It mopped up only Rs. 18 crore. Another scheme, the National Defence Remittance Scheme fetched Rs. 70 crore.

Voluntary Disclosure Scheme 1975

The Voluntary Disclosure Scheme of October 1975 was announced in the shadow of the emergency. It allowed tax evaders to declare their unaccounted incomes or wealth of any year without fear of levy of interest, penalty, or prosecution under the various direct tax enactments or the Gold Control Act. Tax on disclosed incomes was to be paid @ 60 per cent in case of companies and at slab rates of 25%, 40% and 60% in the case of others on incomes up to Rs. 25,000; between Rs. 25000 and 50,000; and above Rs. 50,000. The scheme resulted in disclosure of unaccounted income of Rs. 738 crore and unaccounted wealth of Rs. 790 crore. Total tax collected was about Rs. 241 crore. The estimated black money in 1975 was of the order of 15-18% of GDP i.e. Rs 9958 to 11870 crore.

Demonetisation of High value currency notes

In 1978 it was the turn of the first non-Congress Government to try its hand at unearthing black money. It came up with a Scheme for demonetisation of currency notes of Rs. 1,000, and above. The objective was to illegitimise black money supposedly held in high denomination currency notes. The logic was as simple as of Baba Ramdev . But most black money is never kept idle in wads of currency notes. Even those who held it in this manner simply got it converted by finding benamis who could explain these as their savings. Therefore, the scheme met with limited success.

Special Bearer Bonds 1981

Then came the Special Bearer Bonds (Immunities) Act, 1981. It provided for issue of 10 year bonds of Rs. 10000/- face value, with redemption value of Rs. 12000/-. This offered the best terms in a long time. It simply stated that notwithstanding anything contained in any other law no person subscribing to or acquiring these Bonds shall be required to disclose, the source of their acquisition for any purpose whatsoever. Further, the fact that any person has acquired these Bonds shall not be taken into account and shall be inadmissible as evidence in any proceedings

relating to any offence or imposition of penalty etc. Still further, premium on redemption of these Bonds, was also exempted from tax. In short any amount of black money invested in these Bonds became white in ten years without payment of any tax, in the process earning the declarants tax free premium of 20%. Even these attractive terms did not induce many to come forward. The sales of these bond in 1981-82 was Rs. 964 crore against an estimated size of black economy in 1981 of 15-18% of GDP or Rs 20362 to 23678crore.

The bonds however became alternate currency and commanded premium in market which increased as the date of maturity came closer. So much so that in the Budget speech for 1990-91(the year of their maturity) the Finance Minister lamented that the instrument to render black money white was itself used to reconvert white money into black.

The Amnesty Circulars of 1985

Not bemused by the failure of successive schemes the Government came up with another one in 1985 - by stealth. This was not even called a Disclosure Scheme and was not made with Parliamentary approval either. It came in the form of seven CBDT circulars issued between June 26, 1985 February 17,1986. These allowed tax evaders to disclose their unaccounted incomes and wealth of any year before March 31, 1986 and pay due tax on it, on the assurance that penal interest would be waived and immunity from penalties would be granted. There was no immunity in respect of excise duty, sales tax, etc. The Scheme extended up to March 31, 1987 mopped up black money of about Rs 700 crore.

Indira Vikas Patra 1986

These are not officially described as black money bonds but have all the features of such bonds. These can be bought from any Post Office in cash and are transferable; name of the purchaser is not entered on the certificate; and investment doubles in 5 years. Kisan Vikas Patras introduced in 1988 give a marginally lower return of 13.43 per cent per annum. However, they have more liquidity and provide for premature encashment after 2½ years. Although interest on these is not exempt these do not attract TDS. Therefore, these are in the nature of ongoing disclosure scheme for parking unaccounted funds which then become available to the Government.

National Housing Bank Deposit Scheme1991

Voluntary Deposits (Immunities and Exemptions) Act, 1991 stated that for effective economic and social planning Government has decided to allow certain immunities for deposit of black money with National Housing Bank. 40% of these were to be credited to a special fund for financing slum clearance while balance could be utilised by the depositors. Persons making these deposits were given immunity from disclosing the nature and source of these. The information was made inadmissible as evidence in any proceedings relating to any offence or any penalty etc. The Scheme however could secure deposits of only about Rs 60 crore.

Foreign Exchange Remittance Scheme and India Development Bonds

These two Schemes were firefighting operations against precarious foreign exchange position oobtaining in 1991. Remittances of Foreign Exchange and Investment in Foreign Exchange Bonds (Immunities and Exemptions) Act, 1991 provided that no person who receives foreign exchange under a Remittance Scheme notified by the Reserve Bank shall be required to disclose the nature and source of the remittance for any purpose whatsoever, and this fact

shall be inadmissible as evidence in any proceedings relating to any offence or the imposition of any penalty under the various direct tax enactments, Foreign Exchange Regulation Act (FERA), Foreign Contribution Regulation Act (FCRA) etc. The Foreign Remittance Scheme brought in about Rs 2200 crore while India Development Bonds netted Rs 4500 crore.

Gold Bonds Scheme 1993

The Gold Bonds (Immunities and Exemptions) Act, 1993 provided that notwithstanding anything contained in Wealth-tax Act, Gift-tax Act, Income-tax Act, Customs Act, FERA, and FCRA, no subscriber in Gold Bonds shall be required to disclose the nature and source of acquisition of these for any purpose whatsoever; and the fact that a subscriber owns Gold Bonds will be inadmissible as evidence in any proceedings under these Acts.

VDIS-1997

The Voluntary Disclosure of Income Scheme (VDIS) was introduced vide Finance Act, 1997. Under this tax evaders including non-residents could disclose unaccounted cash, securities or assets, whether in India or abroad, irrespective of the year or the nature or the source of the funds and pay tax @ of 35% for companies/ firms and 30% for others. In lieu interest and penalty would be waived and immunity would be granted from prosecution under Income-tax, Wealth-tax, Foreign Exchange Regulation and the Companies Acts. The particulars furnished by a declarant were to be secret. The Scheme was described as "a golden chance for tax evaders to become honest" and the "last chance to come clean". Government also announced that no more amnesties will follow though few believed it. The Scheme was challenged by All India Federation of Tax Practitioners before Bombay High Court and later before Supreme Court as violative of Articles 14 of the Constitution. The Supreme Court, while dismissing the matter noted Government's commitment that, in future, it would not resort lightly to schemes favouring dishonest taxpayers.

VDIS attracted 475,477 declarations aggregating Rs. 33,697 crore and realised tax of Rs. 9,729 crore. Maximum declarations were for jewellery (309081) followed by cash (240193). Over 96% declarations were for amounts below Rs. 25 lakh while 0.43% declarations exceeded Rs. 1 crore. Although the Government claimed VDIS to be a great success in real terms the disclosure under the Scheme was 0.79% of the GDP while the amnesty scheme of 1985 had brought out 4.63% of the GDP.

Some of the important conclusions drawn by C&AG in the audit of VDIS-1997 were-

- The scheme had numerous lacunae. It was further undermined by circulars, clarifications, and press briefings inconsistent with the Act. These provided dishonest assessee opportunity for widespread misuse.
- The scheme had made those involved in criminal cases, drugs and narcotics and similar offences ineligible. But several large declarations were found from those involved in large financial scams under police investigation .
- Jewellery, silver, gold, silver utensils were declared at under-stated values by claiming ownership since before 1987.
- Large real estate properties in metropolitan cities were declared at absurdly low amounts.
- Many declarants having declared huge amount of assets under the Scheme did not file wealth tax returns in subsequent years.

The pragmatism argument

In past 60 years India has traversed the entire gamut of amnesties ranging from the highly concessional disclosure schemes to expropriatory demonetisation schemes to virtual alternate currency of Bearer Bonds, Gold Bonds, and Vikas Patras. Different schemes have tried to appeal to sentiments as diverse as patriotism, national defence, nation-building, concerns for fellow citizens, and fear of future strict enforcement. Some of these schemes have been specifically designed for niche audiences e.g. those hoarding gold or foreign exchange, NRIs, etc. But even the most successful could bring out black money of no more than 5% of GDP when the most conservative estimates of black money range upwards of 30% of GDP.

The morality argument

A major argument against these Schemes is that they are tantamount to fraud on honest tax payers. Repeated amnesties damage compliance levels, create expectation of future amnesties, and leave a message that while the honest taxpayer pays tax regularly the dishonest pays from VDS to VDS. In fact the Wanchoo Committee after studying the first three schemes had concluded way back in 1971 that -

"We consider that a disclosure scheme is an extraordinary measure, meant for abnormal situations such as after a war or at a time of national crisis. Resorting to such a measure during normal times and that too frequently, would only shake the confidence of the honest taxpayers in the capacity of the Government to deal with the law breakers and would invite contempt for its enforcement machinery. We are convinced that any more disclosure schemes would not only fail to achieve the intended purpose of unearthing black money but would have deleterious effect on the level of compliance among the taxpaying public and on the moral of the administration. We are, therefore, strongly opposed to the idea of the introduction of any general scheme of disclosure either now or in the future."

Shankar Acharya Committee (1985) noted that many disclosures under the VDS 1975 were made in names of minors, ladies and name-lenders which facilitated subsequent evasion. It concluded that-

'VDS do not blunt the underlying cases of black income generation. If anything, by holding out hopes of repetition in the future, such schemes reduce whatever deterrent effect exists in the current provisions for penalty and prosecution. With the incentives for black income generation unaltered (or worse, enhanced), there is little reason to credit VDS with any long-term effectiveness in the fight against black incomes'.

Factors affecting success of Disclosure Schemes

In a study published in 1998 Arindam Dasgupta and Dilip Mookherjee examined the schemes floated between 1965 and 1993 and concluded that a taxpayer will participate in an amnesty if it offers a highly concessional tax rate compared to when he made the decision to evade OR if he calculates that economic prospects have so brightened that he can achieve higher returns by bringing out his black money OR if there is a greater present chance of being detected. In the first case, the revenue gains from the amnesty are likely to be small. The study suggested that the VDS 1975 yielded appreciable revenues because it coincided with Emergency and expected tough enforcement while

VDIS 1997 produced good revenue due to the enhanced attractiveness of legal investment post-liberalisation.

Red herrings

The logic being proffered for a new disclosure scheme is that with the Government having signed Tax Information Exchange Agreement (TIEA) with several tax havens and with tougher disclosure rules being accepted by foreign banks information about assets held by Indians abroad will start flowing in. The argument runs that revenue gains from such an amnesty scheme now will be immediate compared to lengthy outcome of the enforcement process. The “Offshore Voluntary Compliance Scheme” (OVCS) of USA is being cited in support. These are obvious red herrings. There is really no evidence that such a Scheme will induce the hoarders of assets in foreign banks to bring these back to India in any significant manner when they are anyway in position to route these in myriad other ways without fear of detection.

Offshore Voluntary Disclosure Program of US

Let us examine the Scheme being implemented by the USIRS (Internal Revenue Service of USA) which is being cited as the main ground for an off- shore asset disclosure scheme in India. In May 2008, the US arrested a private banker named Bradley Birkenfeld formerly employed by one of the largest Swiss banks called UBS AG, on charges of having conspired with a US citizen to defraud USIRS of \$7.2 million in taxes on assets of \$200 million hidden in accounts in Switzerland and Liechtenstein. He pleaded guilty to the conspiracy to defraud USIRS in June 2008. The US authorities then placed Martin Liechti, a US-based senior official of UBS under travel restrictions. It also detained another senior UBS official who was travelling from Switzerland on work in Florida as a witness in that prosecution and seized his computer. Based on this information Department of Justice then opened criminal investigations against several US depositors of UBS. The USIRS then moved a Florida court for issue of summons to UBS asking it to disclose names of its US clients. On 1 st July 2008 the court approved service of summons on UBS. At this stage Swiss Confederation authorities entered into negotiations with the US and eventually signed an agreement on August 19, 2009, by which the Swiss agreed that within the mechanism of US-Switzerland Tax treaty they would furnish information regarding open or closed accounts of US clients of UBS as per agreed criteria, numbering approximately 4450. They also agreed to establish a task force and a time frame of 360 days. As part of this agreement the USIRS undertook that it will request those UBS clients who agree to voluntary disclosure program to be soon launched to give a waiver of secrecy clauses to UBS. The Swiss further agreed to process additional requests for information by the IRS under the Tax Treaty regarding the UBS case. Based on this agreement the USIRS and UBS entered into a settlement in August 2009 under which USIRS agreed to withdraw the court case and UBS agreed to furnish information of its US clients on a rolling basis - first 500 cases described in Annex to the US-Switzerland Agreement within 60 days and remaining cases within 180-270 days.

It was in this context that USIRS announced Offshore Voluntary Disclosure Program (OVDP) in August 2009. Under this the declarants were required to make year-wise disclosure of their foreign incomes of last six years, pay tax as per rates applicable in the relevant year, interest for delayed payments, accuracy-related penalty of 20% of tax and certain other penalties of up to another 20%. The only concession given was that fraud penalty of 75% and criminal prosecution would be waived. The Program closed on Oct. 15, 2009 with 15,000 voluntary disclosures covering banks in over 60 countries. The USIRS continued to pursue Swiss authorities and as information of more accounts started flowing in there was a demand for another opportunity to disclose these. The USIRS then announced Special Voluntary Disclosure Initiative (SVDI) 2011 in February 2011 which closed on 9 th September 2011. This raised the

penalty to 25% of the highest aggregate balance in foreign accounts between 2003 and 2010, together with back-taxes and interest for up to eight years as well as accuracy-related and/or delinquency penalties. The idea was that people who did not come in the 2009 program are not rewarded for waiting. IRS Commissioner Douglas Shulman announced that “tax secrecy continues to erode. We are not letting up on international tax issues, and more is in the works. For those hiding cash or assets offshore, the time to come in is now. The risk of being caught will only increase.” It was clearly made out that taxpayers hiding assets offshore who do not come forward will face far higher penalties as well as criminal prosecution .

Following this Germany has entered into a pact with Switzerland to allow German residents to make a one-time payment on their hidden wealth and escape punishment. Swiss banks agreed to withhold capital gains tax on assets of German residents and remit the money to the German government on the condition that no names will be disclosed. Recently, UK has taken a similar initiative.

The moral of the story is that a disclosure scheme would be successful only if backed by hard information and a determination to prosecute those who do not come forward. Without these elements disclosure schemes will tend to be instruments of misuse by hardened tax evaders and push even honest taxpayers towards non compliance. Nothing of the kind has happened as regards the deposits of Indian in Swiss banks.

Tax Information Exchange Agreements

The second argument for introducing an off-shore disclosure scheme, namely, that with so many Tax Information Exchange Agreements (TIEA) having been entered information will start flowing in from tax havens, is equally misleading. Most of these agreements are prospective in nature. Besides, these carry specific provisions that the requesting State has to provide particulars of the person about whom information is requested. For example Article 6 of the TIEA between India and Bermuda requires India to provide following information for seeking information from Bermuda-

- identity of the person under examination;
- period and the nature information is requested;
- tax purpose for which the information is sought;
- grounds for believing that the information is available in Bermuda;
- name/address of person in possession of the information;

Therefore, a request for information under TIEA cannot be a roving and fishing expedition. Moreover while the so-called Mauritius route remains open there would be really very few people who will be interested in the voluntary disclosure route.

Lastly India has become a member of the Financial Action Task Force (FATF) recently after fulfilling tough conditionalities. The FATF deprecates tax amnesties as these facilitate money laundering and terrorist funding.

All in all there appears no case for an offshore disclosure scheme.