

Banking Cash Transaction Tax - The Proposed Law and Intent

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Chapter VII of the Finance Bill, 2005, contains provisions relating to Banking Cash Transaction Tax. This new chapter is proposed to be made applicable to the whole of India except the State of Jammu and Kashmir. This Chapter shall come into force with effect from 1st June 2005.

The levy of tax under this Chapter is proposed on every person as defined in section 2(31) of the Income Tax Act and also on an officer or establishment of the Central Government or the Government of a State. Tax is to be levied at 0.1% of the value of each taxable banking transaction

Taxable banking transactions for this purpose is defined as follows:

- (i) a transaction of withdrawal of cash exceeding ten thousand rupees on any single day by a person from any scheduled bank or
- (ii) a transaction of purchase of a bank draft or a banker's cheque or any other financial instrument on payment of cash exceeding ten thousand on a single day by a person from any scheduled bank; or
- (iii) receipt of cash from a scheduled bank exceeding ten thousand rupees on any single day

by a person on encashment of term deposit, whether on maturity or otherwise, from that bank.

It may be noted that the proposal does not seek to tax a withdrawal from a deposit account, which is not a term deposit such as a withdrawal from a recurring deposit account.

It is proposed to provide that the Banking Cash Transaction Tax shall be payable by the following persons:

- (i) in case of withdrawals exceeding ten thousand rupees, by person withdrawing the cash

The Finance Minister in his budget speech has stated that the levy of tax was an anti tax evasion measure. It appears that the very basis on which the levy is sought to be done is flawed. At the outset it may be mentioned that income, which has been evaded, will normally not enter the banking channels at all. It is an extremely remote possibility that an income, which has been hidden from the revenue, will be banked.



- from any scheduled bank
- (ii) in respect of purchase of bank draft or a banker's cheque or any other financial instrument on payment of cash exceeding ten thousand, by the person purchasing any such instrument from the bank
- (iii) in respect of receipt of cash on encashment of term deposit, by the concerned depositor
- (iv) in respect of cash withdrawal exceeding ten thousand rupees by way of banker's cheques by the bearer of such cheques or instrument.

It is also proposed to provide that no banking cash transaction tax shall be payable if the amount of term deposit is credited to any account with the bank.

The value of taxable banking transactions is proposed as follows:

- (i) in case of cash withdrawals exceeding ten thousand rupees, the amount of cash withdrawn
- (ii) in respect of purchase of a bank draft or a banker's cheques or any other financial instrument

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on payment of cash exceeding ten thousand, the amount of cash deposited;

- (iii) in respect of receipt of cash on encashment of term deposit, the amount of cash received on encashment of term deposit.

It is proposed to provide that every scheduled bank shall collect the banking transaction tax at the specified rate, from every person entering into a taxable banking transaction with the bank. The banking cash transaction tax so collected during any calendar month shall be paid by every scheduled bank to the credit of the Central Government before the 15th of the month succeeding the month in which the tax is collected. The Bill also seeks to provide that if the bank fails to collect the tax the same will still be payable by the bank to the Central Government account.

The Bill proposes to provide that every scheduled bank shall within the prescribed time after the end of each financial year, furnish a return to the Assessing Officer or any other authority or agency authorised by the Board, in the prescribed form, in respect of all taxable securities transaction entered into during any financial year. The proposal also provides that the Assessing Officer may issue a notice to any assessee who is responsible for collection of banking cash transaction tax and has not furnished the return within the prescribed time, asking the assessee to furnish the return within the time specified in the notice. It is also proposed to provide for furnishing a belated return where no return has been filed before the assessment is made and also for furnishing of a revised return before the assessment is made in cases where

the assessee has furnished a return within the time allowed or on discovery of any omission or wrong statement in the return furnished earlier.

The Chapter proposes to confer power on the Assessing Officer to make an assessment of the taxable banking transaction and determine the banking cash transaction tax payable or refundable on the basis of such assessment. It is also proposed that no assessment shall be made after the expiry of two years from the end of the relevant financial year. The proposed section also provides that in cases where any refund has been issued to an assessee, the assessee shall refund the same to the person from whom it was collected within the prescribed time.

The Chapter proposes to provide that the Assessing Officer may amend any order passed by him under the provisions of the said Chapter with a view to rectify any mistakes apparent from record, within one year from the end of the financial year in which the order sought to be amended was passed. It is also proposed that any amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall be made only after giving the assessee a reasonable opportunity of being heard.

The Chapter proposes to provide that every assessee who fails to credit the banking cash transaction tax to the account of the Central Government within the specified period shall pay simple interest at the rate of 1% of such tax for every month or part of a month by which crediting of the tax has been delayed.

The Chapter proposes to pro-

vide for penalty for failure to collect or pay the banking cash transaction tax. It is proposed that any assessee who fails to collect the whole or any part of the banking cash transaction tax shall be liable to pay by way of penalty a sum equal to the amount of banking cash transaction tax that he failed to collect. It is also proposed that any assessee who having collected the banking cash transaction tax fails to pay such tax to the credit of the Central Government shall be liable to pay a penalty of one thousand rupees for every day during which the failure continues. However, the penalty imposable under this clause shall not exceed the amount of the banking cash transaction tax that was to be paid.

It is proposed to provide that if an assessee fails to furnish the return in respect of the banking transaction tax within the prescribed time, he shall be liable to pay a sum of one hundred rupees for every day during which the failure continues by way of penalty.

The Chapter further proposes to provide that any assessee who fails to comply with a notice issued under clause 100(2) of the proposed Chapter shall be liable to pay a sum of one hundred rupees for every day during which the failure continues.

No penalty it is proposed will be imposable under any of the above sections if the assessee proves that there was reasonable cause for failure to comply with the provision of the said clause. It is also proposed that no order imposing a penalty under the proposed Chapter shall be made unless the assessee has been given a reasonable opportunity of being heard.

It is proposed to make sections 120, 131, 133A, 156, 178, 220 to

227, 229, 232, 260A, 261, 262, 265 to 269, 278B, 282 and 288 to 293 of the Income Tax Act, apply in relation to banking cash transaction tax.

An appeal before the CIT(A) is proposed against an order of the Assessing Officer. Such appeal must be presented within thirty days from the date of receipt of the order of the Assessing Officer. It is further proposed for filing of appeal to the Appellate Tribunal in cases where the assessee is aggrieved by any order passed by the Commissioner of Income Tax (Appeals), and also in cases where the Commissioner of Income Tax objects to any order passed by the Commissioner of Income Tax (Appeals).

The Chapter seeks to provide that if a person makes any statement in any verification, or delivers an account or statement which is false, and which he either knows or believes to be false or does not believe to be true, he shall be punishable by way of imprisonment upto a period of three years and with fine.

Consequent to the proposed levying of Banking Cash Transaction Tax, it is also proposed to insert a new clause in section 36(1) of the Income Tax Act so as to provide for allowing deduction in respect of banking cash transaction tax paid by the assessee during the year on the taxable banking transaction entered into by him.

Even a reading of the proposed Chapter makes it clear that the Chapter is extremely well drafted and seems to take care of all the procedural requirements but what is failing is the purpose for the levy of such tax. The Finance Minister in his budget speech has stated that the levy of tax was an anti tax evasion measure. It appears that the very basis on which the levy is sought to be done is flawed. At the outset it

may be mentioned that income, which has been evaded, will normally not enter the banking channels at all. It is an extremely remote possibility that an income, which has been hidden from the revenue, will be banked. Similarly it is also unlikely that money withdrawn from the bank will be used for a purpose, which is sought to be hidden from the revenue. The Finance Minister has however stated that such withdrawals without an ostensible purpose, which leave no trail presumably, form part of the black economy. It is surprising to note that such a conclusion is arrived at. While it may be partially true to say that some of these withdrawals may leave no trail and even may be used and become part of the black economy, the solution cannot lie in seeking to collect a 0.1% on such withdrawals by way of tax. The collection or otherwise of the said 0.1% will not stop or deter a person from withdrawing the money and at the same time does not give any additional power to an Assessing Officer to make an enquiry on the manner of utilization of the withdrawal. This being the case one fails to understand how the circulation in the black economy can be reduced by levy of such tax. It appears that the Minister wants to collect atleast a small portion of such withdrawals by way of tax. Such provisions as already mentioned would serve no useful purpose in terms of curbing black money circulation. They may at best help in mopping up resources for the exchequer. **Looked at from this angle the provisions seem to be more a revenue raising measure than an anti tax avoidance measure. The purpose intended it is felt can be achieved only by collecting and putting to use data, which can be**

done even without such tax being levied. It may be noted that a genuine tax payer would be put to a great deal of hardship. This is obvious from the fact that even genuine transactions such as withdrawals for payment of salary or wages or for purchase of stamp papers for acquiring property or for that matter for meeting emergency medical requirements will attract such tax. A person withdrawing a sum for a clandestine purpose may not mind paying the 0.1% as tax. All this will only work as a disincentive on people from banking money, which may have to be withdrawn within a short time. The said provisions also go against the basic canons of taxation and cannot and should not survive as a direct tax levy.

It would be unjust to blame the law maker whose possible intent is only to curb the circulation of black money which, as already mentioned cannot be achieved through these provisions. **The Minister may consider bringing in provisions in the Income Tax Act under which a onus is cast on the tax payer to explain the withdrawal and the purpose of its utilization and in a case where there is no explanation for the withdrawal or where the withdrawal is not supported by a cash balance, the same may be deemed as income.** This provision can be on the same lines as section 68 of the Income Tax Act, which requires the tax payer to explain a credit in the books of account and where there is no satisfactory explanation deems the credit as the income of the tax payer. At any rate the only way in which the circulation of black money can be reduced is by making provisions and laws which will really help control the same and more importantly a proper and honest administration of the same. ■