

BANKING CASH TRANSACTION TAX

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The banking cash transaction tax is finally here to stay. Enacted as per Chapter VII of the Finance Act, 2005, this new tax will be applicable with effect from 1st June 2005. Being a new piece of legislation, it may grow year after year. The article provides an overview of various provisions related to this tax.

After a great deal of debate and discussion the banking cash transaction tax (BCTT) is before us in the form of a statute. The banking cash transaction tax enacted as per Chapter VII of the Finance Act, 2005 will be applicable with effect 01.06.2005 and the Government will issue a separate notification for this purpose. This is a new piece of legislation without a separate Act like the service tax and it may grow year after year in a similar manner. The Income-tax Department will administer this new tax. In this new system of tax the assesseees are easily identifiable and the compliance will be substantial. Sections 93 to 112 in Chapter VII of the Finance Act, 2005 cover this new legislation. The Finance Minister in his budget speech mentioned that he had to carry out the NCMP direction to unearth black money and assets. He wanted to do this without giving any undeserved relief or an amnesty. Accordingly, the new banking cash transaction tax has been introduced to check the trail of cash withdrawals and to prevent such cash withdrawals becoming part of black money.

In the Parliament, while moving the changes to the Finance Bill, 2005 on 2nd May, 2005, the Finance Minister Mr. P. Chidambaram mentioned that he was in possession of massive evidence that the banking system was used for money laundering and that he wanted to push the economy towards cheque economy and plastic card economy. The Finance Minister further reiterated that crores of money was deposited and withdrawn without PAN number and by the non-income taxpayers.



Person

This Banking Cash Transaction Tax covers not only the persons specified in section 2(31) of the Act but also covers all offices or establishments of Central and State Governments as per section 94(5) of the Finance Act, 2005.

For the purpose of this Chapter the words and expressions not defined in Chapter VII will have the same meaning as defined in the Negotiable Instrument Act 1881, RBI Act 1934, Banking Regulations Act 1949, the Income-tax Act 1961, or Rules or regulations made under these Acts.

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Banking cash transaction

As per section 94(3), 94(8) and 95(1) of the Finance Act, 2005, if any person enters into a banking cash transaction i.e. withdrawal of cash exceeding Rs. 25,000/- by any individual or HUF on any single day from an account maintained by him with any scheduled bank shall be required to pay tax at the rate of 0.1% of the value of such taxable transaction. Other entities including Central or State Government offices or establishments have to pay 0.1% if the withdrawals exceed Rs.1,00,000/- on any single day from an account maintained with a Scheduled bank.

Similarly, the BCTT at the rate of 0.1% will be applicable, if the cash withdrawn on the maturity or otherwise of a term deposit from a scheduled bank exceed Rs. 25,000/- for individual or HUFs and Rs. 1,00,000 for the other entities including Central or State Government offices and establishments.

There is no prohibition under the Finance Act, 2005 for any person to purchase a demand draft or banker's cheque by depositing cash without any limit. The withdrawal of cash from any savings bank account by any person is outside the ambit of the tax. The banking cash transaction tax will be applicable only to Scheduled Bank.

Scheduled bank

The Finance Act, 2005 in section 94(7) defines Scheduled bank to mean the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or under section 3 of the Banking Companies (acquisition and Transfer of undertaking) Act 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934) The co-operative societies which are notified as Scheduled Bank in the Second Schedule to the Reserve Bank of India Act is also covered under this definition.

Savings Bank

Similarly we have to follow the RBI definition for the savings bank. The same has been defined as "saving deposit" and it means a form of demand deposit, which is a deposit account whether designated as "savings account", "savings bank account", "savings deposit account" or other account by whatever name called

The banker, who is responsible to collect the banking cash transaction tax, shall identify every transaction of the customer and where any transaction exceeds the prescribed limit, the tax at the rate 0.1% has to be collected from them at the time of disbursement of cash. The duty of monitoring all the cash withdrawals on a single day will be on the bankers.

which is subject to the restrictions as to the number of withdrawals as also the amount of withdrawals permitted by the bank during any specified period.

The following interesting issues arise in this context.

- Whether each banking transaction is to be identified branch wise or the transactions have to be consolidated bank-wise for the purpose of computing the limit specified in the Act?

It is felt that since the transaction is each account-wise the limit should also according to each account-wise irrespective of different accounts maintained in different branches of the same bank.

- Whether the transactions in both minor and parents' accounts should be clubbed for BCTT?

The answer is that since the chapter on banking cash transaction tax does not provide for such clubbing, there can be banking cash transaction tax only if the amount exceeds the prescribed limit based on withdrawal from each individual account.

- Whether the clubbing of withdrawals is required in a case where a proprietor maintains two separate current accounts for two different businesses?

Since the two different business accounts belong to one single individual the withdrawals made from these accounts in a single day have to be clubbed together for the purposes of collection of tax.

- Whether the BCTT is applicable where the aggregate amount of cash withdrawal and encashment of term deposits exceeds the prescribed limit?

Yes. The person concerned is to be considered as a single unit and the cash withdrawal and the cash receipt from term deposits exceeding the prescribed limit will be subject to BCTT.

- Whether the cash withdrawal from the PPF account maintained in a bank, is subject to BCTT?

Since the PPF account is in the nature of savings bank account the BCTT will not be attracted.

- Cash is withdrawn from the ATM by using credit

card or debit card are routed through an account maintained by scheduled bank. Will this be covered by the BCTT?

Yes. The withdrawal is from an account other than the savings bank account subject to BCTT.

The valuation and levy of tax

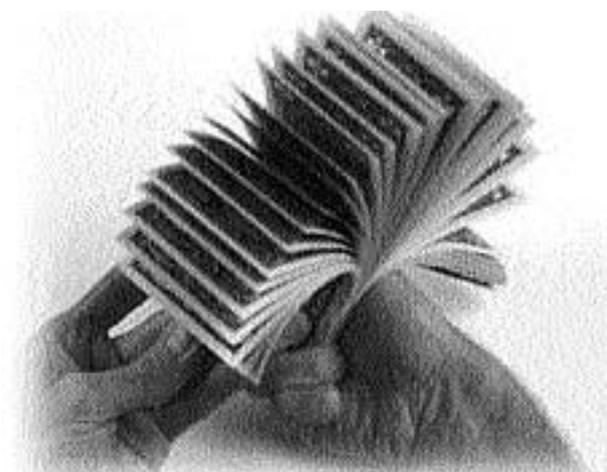
The banker, who is responsible to collect tax under this chapter, shall identify every transaction of the customer and where any transaction exceeds the prescribed limit, the tax at the rate 0.1% has to be collected from them at the time of disbursement of cash. The duty of monitoring all the cash withdrawals on a single day will be on the bankers. The valuation can be done only in respect of transactions on a single day per branch per customer. If the customer gives standing instruction that interest on his term deposit and the principal amount should be credited to his savings bank account and withdraws cash representing the deposit and the interest from the saving bank account then no BCTT is applicable.

The Bankers are liable to collect the tax

Once the withdrawals exceed the limit of Rs.25,000/- or Rs.1,00,000/- as per the status of the customer the entire amount is subject to tax irrespective of whether the earlier withdrawal is less than Rs.25,000/- or Rs.1,00,000/-. The tax has to be collected for the whole amount including the previous drawings. The requirement is that every cash withdrawal or cash receipt should be combined together to verify the limit prescribed under the Act.

As per section 97, every scheduled bank shall collect the banking cash transaction tax and it shall be paid to the credit of the Central Government by 15th of every month. The Scheduled bank that has failed to collect the tax will be liable to pay the tax to the credit of the Central Government notwithstanding the fact that it has failed to collect the tax.

The assesseees are required to pay an equal amount as penalty apart from the banking cash transaction tax to be collected along with the interest in case they failed to collect the tax. In case the assesseees fail to remit the collected amount, they have to pay, apart from the tax and interest, a penalty of Rs.1000/- for every day during which the failure continues subject to the maximum amount being equal to the tax.



Business deduction

The BCTT is allowed as revenue expenditure under newly inserted section 36(1)(XII) of the Income-tax Act, 1961 for persons whose income is chargeable under section 28 of the Act. This deduction is available irrespective of whether BCTT is paid on business transaction or personal transaction.

Return

The Central Government will notify the prescribed form of return to be filed by the scheduled bank. It shall be prepared and delivered or caused to be delivered, to the Assessing Officer or to any other authority or agency authorised by the Board in respect of all taxable banking transactions during the financial year.

The scheduled banks must file the prescribed return after the end of the each financial year on or before the prescribed time limit notified by the Central Government. In case of failure to file the return, the Assessing Officer may issue a notice to file the return within the time specified in the notice. The assesseees, who, having furnished the return, discover any omission or wrong statement may furnish a revised return at any time before the assessment.

- *Whether each branch has to file a separate return or a consolidated return has to be filed?*

Even though each branch has to remit tax collected separately there should be only one return to be filed by the Scheduled bank for each financial year.

Assessment

The Assessing Officer may serve a notice on the assessee who has furnished the return voluntarily or returns filed after the notice or revised return for the purpose of assessment and direct them to produce the documents or evidence or accounts in support of the return filed. The

Assessing Officer after verification and scrutiny of the books of account or evidences or documents shall pass an assessment order in writing may determine the tax payable or refund due on such assessment. The assessment order cannot be passed after the expiry of the two years from the end of the relevant financial year.

It will be interesting to note that in case where any assessment results in a refund, it is the duty of the assessee to refund the amount properly to the concerned person from whom it has collected the tax.

Rectification

The Assessing Officer may on his own motion or where the assessee has brought any mistake in the assessment order to the notice of the Assessing Officer can rectify the assessment order according to the law. Any amendment, which has the effect of enhancement of the assessment or reduction of refund or otherwise increase the liability of the assessee, shall not be made without proper opportunity to the assessee. This amendment order should be passed in writing and specify the refund due or tax due from the assessee. The rectification or amendment order cannot be passed after the expiry of one-year from the end of the financial year in which the order has been passed.

The Assessing Officer cannot carry out the rectification on any matters considered and decided by the appellant authorities.

Appeals

The assessee, who has aggrieved against the order passed by the Assessing Officer can file an appeal before the CIT (Appeals) within 30 days along with a fixed fees of Rs.1000/- in the prescribed form. Further,

if he is not satisfied by the order of CIT (Appeals) an appeal can be filed before the Appellate Tribunal along with the fees of Rs.1000/- within 60 days, The assessee can file the appeal before the ITAT against the order passed by the Commissioner of Income-tax under section 263 of the Income-tax Act 1961

All the provisions relating to summons, survey, tax collection and recovery, revisions, appeals to High Court or Supreme Court, etc. applicable as per the Income-tax Act 1961 are applicable in the context of Banking Cash Transaction Tax as per section 106 of the Chapter VII of the Finance Act, 2005.

Interest

There is a levy of interest at 1% per month or part thereof for the non-payment or short payment of the tax collected or part thereof by the assessee as per section 101 of the Finance Act 2005.

Penalty

The assessee is required to pay an equal amount as penalty apart from the tax to be collected along with the interest in case they failed to collect the tax. In case the assessee fails to remit the collected amount, they have to pay apart from the tax and interest, a penalty of Rs.1000/- for every day during which the failure continues subject to the maximum amount equal to the tax.

Conclusion

The objective of introducing banking cash transaction tax is laudable. However, the task before the administration to ferret out the black money by investigating into the audit trails of large cash withdrawals is indeed complex. ■

CORRIGENDUM

Companies (Auditor's Report) Order, 2003

Attention of the members is drawn towards the **Stop Press** section appearing at the end of the **Handbook of Auditing Pronouncements (as on February 1, 2005)**. The said section contains the **Text of Companies (Auditor's Report) Order, 2003** after incorporating the amendments made by the Companies (Auditor's Report) (Amendment) Order, 2003, notified by the Department of Company Affairs on November 25, 2004.

The members may note the **clause 4(ix)(b)** of the Order, appearing on **page 5 of the Stop Press**, should be read as under: "In case dues of Income tax/Sales tax/Wealth tax/Service tax/Custom duty/ Excise duty/cess have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned.

(A mere representation to the Department shall not constitute the dispute)".

The members may note that the text appearing in bold face and brackets above was inadvertently omitted from being printed in the Stop Press.