Tax evaders may soon have to pay for past sins

The government on Monday said it will be able to access some retrospective information from other countries with effect from 2017 when the global automatic exchange of information regime kicks in, signalling that individuals and entities that evaded tax in the past but have since cleaned up their acts could soon find themselves paying for their past sins.

Coupled with the stringent black money law that came into effect from 1 July, the retrospective exchange of information will make it very difficult for tax evaders having unaccounted income and assets stashed overseas to escape the scrutiny of the income-tax department.

“There is a roadmap for information sharing. Under the automatic exchange of information, initially we will get some quantum of retrospective information but largely prospective information. But over a period of time, we will get past period information also,” said revenue secretary Shaktikanta Das in a talkathon on the black money law.

At last count, over 50 countries including Switzerland, Cyprus and Mauritius, had signed the Multilateral Competent Authority Agreement (MCAA) on Automatic Exchange of Financial Account Information that will ensure seamless flow of financial information between countries.

Once it comes into effect (the aim is to have 94 signatories by then), it will help the Indian government access information about residents. From 30 September, the government will also start receiving information from the US under the Foreign Account Tax Compliance Act.

To be sure, the effectiveness of information exchange will depend on how countries decide to modify their domestic laws.

The government also clarified that the black money law will be applicable to undisclosed foreign income and assets for previous years as well and not just from the current fiscal, effectively ensuring that the tax department can take action against any evader whenever it gets access to such information.

“The act covers all past sins,” said Anita Kapur, chairperson of the Central Board of Direct Taxes. “The act has come into force on 1 July. But we can get any information any time. Even if we get the information 10 years down the line (about any such asset) we can act on that information.”

The government enacted a stringent black money law which came into force on 1 July, but provided a short compliance window to taxpayers who want to come clean.

“If the government can get information even for past years and that is reliable information, then it will make it more difficult for tax evaders to dodge the Indian income tax department,” said Rahul Garg, leader of the direct tax practice at PricewaterhouseCoopers, a consulting firm. “If you have unaccounted money abroad that you cannot explain, it is better to come clean under the compliance window.”

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 prescribes jail terms of up to 10 years and penalties of up to 120% of the value of the undisclosed assets.

If those with undisclosed income and assets stashed overseas declare these within the compliance window that ends on 30 September, they will have to pay a tax of 30% and penalty of 30% and will be spared prosecution.

"This law is very stringent. That's why the government deemed it fit to offer everyone the opportunity to come clean through the compliance window," Das said.

Das, however, assured tax payers that the government will not name and shame those individuals who come clean under the compliance window. "The disclosures will be protected under section 138 of the income tax act which provides for confidentiality of information except when disclosure is in public interest."

It will also not conduct a "roving enquiry or a fishing expedition" on anyone who comes clean within the window.

"If during the compliance period, someone declares their assets, the officer will not conduct any other enquiry. The officer will not go on a fishing expedition," Das said. "It will be verified by 30 October if we have received any information through tax treaties with respect to that person. If yes, then this compliance window will not be applicable. Then that person will be tried under the income tax act," he added.

Both officials assuaged concerns expressed by people who are now residents on the issue of assets purchased by them in the past when they were non-residents. "As long as the asset creation was through legitimate route and declared as per existing laws of the land, they have nothing to fear," Kapur said.

CBDT will also issue more clarifications in the coming days to address the concerns of taxpayers.

Das added that it was wrong to say that people are leaving India fearing the consequences of the black money law and implied that it wouldn't help even if it was happening. "The long arm of the law will reach you even if you leave the country."

(HT Mint)