

Companies roping in tax professionals to avoid black money trap

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NEW DELHI: Indian companies that have foreign operations or web of subsidiaries in tax havens are rushing to tax practitioners to ensure that they are not caught on the wrong side of the black money law that prescribes up to ten years' imprisonment for not disclosing overseas wealth.

The law, expected to be taken up by Parliament in the current session, will also require businesses having subsidiaries or special purpose vehicles overseas to ensure their disclosures are robust. Although companies carry disclosures on businesses in their balance sheets, sometimes assets held by a special purpose vehicle or a subsidiary having a step down subsidiary may not be captured.

Traders who may have floated SPVs for conducting imports or exports overseas with bank accounts are more worried, said a tax practitioner, who did not wish to be identified. "There are queries on if they need to disclose if the SPV has been shut down and account closed," the practitioner said.

"People have also been seeking help to create neat and simpler structures," he said, clearly indicating that days of complicated web to avoid tax may be going out of favour. Giving example of a query, the practitioner said a trader wanted to know if he should declare a bank account that was opened in a tax haven for a transaction but has been closed now.

On March 20, the government introduced the Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015, which has been introduced in Parliament. The Bill provides for separate taxation of any undisclosed income in relation to foreign income and assets.

Cracking the Whip on Firms

A Tough Law

ALL RESIDENTS have to declare foreign assets and income from assessment year beginning April 1, 2016

SINCE THE LAW covers residents, it will include Indian companies as well

EXPATS WORKING here for some time will also be covered

Stiff Penalty

IMPRISONMENT UP to seven years in case disclosure not made

IMPRISONMENT MAY rise to ten years if there is attempt to evade any tax, penalty or interest chargeable

TAX WILL BE charged at flat rate of 30% on undisclosed asset or income

IN ADDITION PENALTY of three times the tax computed will be levied

Rush to Clean Up

COMPANIES SEEKING out tax advisors in respect of their overseas subsidiaries

THEY ARE KEEN to clean up accounts by the time limited disclosure window ends

COMPANIES KEEN TO ensure all assets and incomes disclosed

Managers made liable

DIRECTOR, MANAGER, secretary or other officer of the company liable if a company violates the law

MANAGERS MADE personally liable if tax dues under the law cannot be recovered from the company

The proposed Bill is applicable to Indian tax residents, both to the individuals (who are resident and ordinarily resident) and the corporates (who qualify as Indian residents)

PRANAY BHATIA, Partner, BDO India LLP

The law will provide a small window for individuals and companies to come clean before its harsh provisions kick in, prompting individuals and companies to rush to get things in order.

"The proposed Bill is applicable to Indian tax residents, both to the individuals (who are resident and ordinarily resident) and the corporates (who qualify as Indian residents)," said Pranay Bhatia, partner, BDO India LLP. As per a separate amendment proposed in the finance bill to the Income Tax Act, a company will be treated as a resident if its place of effective management or POEM, at any time in that year, is in India.

The intent behind the introduction of this concept is primarily to curb the creation of shell companies which are incorporated outside India but controlled and managed from India.

"Depending upon the disclosure requirements to be prescribed, the companies will have to be careful in meeting the compliance requirements under the proposed law, as stringent penal provisions have been prescribed in respect of nondisclosure. Further, in case a company is held guilty then prosecution proceedings could be initiated against the senior executives of the company including the director, manager and secretary," said Vikas Vasal, partner, KPMG India.

A combined reading of POEM and the provisions of the Undisclosed Foreign Income and Assets (Imposition of Tax) bill necessitates companies and their senior executives to take note of the changes in the tax provisions and ensure full compliance to avoid any dispute and penal consequences, Vasal said. Companies headquartered in India with subsidiaries, branch offices and other alliances across the globe will have to take note of their existing structures and review the additional compliance requirements that may get triggered due to the proposed changes in the definition of tax residency.

"Indian entities that have nothing to hide should not worry about obligations about full disclosures that may be asked for by way of returns and forms. In any event, a limited window has been provided to make full disclosures before the stringent provisions kick in, in keeping with the overall mood of Indian judiciary and general public," said Sunil Jain, partner, Jyoti Sagar & Associates. Sanjay Sanghvi, partner, Khaitan & Company said that given the language of the Foreign Assets Bill, the apprehension of foreign companies that are regarded as tax resident of India due to application of POEM rules is not ill founded.

"But they need not worry as filing their audited balance sheets and/or a suitable note to that effect in their Indian tax returns would help them present or defend their case," he said.