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# Income Tax officials unsure how to slap 200% penalty on income mismatch

By Kiran Kabtta Somvanshi, Sugata Ghosh, ET Bureau | Updated: Nov 14, 2016, 08.54 AM IST



MUMBAI: As India struggles with demonetization, individuals and businesses are using old currency notes to settle debts while income tax officials are at a loss how to go about imposing 200% penalty -- as announced by a senior finance ministry official -- on such funds flowing into banks.

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*Taxmen in several cities have told their superiors that there is no provision in the law to slap penalty on such cash being deposited in banks.*

Firms are clearing dues to suppliers, depositing cash in bank accounts to repay old loans, and buying memberships of clubs, SPAs and gyms; in all these cases their books would show that

cash changed hands before Tuesday evening when demonetization of 500 and 1000 rupee bills was announced. On the other hand, taxmen in several cities have told their superiors that there is no provision in the law to automatically slap penalty on such cash being deposited in banks, according to I-T officials, tax practitioners and bankers ET spoke to.

“There can be penalty on escaped income. But what do you do if someone deposits a crore with bank, pays 33% tax, and discloses the amount as income in his tax return filed for the assessment year '17-18? Even if it's driven by demonetization, this is technically voluntary declaration and shown as 'income from other source'. This has been discussed in our meetings over the past few days... To impose penalty on this money, there has to be retrospective amendment of the income tax law,” said a senior tax official.

A 200% penalty would mean the entire declared amount going into the state coffer.

The questions troubling those with large, unexplained cash deposits are: Will the I-T office come after them if they are unable to spell out the fund source? Even if i-T spares them, will the service tax and other indirect departments chase them? And finally, will the I-T office share the information with Enforcement Directorate who in turn can invoke the harsh anti-money laundering law?

“If the source of the fund relates to an admitted activity which is subject to levy of indirect tax, then even if the IT department accepts the source there is always the possibility that other agencies may step in,” said senior chartered accountant Dilip Lakhani.

Indeed, the swelling bank deposits could pose challenge for the I-T department. Several small and mid-sized businesses, traders and individual borrowers in the farm sector have deposited cash to resolve their non-performing loans and initiate one-time settlements. “These are typically small borrowers with loan liability ranging from Rs 5-10 lakhs to Rs 5-10 crores. We have also had an instance of an individual borrower depositing cash of Rs 20 crore to clear his

dues," said the CEO of a southern bank. "As part of our compliance, we are filing suspicious transaction report on such deposit beyond permissible limits," said the compliance head of a Mumbai-based private sector bank.

It is not just banks which are witnessing inflows. "Many companies have undertaken prepaid sales for a year; health centres, SPAs, and hotels have offered prepaid packages -- all have been sold without discounts but using earlier currency notes. NGOs and trusts are receiving calls for anonymous donations. Some are in a dilemma whether to accept," said Mitil Chokshi, senior partner at audit firm Chokshi & Chokshi.

On Friday, income tax officials surveyed large bullion dealers to assess their respective cash in hand and make a note of the last bill number. This was done to stop the transfer of cash to bullion dealers and jewelers that began since Tuesday evening. But it's impossible to keep a track of all establishments which are accepting cash. Such cash transfers are easier in case of retail outlets and jewelers where the names of buyers are not mentioned, but more difficult in transactions where the identity of the cash giver is revealed -- such as club and holiday membership deals. While government authorities may not be able to prove that the cash transfer took place post Nov 7, they can always question the fund source.

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