

User Of Tax Havens Route For Financing Terrorism

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THE OECD identified four dominant features of a tax haven: these are (a) no or nominal effective tax rates; (b) lack of effective exchange of information; (c) lack of transparency; (d) absence of a requirement of substantial activities. Tax havens are the jurisdictions which make themselves available for avoidance of tax which would otherwise be paid in relatively high tax countries.

It is common knowledge that in recent years the tax havens are widely used for evading tax. In fact, the economy of most tax havens largely depends on the promotion of the unwholesome activities having the effect of causing wrongful gain to those not entitled to tax benefits, and causing wrongful loss to those having legitimate claims to tax. Operators in the third countries thereby turn such treaties into veritable rouge's charter. If the U.S. Company earns capital gains in India or in the United States it is liable to be charged to tax as per the laws prevailing in these countries; or, if the Luxemburg Company earns capital gains in India it would be taxed in India as an ordinary non-resident as there is no double taxation agreement between these two countries. If these companies set up subsidiaries in tax havens like Mauritius they are neither taxed in India nor in such tax havens on their capital gains. Sailing under false colours become most inviting for the tax dodgers as they wrongfully gain advantages of a bilateral treaty of which they are neither the parties nor beneficiaries.

It is said that in the globalized economy different countries tend to share a common emerging space. That this pursuit would be good for the common people is not beyond all doubt. But time is ripe to recognize that the pathogenic effects of globalization can be somewhat avoided only by ensuring complete transparency of the global economic process. Tax havens negate transparency. Tax evasion and criminal activities flourish in darkness.

But right now what has become a matter of gravest concern for us is the evident risk of the use of the tax haven routes for transmission of money for promoting terrorism and effecting anti-national activities.

It is commonly shared concern that a lot of money is being generated by the most unscrupulous methods, through bribery, receipt of kick-backs, drug-trafficking, insider trading, embezzlement, computer fraud, under invoicing-over invoicing, and other tainted activities spawning scams having deep lethal consequences on the welfare of common people. But those who earn these ways try first to park them in places where the risk of detection, seizure and confiscation is either non-existent or is minimal. Then they devise ways to disguise their criminal proceeds of their illegal origin. The tax havens are considered the safe places to park such tainted wealth. Through companies floated in tax havens ill-gotten money can be effectively laundered and money brought into the normal economic channels. Many of the tax havens spread red carpet to welcome them. They ensure legal systems under which such pursuits are carried on without any risk of being subjected to scrutiny. The other day we got news on the TV that a most widely known terrorist has vast wealth in Caribbean islands, Monaco and several other places apparently tax havens. He to finance terrorism world over through his financial network adopted complex ways. If a dreaded terrorist decides to transfer resources to India from Monaco or the Bahamas, or Luxemburg, or some of the islands in the Caribbean Sea, or the English Channel or some dot-like country in Micronesia or Polynesia, he would adopt a simple strategy. He would instruct his investment manager to structure some device for transferring resources into the target country. By way of illustration, he might float a subsidiary company or a conduit company in Mauritius for transacting on the Indian Stock Exchange. It is worth noting that capital gains are neither taxable in India nor in Mauritius. In fact, capital gains do not constitute even a species of income under the Mauritian law. Floating a conduit company in Mauritius is an easy affair. Such companies are so ring fenced as not to have adverse effects on the domestic transactions but enjoy all the facilities to maraud the revenue of other countries. India has become over these years an obvious and immediate target. Such companies obtain certificate of residence from the foreign tax authorities in order to pass for the real residents.

There was some measure of check when the income tax authorities used to investigate the cases of the non-residents in order to see the profile of the real operators and the beneficial owners to exclude the persons of the third States from taking advantage of the bilateral treaties. The courts of law have held such actions of the income tax authorities in total conformity with law. In exercise of this jurisdiction the Income-tax Department could know the whereabouts of the real operators and the real beneficiaries. On knowing that some crime had been committed or some crime had been planned the authorities of the Income-tax Department were duty bound to inform other agencies of the government to take appropriate actions. This would be in exercise of general duty of the type contemplated in the Government Instructions issued in terms of

section 138 of the Income tax, 1961. The various frauds and crimes, especially in the post-September 11, phase, should drum into the ears even of the banking regulators world over, to identify account holders and the beneficiaries of funds flows from and to bank accounts.

The effect of Circular no. 789 issued by the Central Board of Direct Taxes is to subvert the check, which had its wholesome effect before the Circular under reference had been issued. The effect of the Circular is to make the Certificate of Residence granted by a tax haven government conclusive for two things: (i) as to the authenticity of the fact of residency, and (ii) as to the beneficial ownership of income. On account of the mandatory directions the income tax authorities would not be able to know the real operators and the real income earners. Terrorism can flourish under such circumstances. I am sure that those who issued this Circular would not have thought that they were unwittingly facilitating terrorism and antinational activities. Countries, which believe in the rule of law and want to ensure that public resources are not plundered through fraudulent devices, readily reject any Certificate of Residence granted by a foreign authorities when the rogues take unfair advantage.. The United States Court of Appeal crisply said in an important case, 'Be this as it may, we are not bound by the determination of the Swiss tax authorities.' To say the obvious, the statutory jurisdiction to investigate can neither be clogged nor curtailed under the executive instructions. It is a fundamental principle of the tax law that only the real earner of income is taxable. As legality of the government circular is for the Court to decide, I must refrain from comments on its legality. But its evident sinister potentialities which the terrorists would grab must not be lost sight of.

Such matters cannot brook any delay, as the security of the country must be of supreme interest. The price of liberty and societal weal is always eternal vigilance. The Government must respond not only by withdrawing the aforementioned Circular but should also take all possible steps to see that there is no unjust enrichment, there are no recipients of wrongful gains, there are no sufferers on account of wrongful loss. It would be a queer irony that the government which rightly asserts its case against terrorism tends to become, perish the thought, a facilitator of terrorism! It would be foolish to wait till facts are proved beyond a reasonable doubt. When the issues relate to the security of the country a responsive and reasonable government should act on express probability itself. : Whittier said -

***"For all sad words of tongue or pen
The saddest are these: It might have been."***

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