

Ministry of Finance
Press Release

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Among others Special Investigation Team (SIT) calls for greater vigilance by law enforcement and intelligence agencies while examining the cases of persons holding Directorship in more than 20 Companies and where more than 20 companies are operating from the same address

The Special Investigation Team (SIT) in its Third Report had observed the following with respect to Shell Companies and Beneficial Ownership: **“Shell Companies and beneficial ownership (Reference p. 73-76 of the Third SIT Report)**

The Report of the Committee headed by Chairman, CBDT on “Measures to tackle Black Money in India and Abroad” submitted in 2012 observed as follows:

“3.4 The primary method of generation of black money remains suppression of receipts and inflation of expenditure. The suppression could be over a range of businesses and industrial activities which are covered by what may be called ‘primary’ enactments to regulate sale receipts, actual production, charging amount in excess of statutory amounts, etc.

3.6 However, as manipulation of income is not always possible by suppression of receipts, tax-payers may try to inflate expenses by obtaining bogus or inflated invoices from ‘bill masters’, who make bogus vouchers and charge nominal commission. As these persons are of very modest means, upon investigation, they tend to leave the business and migrate from the city where they operate. This is one of the reasons for a proportion of income tax arrears attributed to ‘assessee not traceable’.

3.7 Similarly, there are other categories of small ‘entry operators’, who provide accommodation entries by accepting cash in lieu of cheque/ demand draft given as loans/advances/share capital, etc and thereby launder large sums of money at miniscule commissions. Due to frequent migration, such entry operators escape prosecution under the Income Tax Act. The appellate tax bodies also tend to tax their income at nominal rates. There is no effective deterrence, except for taxing commission on such bogus receipts and tax in the hands of beneficiaries. Providing fake bills and entries need to be dealt with strongly and as criminal offence under the tax laws.”

Use of shell companies to provide accommodation entries to launder black money has been observed in a number of high profile cases investigated or under investigation in the recent past.

The strategy to curb this menace has to be twofold:

- (i) Proactive detection of creation of shell companies: This would involve intelligence gathering through regular data mining and dissemination of information gathered to various law enforcement agencies for active surveillance.
- (ii) Deterrent penal action against persons involved in creation of shell companies and providing accommodation entries.

This document has been compiled as service to our clients. We recommend that you seek professional advise prior to initiating action on specific issues.

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The following recommendations are made in this regard:

- (i) Proactive detection of creation of shell companies: Serious Frauds investigation office (SFIO) under Ministry of Company needs to actively and regularly mine the MCA 21 database for certain red flag indicators. These red flag indicators could be based on common DIN numbers in multiple companies, companies with same address, same contact numbers, use of only mobile numbers, sudden and unexpected change in turnover declared in returns etc. These indicators are illustrative in nature and the SFIO office can prepare a set of indicators based on its own experience and consultation with other law enforcement agencies like CBDT, ED and FIU.
- (ii) Sharing of information on such high risk companies with law enforcement agencies: Once certain companies are identified through data mining above, the list of such high risk companies should be shared with CBDT and FIU for closer surveillance.
- (iii) In case after investigation/assessment by CBDT, a case of creating accommodation entries is clearly established, the matter should be referred to SFIO to proceed under relevant sections of IPC for fraud. SFIO should also refer the matter to Enforcement Directorate for taking action under PMLA for all such cases of money laundering.
- (iv) It has also been observed that in many cases of creation of shell companies, the shareholders or directors of such Companies are persons of limited financial means like drivers, cooks or other employees of main persons who intend to launder black money. Section 89(1) and 89(2) of the Companies Act, 2013 provides for persons to declare if they have "beneficial interest" in the shares of the Company or not. Section 89(4) enjoins the Central Government to make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section. The Ministry of Company Affairs may frame such rules at the earliest."

The SIT had requested Ministry of Corporate Affairs to provide the following data:

- (i) Persons who held Directorship in more than one Company
- (ii) Companies who have the same office address

The data was subsequently provided by the Ministry of Corporate Affairs. From a perusal of data given by the Ministry of Corporate, the following points stand out:

- (i) There are 2627 persons holding Directorship in more than 20 Companies in violation of Section 165 of the Companies Act, 2013. It may be mentioned this is also in violation of s. 275 of the erstwhile Companies Act, 1956. The total number of Companies involved is 77696.

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- (ii) A total of 345 addresses have at least 20 Companies operating from the same address. The total number of Companies sharing their address with at least 19 more Companies are 13581 in number. While there is no specific Act/Rule which debars Companies from having the same address, SIT has desired greater vigilance is accorded by law enforcement and intelligence agencies like CBDT, CBEC, ED and FIU while examining the operations of such Companies.

The SIT has requested Ministry of Company affairs to take necessary action with respect to violation of the Companies Act noted above. The SIT has further requested CBDT, CBEC and Enforcement Directorate to undertake due diligence on the Companies data referred to above.

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