BLACK MONEY

WHITE PAPER

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Foreword

In the past year the public discourse on the issue of corruption and black money has come in the forefront with the active participation of the civil society and our Parliamentary institutions. Two issues have been highlighted in this debate. First, several estimates have been floated, often without adequate factual basis on the magnitude of black money generated in the country and the unaccounted wealth stashed aboard. Secondly, a perception has been created that the Government's response to address this issue has been piecemeal and inadequate. This document seeks to dispel some of the views around these two issues and place the various concerns in a perspective.

The "White Paper on Black Money" presents the different facets of black money and its complex relationship with policy and administrative regime in the country. It also reflects upon the policy options and strategies that the Government has been pursuing in the context of recent initiatives, or need to take up in the near future, to address the issue of black money and corruption in public life.

There is no doubt that manifestation of black money in social, economic and political space of our lives has a debilitating effect on the institutions of governance and conduct of public policy in the country. Governance failure and corruption in the system affect the poor disproportionately. The success of an inclusive development strategy critically depends on the capacity of our society to root out the evil of corruption and black money from its very foundations. Our endeavour in this regard requires a speedy transition towards a more transparent and result oriented economic management systems in India.

The steps taken in recent years for simplifying and placing the administrative procedures concerning taxation, trade and tariffs and social transfers on UID based electronic interface, free of discretion and bureaucratic delays, are vital building blocks of the approach for tackling corruption and black money in our country. In this past year Government has brought five bills namely, the Lokpal Bill, the Judicial Accountability Bill, the Whistle Blowers Bill, the Grievance Redressal Bill and the Public Procurement Bill, which are at various stages of consideration by the Parliament. The institutionalisation and expansion of information exchange network at the international level is a major step in curbing cross-border flow of illicit wealth and in facilitating its repatriation. While these measures will set the tone for an equitable, transparent and a more efficient economy, there is much that we could do, both individually and collectively, to strengthen the moral fibre of our society.

I would have been happy if I could have included the conclusions of reports of three premier institutions that have been tasked to quantify the magnitude of black money. These reports are likely to be received by the end of this year. However I have chosen to present this document now in response to an assurance given to the Parliament. Hopefully, it would contribute to an informed debate on the subject and a more effective policy response as we move forward.

New Delhi
16 May 2012

(Pranab Mukherjee)

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Introduction

1.1 The Context

Generation of black money and its stashing abroad in tax havens and offshore financial centres have dominated discussions and debate in public fora during the last two years. Members of Parliament, the Supreme Court of India and the public at large have unequivocally expressed concern on the issue, particularly after some reports suggested estimates of such unaccounted wealth being held abroad. The Finance Minister, while responding to an adjournment motion on the 'Situation Arising out of Money Deposited Illegally in Foreign Banks and Action Being Taken against the Guilty Persons' in the Lok Sabha on 14 December 2011 gave an assurance that a white paper on black money would be prepared. This document is being presented to Parliament as a result.

1.2 The Objective of this Paper

The objective of this paper is to place in the public domain various facets and dimensions of black money and its complex relationship with the policy and administrative regime in the country. The paper also presents the framework, policy options, and strategies that the Government of India has been pursuing to tackle this issue, especially recent initiatives and developments. The paper is expected to contribute to the ongoing debate on the issue of black money and help develop a broad political consensus regarding the future course of action to address it.

1.3 The Problem and its Complexities

1.3.1 Black money is a term used in common parlance to refer to money that is not fully legitimate in the hands of the owner. This could be for two possible reasons. The first is that the money may have been generated through illegitimate activities not permissible under the law, like crime, drug trade, terrorism, and corruption, all of which are punishable under the legal framework of the state. The second and perhaps more likely reason is that the wealth may have been generated and accumulated by failing to pay the dues to the public exchequer in one form or other. In this case, the activities undertaken by the perpetrator could be legitimate and otherwise permissible under the law of the land but s/he has failed to report the income so generated, comply with the tax requirements, or pay the dues to the public exchequer, leading to the generation of this wealth.

1.3.2 A comparison of the two ways in which black money is generated is fundamental to understanding the problem and devising the appropriate policy mix with which it can be controlled and prevented by the public authorities. At the very outset, it becomes clear that the first category is one where a strongly intolerant attitude with adequate participation of all state arms can produce results. It is the second category where the issue becomes far more complex and may require modifying, reforming, and redesigning major policies to promote compliance with laws, regulations, and taxes and deter the active economic agents of society from generating, hoarding, and illicitly transferring abroad such unaccounted wealth.

1.3.3 One of the reasons for the complexity of the problem of black money is the differences in perceived interests and objectives of taxpayers and the tax authority. Theoretically, one can postulate a particular level of regulation and tax that creates appropriate balance between the three different but related objectives, namely ensuring efficiency of a market economy, ensuring efficiency of the state with respect to its goals of providing requisite public goods and promoting equity, or what is often referred as good governance, and ensuring that the incentives for compliance are not distorted in a self-defeating manner. However, in practice it may be difficult to bring about this balance and convergence in the interests of the stakeholders. It is therefore necessary to create awareness about these aspects and encourage understanding about the lack of any universal panaceas or magic remedies for this complex socio-economic problem.

1.3.4 Prevention of unacceptable aberrant behaviour needs strong policy deterrence. The need of the hour is to create effective administrative systems, using technology-based data processing, to generate actionable intelligence. In a federal structure of governance, this will require cooperation between agencies of the central and state governments. Moreover in an increasingly globalized environment, it would need strong initiatives on part of the Indian state to develop and strengthen mutual cooperation with the rest of the world.

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Black Money and its Estimation

2.1 Defining 'Black Money'

2.1.1 There is no uniform definition of black money in the literature or economic theory. In fact, several terms with similar connotations have been in vogue, including 'unaccounted income', 'black income', 'dirty money', 'black wealth', 'underground wealth', 'black economy', 'parallel economy', 'shadow economy', and 'underground' or 'unofficial' economy. All these terms usually refer to any income on which the taxes imposed by government or public authorities have not been paid. Such wealth may consist of income generated from legitimate activities or activities which are illegitimate per se, like smuggling, illicit trade in banned substances, counterfeit currency, arms trafficking, terrorism, and corruption. For the purpose of this document, 'black money' can be defined as assets or resources that have neither been reported to the public authorities at the time of their generation nor disclosed at any point of time during their possession.

2.1.2 This definition of black money is in consonance with the definition used by the National Institute of Public Finance and Policy (NIPFP). In its 1985 report on Aspects of Black Economy, the NIPFP defined 'black income' as 'the aggregates of incomes which are taxable but not reported to the tax authorities'. Further, black incomes or unaccounted incomes are 'the extent to which estimates of national income and output are biased downwards because of deliberate, false reporting of incomes, output and transactions for reasons of tax evasion, flouting of other economic controls and relative motives'.

2.1.3 Thus, in addition to wealth earned through illegal means, the term black money would also include legal income that is concealed from public authorities:

- to evade payment of taxes (income tax, excise duty, sales tax, stamp duty, etc);
- to evade payment of other statutory contributions;
- to evade compliance with the provisions of industrial laws such as the Industrial Dispute Act 1947, Minimum Wages Act 1948, Payment of Bonus Act 1936, Factories Act 1948, and Contract Labour (Regulation and Abolition) Act 1970; and / or
- to evade compliance with other laws and administrative procedures.

2.2 Factors Leading to Generation of Black Money

2.2.1 Black money arising from illegal activities such as crime and corruption has an underlying anti-social element. The 'criminal' component of black money may include proceeds from a range of activities including racketeering, trafficking in counterfeit and contraband goods, smuggling, production and trade of narcotics, forgery, illegal mining, illegal felling of forests, illicit liquor trade, robbery, kidnapping, human trafficking, sexual exploitation and prostitution, cheating and financial fraud, embezzlement, drug money, bank frauds, and illegal trade in arms. Some of these offences are included in the schedule of the Prevention of Money Laundering Act 2002. The 'corrupt' component of such money could stem from bribery and theft by those holding public office – such as by grant of business, leakages from government social spending programmes, speed money to circumvent or fast-track procedures, black marketing of price-controlled services, and altering land use regularizing unauthorized construction. All these activities are illegal per se and a result of human greed combined with declining societal values and inability of the state to prevent them. Factors leading to their generation are both social and administrative.

2.2.2 These illegal activities are punishable under various Acts of the central and state governments which are administered by various law enforcement agencies. Effective implementation of these Acts is the responsibility of both state and central governments.

2.2.3 Significant amount of black money, however, is generated through legally permissible economic activities, which are not accounted for and disclosed or reported to the public authorities as per the law or regulations, thereby converting such income into black money. The failure to report or disclose such activities or income may be with the objective of evading taxes or avoiding the cost of compliance related to such reporting or disclosure. It may also be the result of non-compliance with some other law. For example, a factory owner may under-report production on account of theft of electricity which in turn leads to evasion of taxes. Generally, a high burden of taxation, either actual or perceived, provides a strong temptation to evade taxes and generate black money. Sometimes the procedural regulations can be such that complying with them may increase the probability of further scrutiny and thereby the incidence of the burden of compliance, creating a perverse incentive not to report at all and remain outside the reported and accounted proportion of the economy. Culture and social practices may also play a vital role in deciding the preferences of citizens between tax compliance and black money generation. In a society where tax evasion and under-reporting of activities and income is perceived to be very common or the norm, such activities may be considered acceptable and honest tax compliance and paying one's due share to the public fund may not be considered a virtue. Studies indicate that countries with relatively poor implementation of regulations tend to have a higher share of unaccounted economy, whereas countries with properly implemented regulations and sound deterrence have smaller 'black' economies.

2.2.4 Thus the fight against generation and accumulation of black money is likely to be far more complex, requiring stronger intervention of the state, in developing countries like India than in developed countries. It needs a stronger legal framework, commensurate administrative measures, and a very strong resolve to fight the menace. It also calls for political consensus as well as patience and perseverance.

2.3 Generating Black Money by Manipulation of Accounts

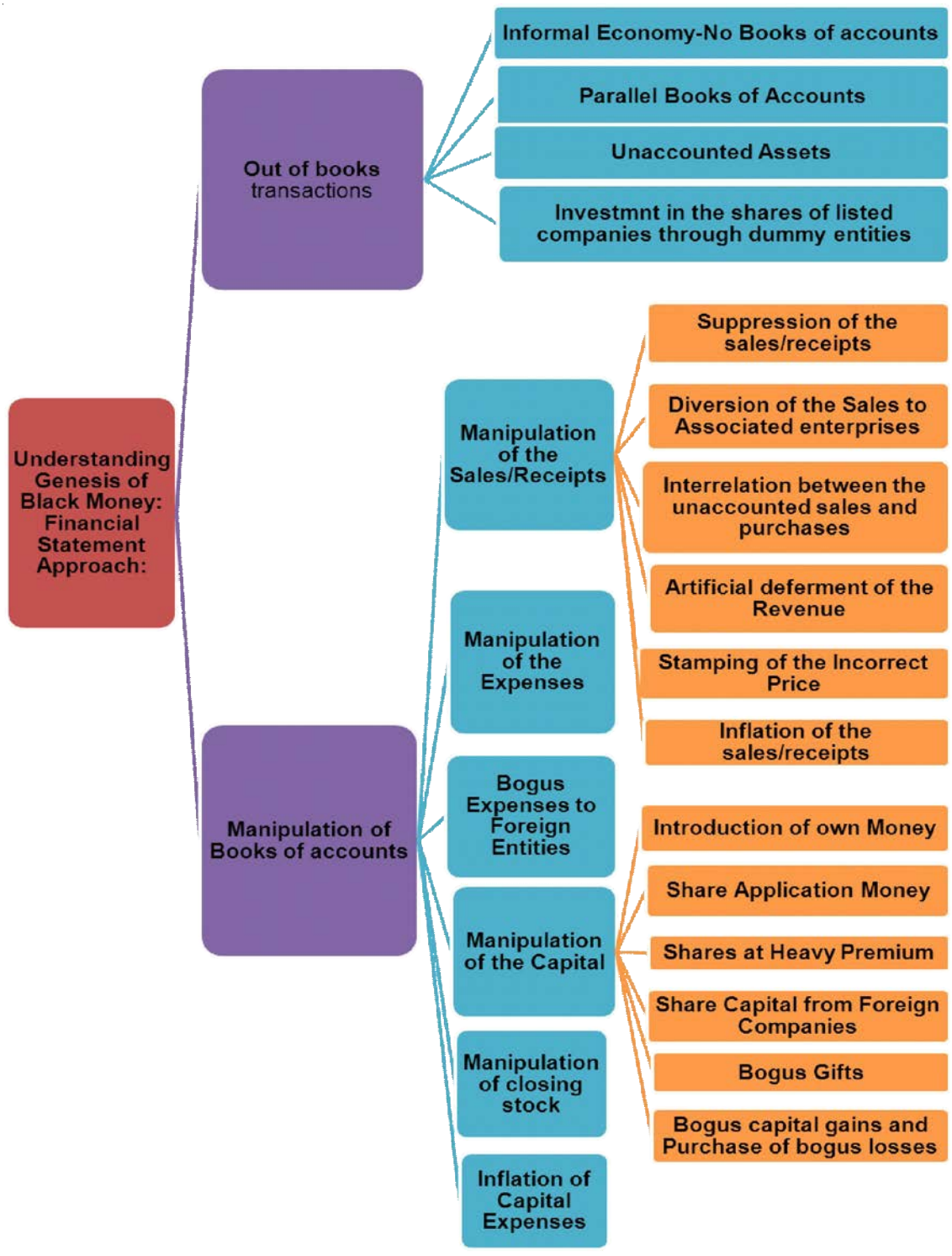
2.3.1 There can be two different modi operandi involved in the generation of black money. The first is the crude approach of not declaring or reporting the whole of the income or the activities leading to it. This is the likely approach in all cases of criminal, illegal, and impermissible activities. The sophistications in such an approach mostly get introduced subsequently for the purpose of laundering the money so generated with the objective of making it accountable and converting it into legitimate reported wealth that can be openly possessed and used.

2.3.2 The same approach of not declaring or reporting activities and the income generated therefrom may also be followed in cases of failure to comply with regulatory obligations or tax evasion on income from legitimate activities. However, complete evasion or non-compliance may make such incomes vulnerable to detection by authorities and lead to consequent adverse outcomes for the generator. Thus a more sophisticated approach for generation of this kind of black money is often preferred, involving manipulation of financial records and accounting.

2.3.3 The best way of classifying and understanding the various ways and means adopted by taxpayers for the generation of black money would be the financial statement approach, elaborating different means by which the accounts prepared for reporting and presenting before the authorities are manipulated to misrepresent and underdisclose income, thereby generating unaccounted, undeclared, and unreported income that amounts to black money.

2.3.4 Any transaction entered into by the taxpayer must be reported in books of account which are summarised at the end of the year in the form of financial statements. The financial statements basically comprise statement of income and expenditure which is called by different names such as 'Profit and Loss Account' or 'Income and Expenditure Account' and statement of assets and liabilities which is called 'Balance Sheet' or 'Statement of Affairs'. Tax evasion involves misreporting or non-reporting of the transactions in the books of account. Different kinds of manipulations of financial statements resulting in tax evasion and the generation of black money are summarised in Figure 2.1 and and some of these are elaborated in the following paragraphs.

Figure 2.1 Manipulations of Accounts for Tax Evasion



2.3.5 Out of Book Transactions: This is one of the simplest and most widely adopted methods of tax evasion and generation of black money. Transactions that may result in taxation of receipts or income are not entered in the books of account by the taxpayer. The taxpayer either does not maintain books of account or maintains two sets or records partial receipts only. This mode is generally prevalent among the small grocery shops, unskilled or semi-skilled service providers, etc.

2.3.6 Parallel Books of Accounts: This is a practice usually adopted by those who are obliged under the law or due to business needs to maintain books of account. In order to evade reporting activities or the income generated from them, they may resort to maintaining two sets of books of account – one for their own consumption with the objective of managing their business and the other one for the regulatory and tax authorities such as the Income Tax Department, Sales Tax Department, and Excise and Customs Department. The second set of books of account, which is maintained for the purpose of satisfying the legal and regulatory obligations of reporting to different authorities, may be manipulated by omitting receipts or falsely inflating expenses, for the purpose of evading taxes or other regulatory requirements.

2.3.7 Manipulation of Books of Account: When books of accounts are required to be maintained by taxpayers under different laws, like the Companies Act 1956, the Banking Regulation Act, and the Income Tax Act, it may become difficult for these taxpayers to indulge in out of books transactions or to maintain parallel books of accounts. Such parties may resort to manipulation of the books of accounts to evade taxes.

2.3.8 Manipulation of Sales/Receipts: A taxpayer is required to pay taxes on profit or income which is the difference between sale proceeds or receipts and expenditure. Thus manipulation of sales or receipts is the easiest method of tax evasion. Other innovative means may include diversion of sales to associated enterprises, which may become more important if such enterprises are located in different tax jurisdictions and thereby may also give rise to issues related to international taxation and transfer pricing.

2.3.9 In case of use of a dummy / associated entity, there can be a plethora of possible arrangements entered into by such entities to aid generation of black money. In its simplest form, the associate entity may not report its activities or income at all. The main entity may show sales to such a dummy / associate entity at a lower price, thereby reducing its reported profits.

2.3.10 More complex scenarios can emerge if the dummy/ associated entity is situated in a low tax jurisdiction having very low tax rates. Thus the profit of the Indian entity will be transferred to the low tax jurisdiction and money will be accumulated by the taxpayer in the books of accounts of the entity in the low tax jurisdiction.

2.3.11 Under-reporting of Production: Manipulation of production figure is another means of artificially reducing tax liability. It may be resorted to for the purpose of evading central excise, sales tax, or income tax.

2.3.12 Manipulation of Expenses: Since the income on which taxes are payable is arrived at after deducting the expenses of the business from the receipts, manipulation of expenses is a commonly adopted method of tax evasion. The expenses may be manipulated under different heads and result in under-reporting of income. It may involve inflation of expenses, sometimes by obtaining bogus or inflated invoices from the so called 'bill masters', who make bogus vouchers and charge nominal commission for this facility.

2.3.13 Any number of more sophisticated versions of manipulation of expenses can also be resorted to by those intending to generate black money. Sometimes it can also involve 'hawala' operators, who operate

shell entities in the form of proprietorship firms, partnership firms, companies, and trusts. These operators may accept cheques for payments claimed as expense and return cash after charging some commission. There have been instances of claims of bogus expenses to foreign entities. The payments can be shown to foreign entities in the form of advertisement and marketing expenses or commission for purchases or sales. The funds may be remitted to the account of the foreign taxpayer and the money can either be withdrawn in cash or remitted back to India in the form of non-taxable receipts. Such money may also be accumulated in the form of unaccounted assets of the Indian taxpayer abroad.

2.3.14 Other Manipulations of Accounts: Besides inflation of purchase / raw material cost, expenses like labour charges, entertainment expenses, and commission can be inflated or falsely booked to reduce profits. In these cases, bogus bills may be prepared to show inflated expenses in the books.

2.3.15 Manipulation by Way of International Transactions through Associate Enterprises: Another way of manipulating accounted profits and taxes payable thereon may involve using associated enterprises in low tax jurisdictions through which goods or other material may be passed on to the concern. Inter-corporate transactions between these associate enterprises belonging to the same group or owned and controlled by the same set of parties may be arranged and manipulated in a way that leads to evasion of taxes. This can often be achieved by arrangements that shift taxable income to the low tax jurisdictions or tax havens, and may lead to accumulation of black money earned from within India to another country.

2.3.16 Manipulation of Capital: The statement of affairs or balance sheet of the taxpayer contains details of assets, liabilities, and capital. The capital of the taxpayer is the accumulated wealth which is invested in the form of assets or as working capital of the business. Manipulation of capital can be one of the ways of laundering and introduction of black money in books of accounts.

2.3.17 Manipulation of Closing Stock: Suppression of closing stock both in terms of quality and value is one of the most common methods of understating profit. More sophisticated versions of such practice may include omission of goods in transit paid for and debited to purchases, or omission of goods sent to the customer for approval. A more common approach is undervaluation of inventory (stock of unsold goods), which means that while the expenses are being accounted for in the books, the value being added is not accounted for, thereby artificially reducing the profits.

2.3.18 Manipulation of Capital Expenses: Over-invoicing plant and equipment or any capital asset is an approach adopted to claim higher depreciation and thereby reduce the profit of the business. As already stated, increase in capital can also be a means of enabling the businessman to borrow more funds from banks or raise capital from the market. It has been seen that such measures are sometimes resorted to at the time of bringing out a capital issue. At the same time, under-invoiced investments, indicating entry of undeclared wealth, may imply introduction of black money.

2.4. Generation of Black money in Some Vulnerable Sections of the Economy

2.4.1 While the source of generation of black money may lie in any sphere of economic activity, there are certain sectors of the economy or activities, which are more vulnerable to this menace. These include real estate, the bullion and jewellery market, financial markets, public procurement, non-profit organizations, external trade, international transactions involving tax havens, and the informal service sector.

2.4.2 Land and Real Estate Transactions: Due to rising prices of real estate, the tax incidence applicable on real estate transactions in the form of stamp duty and capital gains tax can create incentives for tax evasion through under-reporting of transaction price. This can lead to both generation and investment of black money. The buyer has the option of investing his black money by paying cash in addition to the documented sale consideration. This also leads to generation of black money in the hands of the recipient. A more sophisticated form occasionally resorted to consists of cash for the purchase of transferable development rights (TDR)[1].

[1] *TDRs are rights for construction beyond the usual limits, which can be transferred by the owner. These rights can be made available in lieu of area or land surrendered by the owner.*

2.4.3 Bullion and Jewellery Transactions: Cash sales in the gold and jewellery trade are quite common and serve two purposes. The purchase allows the buyer the option of converting black money into gold and bullion, while it gives the trader the option of keeping his unaccounted wealth in the form of stock, not disclosed in the books or valued at less than market price.

2.4.4 Financial Market Transactions: Financial market transactions can involve black money in different forms. Initial public offers (IPOs) offering equity shares to the public at large are also vulnerable to various manipulations that can generate black money for the promoters or operators. Rigging of markets by the market operators is one such means. This may involve use of shell companies and more sophisticated versions of such manipulation may involve offshore companies or investors in foreign tax jurisdictions who invest in shares offered by the IPO and through manipulated trading escalate their price artificially, only to offload them later at the cost of ordinary investors.

2.4.5 Public Procurement: Public procurement has grown phenomenally over the years – in volume, scale, and variety as well as complexity. It often includes sophisticated and hi-tech items, complex works, and a wide range of services. An OECD (Organisation for Economic Cooperation and Development) estimate puts the figure for public procurement in India at 30 per cent of the GDP whereas a WTO (World Trade Organisation) estimate puts this figure at 20 per cent of the GDP.[2] The Competition Commission of India had estimated in a paper that the annual public sector procurement in India would be of the order of ` 8 lakh crore while a rough estimation of direct government procurement is between ` 2.5 and 3 lakh crore. This puts the total public procurement figure for India at around ` 10 to 11 lakh crore per year.[3]

2.4.6 Non-profit Sector: Taxation laws allow certain privileges and incentives for promoting charitable activities. Misuse of such benefits and manipulations through entities claimed to be constituted for non-profit motive are among possible sources of generation of black money. Such misuse has also been highlighted by the Financial Action Task Force (FATF), an intergovernmental body which develops and promotes policies to protect the global financial system against money laundering and financing of terrorism. A Non-profit Organisation (NPO) Sector Assessment Committee constituted under the Ministry of Finance has reviewed the existing control and legal mechanisms for the NPO sector and suggested various measures for improvement.

2.4.7 Informal Sector and Cash Economy: The issue of black money is related to the magnitude of cash transactions in the informal economy. The demand for currency is determined by a number of factors such as income, price levels, and opportunity cost of holding currency. Factors like dependence on agriculture, existence of a large informal sector, and insufficient banking infrastructure with large un-banked and under-banked areas contribute to the large cash economy in India.

2.4.8 External trade and Transfer Pricing: More than 60 per cent[4] of global trade is carried out between associated enterprises of multinational enterprises (MNEs). Since allocation of costs and overheads and fixing of price of product/services are highly subjective, MNEs enjoy considerable discretion in allocating costs and prices to particular products/services and geographical jurisdictions. Such discretion enables them to transfer profit/income to no tax or low tax jurisdictions. Differing tax rates in different tax jurisdictions can create perverse incentives for corporations to shift taxable income from jurisdictions with relatively high tax rates to jurisdictions with relatively low tax rates as a means of minimising their tax liability. For

[2] *Ref: Para 1.5 of the Report of the Committee on Public Procurement, 6 June 2011*

[3] *Ibid.*

[4] *Christianaid, Death and Taxes: The Truth of Tax Dodging, March 2009.*

example, a foreign parent company could use internal 'transfer prices' for overstating the value of goods and services that it exports to its foreign affiliate in order to shift taxable income from the operations of the affiliate in a high tax jurisdiction to its operations in a low-tax jurisdiction. Similarly, the foreign affiliate might understate the value of goods and services that it exports to the parent company in order to shift taxable income from its high tax jurisdiction to the low tax jurisdiction of its parent. Both of these strategies would shift the company's profits to the low tax jurisdiction and, in so doing; reduce its worldwide tax payments. In this context transfer pricing has emerged as the biggest tool for generation and transfer of black money. In recent years, after the 9/11 incident in the USA due to intense scrutiny of banking transactions, enhanced security checks at airports and ports, and relaxation of exchange controls, transfer of money through hawala has reduced significantly but now transfer pricing is now being extensively used to transfer income/profit and avoid taxes at will across countries. Also, with the relaxation of exchange controls and liberalisation of banking channels, the popularity of the hawala system for legitimate transfers has reduced substantially. The increasing pressure on financial operators and banks to report cash transactions has also helped in curbing hawala transactions. Tax evasion through transfer pricing is largely invisible to the public and difficult and expensive for tax officers to detect. Christianaid[5] estimates that developing countries may be losing over US$160billion of tax revenues a year, primarily through transfer pricing strategies.

2.4.9 The illicit money transferred outside India may come back to India through various methods such as hawala, mispricing, foreign direct investment (FDI) through beneficial tax jurisdictions, raising of capital by Indian companies through global depository receipts (GDRs), and investment in Indian stock markets through participatory notes. It is possible that a large amount of money transferred outside India might actually have returned through these means.

Box 2.1 : Characteristics of Tax havens

Various studies on tax havens have shown that tax havens are typically small countries/ jurisdictions, with low or nil taxation for foreigners who decide to come and settle there. They usually also offer strong confidentiality or secrecy regarding wealth and accounts, making them very attractive locations for safe keeping of unaccounted wealth. They also offer a very liberal regulatory environment and allow opaque existence, where an entity can easily be set up without indulging in any meaningful commercial activity and yet claim to be a genuine business unit, merely by getting itself incorporated or registered in that jurisdiction. This makes them highly desirable locations for multinational entities wishing to reduce their global tax liabilities. These multinational entities consisting of a network of several corporate and non-corporate bodies may set up conduit companies in tax havens and artificially transfer their income to such conduit companies in view of the low tax regime there. There is increasing global awareness and concern about the role of tax havens and their facilitation of certain abusive and undesirable arrangements that result in significant fiscal challenges to other countries and also pose a threat in terms of potential financing of terrorism and other activities that threaten peace and security.

2.4.10 Trade-based Money Laundering (TBML): The FATF defines TBML as the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt at legitimising their illicit origins. Factors that facilitate such manipulation include the enormous volume of international trade flow, the complexity associated with financing arrangements and currency exchanges as well as limited recourse to verification procedures between countries.

[5] *ibid*

2.4.11 Tax Havens: The term 'tax haven' has been widely used since the 1950s. However, there is no precise definition of the term. The OECD initially defined tax havens as being characterised by no or very low taxes, lack of effective exchange of information, and lack of transparency about substantial activities. It listed 35 countries/ jurisdictions as tax havens in the year 2000. The list has changed over time as more tax havens have made agreements to share information.

2.4.12 Offshore Financial Centres: Some of the old tax havens have adopted the more benign designation of 'offshore financial centre' (OFC) and tend to describe themselves as financial centres specializing in non-residential financial transactions. However, with their array of secrecy provisions that lack regulation, the zero or near zero taxation imposed by them, and lack of adequate capital controls, they are logical extensions of the traditional tax havens. The IMF has defined OFCs as *centers where the bulk of financial sector transactions on both sides of the balance sheet are with individuals or companies that are not residents, where the transactions are initiated elsewhere, and where the majority of the institutions involved are controlled by non-residents. Thus, many OFCs have the following characteristics:*

1. *Jurisdictions that have financial institutions engaged primarily in business with non-residents;*
2. *Financial systems with external assets and liabilities out of proportion to domestic financial intermediation designed to finance domestic economic; and*
3. *More popularly, centers which provide some or all of the following opportunities: low or zero taxation; moderate or light financial regulation; banking secrecy and anonymity.*

International organizations including the BIS and IMF began to use the term OFC in a more restrictive manner to describe financial services that were evolving in tax havens.

Box 2.2 : Participatory Notes

A Participatory Note (PN) is a derivative instrument issued in foreign jurisdictions, by a Foreign Institutional Investor (FII) / its sub-accounts or one of its associates, against underlying Indian securities. PNs are popular among foreign investors since they allow these investors to earn returns on investment in the Indian market without undergoing the significant cost and time implications of directly investing in India. These instruments are traded overseas outside the direct purview of SEBI surveillance thereby raising many apprehensions about the beneficial ownership and the nature of funds invested in these instruments. Concerns have been raised that some of the money coming into the market via PNs could be the unaccounted wealth camouflaged under the guise of FII investment. SEBI has been taking measures to ensure that PNs are not used as conduits for black money or terrorist funding.

2.4.13 Investment through Innovative Derivative Instruments: With increasing sophistication of derivative instruments, new opportunities for investing and making profits without being subjected to taxes and regulations are also opening up. Such innovative means can also be misused by unscrupulous parties to generate unaccounted income. Some such instruments like participatory notes may not be adequately covered by regulatory mechanisms and their oversight and hence have potential for misuse.

2.5 Estimates of Black Money Generated in India

2.5.1 There are no reliable estimates of black money generation or accumulation, neither is there an accurate well-accepted methodology for making such estimation. By its very definition, black money is not accounted for, thus all attempts at its estimation depend upon the underlying assumptions made and the sophistication of adjustments incorporated. Among the estimates made so far, there is no uniformity, unanimity, or consensus about the best methodology or approach to be used for this purpose. There have also been wide variations in the figures reported, which further serves to highlight the limitations of the different methods adopted.

2.5.2 Analysis of individual methods used for estimation further exposes their limitations. One such method is the input / output method. It consists of using the input/output ratio along with the input to calculate the true output. It estimates black money as the difference between the declared output and the output expected on the basis of the input/output ratio. This method is deceptively simple and, though it may have some utility if applied to a uniform industry or a specific sector of the economy, it is unlikely to be of much help if applied to economy as a whole. It also ignores structural changes in the economy including those related to technology.

2.5.3 Another approach, adopted by the monetarists, is based on the fact that money is needed to circulate incomes in both the 'black' and accounted for economies. As the official economy is known, the difference between that amount and the money in circulation could be assumed to be the circulating 'black' component. An estimate of the velocity of money (that is to say the average number of times currency changes hand in a year) enables an estimation of income circulated annually. A comparison of that with the income captured in the National Accounting System (NAS) gives the income which could be estimated as the black money in the economy. However, the assumption that the NAS represents accounted incomes accurately is not always true. Large proportions of income, such as those falling in the unorganized sector, are not accurately captured in NAS, thus there may be upward bias in the estimate of black money so derived.

2.5.4 Yet another method of estimation of black money is the survey approach wherein sample surveys are carried out. They may be on the consumption pattern of a representative population sample, which is then compared to the total consumption of the country. In this method, the problems consist in getting a truly representative sample, unambiguous set of questions, and the willingness of persons in the sample size to reveal true facts. Often the comfort level with the interviewers is limited as people are unwilling to admit any illegality before strangers.

2.5.5 There is also the 'fiscal approach' method for estimating black income. The underlying basis of this approach is to view the economy as comprising several sectors, each having its own sets of practices. The contribution of these sectors to black money generation is separately worked out, which when added would give the size of the 'black' economy. However, the manner of identifying the 'black component' in these sectors and the assumptions suffer from inherent subjectivity of the researcher and lack of uniform standards.

2.5.6 Attempts have been made in the past to quantify 'black' money generation in India. Broadly speaking, the estimates made so far have followed two distinct approaches:

(i) Kaldor's approach of quantifying non-salary incomes above the exemption limit of income tax; and

(i) The Edgar L. Feige method of working out transaction income on the basis of currency-deposit ratio and deriving from it the 'black' income of the economy.

2.5.7 N. Kaldor in his report (1956) estimated non-salary income on the basis of the break-up of national income into:

(i) Wages and salaries,

(ii) Income of the self-employed, and

(iii) Profit, interest, rent, etc.

Excluding wages and salaries from the contribution to net domestic product, he derived total non-salary income. An estimate of the actual non-salary income assessed to tax was made for each sector in order

to arrive at the total non-salary income assessed to tax. The difference between the estimated non-salary income above the exemption limit and the actual non-salary income assessed to tax measures the size of 'black' income.

2.5.8 The Direct Taxes Enquiry Committee (Wanchoo Committee) followed the method adopted by Kaldor with some modifications. It estimated assessable non-salary income for the year 1961-62 at ` 2686 crore and non-salary income actually assessed to tax to be of the order of ` 1875 crore. Accordingly the income which escaped income tax was of the order of ` 811 crore. After making rough adjustments for exemptions and deductions, the Wanchoo Committee found that 'the estimated income on which tax has been evaded (black income) would probably be `700 crore and ` 1000 crore for the years 1961-62 and 1965-66 respectively'. 'Projecting this estimate further to 1968-69 on the basis of percentage increase in national income from 1961-62 to 1968-69, the income on which tax was evaded for 1968-69 was estimated as `1800 crore.'

2.5.9 Rangnekar's estimate: Dr D.K. Rangnekar, a member of the Wanchoo Committee, dissented from the estimates made by the Wanchoo Committee. According to him, tax-evaded income for 1961-62 was of the order of ` 1150 crore as compared to the Wanchoo Committee's estimate of ` 811 crore. For 1965-66, it was ` 2,350 crore against the ` 1000 crore estimated by the Wanchoo Committee. The projections for 1968-69 and 1969-70 were ` 2833 crore and ` 3080 crore respectively.

2.5.10 Chopra's estimate: Noted economist O.P. Chopra published several papers on the subject of unaccounted income. He prepared a series of estimates of unaccounted income for a period of 17 years, i.e. 1960-61 to 1976-77. Chopra's methodology marked a significant departure from the Wanchoo Committee approach and, as a consequence, he found a larger divergence in the two series from 1973 onwards when income above the exemption limit registered significant increase. The broad underlying assumptions of his methodology were:

i. Only non-salary income is concealed;

ii. Taxes other than income tax are evaded and the study is restricted to only that part of income which is subject to income tax. Thus tax evasion which may be due to (a) non-payment or under-payment of excise duty, (b) sales tax,(c) customs duties, or (d) substituting agricultural income for non-agricultural income is not captured;

iii. The efficiency of the tax administration remains unchanged;

iv. The ratio of non-salary income above the exemption limit to total non-salary income has remained the same; and

v. The ratio of non-salary income to total income accruing from various sectors of the economy remains the same.

2.5.11 The crucial finding of Chopra's study was that after 1973-74, the ratio of unaccounted income to assessable non-salary income went up, whereas the Wanchoo Committee assumed this ratio to have remained constant. As a consequence, after 1973-74 there was wide divergence between the estimates of the Wanchoo Committee and those of Chopra. Chopra's estimates corroborated the hypothesis that tax evasion was more likely to be resorted to when the rate of tax was comparatively high. His findings also supported the hypothesis that increase in prices lead to an increase in unaccounted income. Further, he gave a significant finding that funds were diverted to the non-taxable agriculture sector to convert unaccounted (black) income into legal (white) income. Chopra's study estimated unaccounted income to have increased from ` 916 crore in 1960-61, i.e. 6.5 per cent of gross national product (GNP) at factor cost, to ` 8098 crore in 1976-77 (11.4 per cent of GNP).

2.5.12 NIPFP Study on Black Economy in India: The NIPFP conducted a study under the guidance of Dr S. Acharya (1985). The study defined 'black' money as the aggregate of incomes which were taxable but which were not reported to tax authorities. The study, however, gave a broader definition of 'black' income and called it 'unaccounted income' for purposes of clarity. As there was lack of sufficient data, the NIPFP study followed 'the minimum estimate approach'. That is to say, not being able to ascertain the most probable degree of under-declaration or leakage, it used a degree of under-declaration which could safely be regarded as the minimum in the relevant sector. In several cases the study also made use of a range rather than a single figure of underestimation.

2.5.13 While preparing the estimate of 'black' income, the study excluded incomes generated through illegal activities like smuggling, black market transactions, and acceptance of bribes and kickbacks. To prepare a global estimate of black income, the study confined itself briefly to six areas:

i. factor incomes received either openly or covertly while participating in the production of goods and services,

ii. 'black' income generated in relation to capital receipts on sale of asset,

iii. 'black' income generated in fixed capital formation in the public sector,

iv. 'black' income generated in relation to the private corporate sector,

v. 'black' income generated in relation to export, and

vi. 'black' income generated through over invoicing of imports by the private sector and sale of import licences.

2.5.14. After aggregating the different components of 'black' income the study quantified the extent of 'black' money for different years as shown in Table 2.1.

Table 2.1 NIPFP Estimate of Black Money in India 1975-1983

Year	Estimate for Black Money (` in crore)	Percent of GDP
1975-76	9,958 to 11,870	15 to 18
1980-81	20,362 to 23,678	18 to 21
1983-84	31,584 to 36,784	19 to 21

2.5.15 The NIPFP study concluded that total black income generation of ` 36,784 crore out of a total GDP at factor cost of ` 1,73,420 crore was on the higher side, although it turns out to be less than 30 per cent of GDP as against some extravagant estimates placing it at 50 or even 100 per cent of GDP. The study suggested with some degree of confidence that black income generation in the Indian economy in 1983-84 was not less than18 per cent of GDP at factor cost or 16 per cent of GDP at market prices.

2.5.16 While the NIPFP report estimated the 'black' economy (not counting smuggling and illegal activities) at about 20 per cent of the GDP for the year 1980-81, Suraj B. Gupta, a noted economist, pointed out some erroneous assumptions in NIPFP study and estimated 'black' income at 42 per cent of GDP for the year 1980-81 and 51 per cent for the year 1987-88. Arun Kumar pointed out certain defects in Gupta's method as well as in the NIPFP study. He estimated 'black' income to be about 35 per cent for the year 1990-91 and 40 per cent for the year 1995-96.

2.5.17 The last official study for estimating black money generation was conducted at the behest of the Ministry of Finance by the NIPFP in 1985. The alternative estimates of 'black' income for the decade prior to 1985, compiled in the NIPFP Report, as shown in Table 2.2, show the extent of variation in estimates.

Table 2.2 Variations in Estimates of Black Income

Year	Chopra's estimates		Gupta & Gupta's estimates	Gupta & Mehta's estimates	Ghosh et.al's estimates	Rangnekar's estimates
	Wanchoo Method	Own Method				
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1970-71	4.8	5.2	22.3	—	7.6	—
1971-72	5.1	3.2	28.7	—	7.8	—
1972-73	4.0	3.8	31.9	—	7.8	—
1973-74	4.9	8.1	27.1	—	7.4	9.9
1974-75	5.9	12.4	20.9	13.8	8.1	9.3
1975-76	5.6	9.9	25.0	—	8.4	10.0
1976-77	5.7	10.2	37.6	—	8.7	11.3
1977-78	—	—	38.4	—	8.7	12.1
1978-79	—	—	48.1	19.8	—	13.5
1979-80	—	—	—	—	—	14.4

2.5.18 It may be useful to see how India compares with other countries in the world on estimates of black money or black or shadow economy. The World Bank Development Research Group on Poverty and Inequality and Europe and Central Asia Region Human Development Economics Unit in July 2010 estimated 'Shadow Economies' of 162 countries from 1999 to 2007.[6] It reported that the weighted average size of the shadow economy (as a percentage of 'official' GDP) of these 162 countries in 2007 was 31 per cent as compared to 34 per cent in 1999. For India, these figures were 20.7 per cent and 23.2 per cent respectively, comparing favourably with the world average. Shadow economy for the purposes of the study was defined to include all market-based legal production of goods and services that are deliberately concealed from public authorities for any of the following reasons:

- to avoid payment of income, value added or other taxes,
- to avoid payment of social security contributions,
- to avoid having to meet certain legal labour market standards, such as minimum wages, maximum working hours, and safety standards; and
- to avoid complying with certain administrative procedures, such as completing statistical questionnaires or other administrative forms.

2.5.19 The studies discussed here for estimating the extent of Black Money in the economy have followed different methods and have been criticized for their numerous assumptions and approximations. Further, they have arrived at different figures of black money even for the same year. There have also been media reports in recent years that have extended several estimates of black money, especially the unaccounted money held abroad by Indians.

[6] *Policy Research Working Paper 5356, Shadow Economies All over the World: New Estimates for 162 Countries from 1999 to 2007, Friedrich Schneider, Andreas Buehn, and Claudio E. Montenegro.*

2.6 Estimates of Black Money Stashed Abroad

2.6.1 A chain Email, which first started circulating on the Internet in early 2009, states that Indians have more money in the Swiss banks than all other countries combined. It claims that as per a Swiss Banking Association report in 2006, bank deposits in the territory of Switzerland by nationals of a few countries are as under: India, US$1456 billion, Russia, US $470 billion, UK, US$390 billion, Ukraine, US$100 billion, China, US$96 billion.

2.6.2 It is now evident that there is no organization by the name of Swiss Banking Association,[7] although there is a Swiss Bankers Association (SBA). On 13 September 2009 Zeenews.com reported a statement from James Nason, Head of International Communications of the SBA, in which, referring to figures being quoted based on the alleged SBA report, he asserted that the SBA had never published any such report and that the story about Indian deposits was a complete fabrication. Thus these figures appear to be a figment of the imagination and the email circulating them baseless and mischievous in intent.

2.6.3 Another report which was circulated in the media stating that Indian nationals held around US$ 1.4 trillion abroad in illicit external assets was based on the 2008 report of Global Financial Integrity (GFI), 'Illicit Financial Flows from Developing Countries: 2002-2006'. In its November 2010 report, 'The Drivers and Dynamics of Illicit Financial Flows from India: 1948-2008', however, it accepted on page 9 that the back-of-the-envelope method used to derive the figure was flawed – the figure was based on GFI's estimated average illicit outflows of US$ 22.7 billion per annum (over the period 2002-06) multiplied by the 61 years since independence and it is erroneous to apply annual averages to a long time series when illicit flows are fluctuating sharply from one year to the next. [8]

2.6.4 It is however useful to mention here one estimate of the amount of Indian deposits in Swiss banks (located in Switzerland) which has been made by the Swiss National Bank. Its spokesperson stated that at the end of 2010, the total liabilities of Swiss Banks towards Indians were 1.945 billion Swiss Francs (about ` 9,295 crore). The Swiss Ministry of External Affairs confirmed these figures when a reference was made by the Indian Ministry of External Affairs to them. Since the information was publicly available on the website of the Swiss National Bank, the figures of earlier years were also taken and are tabulated in Annexure Table 1. From this Table, it can be seen that bank deposits of Indians in Swiss banks have decreased from ` 23,373 crore in year 2006 to ` 9,295 crore in year 2010.

2.6.5 In Annexure Table 2 the liabilities of Swiss banks towards nationals of various countries have been listed. It can be seen that the deposits of Indians in Swiss banks constitute only 0.13 per cent of the total bank deposits of citizens of all countries. Further, the share of Indians in the total bank deposits of citizens of all countries in Swiss banks has reduced from 0.29 per cent in 2006 to 0.13 per cent in 2010.

2.6.6 These figures are the only authentic information available at this stage about Indian money lying in foreign banks. From these figures, it can be safely concluded that the common belief that Indians hold the maximum deposits in Swiss banks is not correct.

2.7 Illicit Money transferred outside India: Reports of the IMF and GFI

2.7.1 An IMF study as reported by Rishi and Boyce (1990)[9] estimated the flight of capital from India during the period 1971-86 at US$20-30 billion, or US$1-2 billion every year. This estimate was later revised in 2001[10] to US$ 88 billion over the 1971-97 period, a sum that is roughly equivalent to 20 per cent of net real debt disbursements to the economy from 1971 to 1997. In other words, for every dollar of external debt accumulated by India from 1971 to 1997, private Indian residents accumulated 20 cents of external assets.

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7 *The Union Bank of Switzerland was known as Swiss Banking Association before 1921.*

8 *GFI is an international agency that promotes national and multilateral policies, safeguards, and agreements aimed at curtailing the cross-border flow of illegal money.Various reports of GFI referred to in this section can be accessed at www.gfintegrlty.org*

9 *M. Rishi, and J.K. Boyce (1990) 'The Hidden Balance-of-Payments: Capital Flight and Trade Misinvoicing in India, 1971-1986', Economic and Politcial Weekly, July, pp. 1645-8.*

10 *External Debt and Capital Flight in the Indian Economy, Oxford Development Studies, vol. 29, no. 1, 2001*

2.7.2 The method followed to arrive at these estimates was the World Bank residual method which estimates capital flight as follows:

Capital Flight = Change in External Debt Outstanding + Current Account Surplus + Change in Official Reserve + FDI

The underlying rationale of the method is that the sources of funds exceeding recorded use of funds reflect unrecorded outflows. This unrecorded outflow may involve capital earned through legitimate means such as the profits of a legitimate business or it may involve capital earned through illegitimate business.

2.7.3 Capital flight is further adjusted through trade mis-invoicing which arises when transactions are re-invoiced when goods leaving the country of export under one invoice are reported under a different invoice in the country of import. The underlying rationale is that residents can acquire foreign assets illicitly by over-invoicing imports and under-invoicing exports. This is estimated by comparing exports/imports of goods from/to India with what the other countries are reporting as importing/exporting from/to India. The adjusted capital flight was thus estimated at US$ 87,881 million.

2.7.4 GFI used similar methodology, with certain modifications, for estimating illicit outflows and on other related topics in a series of reports:

(a) December 2008: Illicit Financial Flows from Developing Countries: 2002-2006, which estimates that illicit financial flows out of developing countries are US$ 850 billion to US$ 1 trillion per year.

(b) February 2010: The Implied Tax Revenue Loss from Trade Mispricing, which estimates that the developing world is losing roughly US$ 100 billion per year in tax revenue loss from illicit financial flows.

(c) March 2010: Privately Held, Non-Resident Deposits in Secrecy Jurisdictions, which estimates that such deposits are currently approaching US$ 10 trillion and have been growing at a compound rate of 9 per cent annually over the last 13 years, much faster than the growth in world GDP at 3.9 per cent per year.

(d) March 2010: Illicit Financial Flows from Africa: Hidden Resource for Development, which estimates that Africa lost US$854 billion in illicit financial outflows from 1970 through 2008.

(e) May 2010: The Absorption of Illicit Financial Flows from Developing Countries: 2002-2006, which examines where trillions of dollars in illicit outflows from the developing countries, being proceeds of crime, corruption, and tax evasion, are being deposited. It has been reported that the greater part of illicit flows departing from one country and arriving in another are transferred as cash through the shadow financial system, resulting in deposits in accounts outside countries of origin. It has been demonstrated that developed countries are the largest absorbers of cash coming out of developing countries and developed country banks absorb between 56 per cent and 76 per cent of such flows, considerably more than the OFCs.

(f) November 2010: The Drivers and Dynamics of Illicit Financial Flows from India: 1948-2008, which estimates that between 1948 and 2008,a total amount of US$ 213.2 billion has been shifted out of India through illicit outflows. After taking into consideration the rate of return on external assets, it is estimated that the adjusted gross transfer of illicit assets by residents of India amounts to about US$ 462 billion as of end-December 2008. It has been further stated that if the size of India's underground economy is estimated at 50 per cent of the GDP (US$ 640 billion based on a GDP of US$ 1.28 trillion in 2008), roughly 72.2 per cent of the illicit assets comprising the underground economy is held abroad.

(g) January 2011: Illicit Financial Flows from Developing Countries: 2000-2009, which estimates that illicit outflows from the developing world from 2000 to 2008 were approximately US$ 6.5 trillion.

(h) February 2011: Transnational Crime in the Developing World, which evaluates the overall size of criminal markets in 12 categories: drugs, humans, wildlife, counterfeit goods and currencies, human organs, small arms, diamonds and other gems, oil, timber, fish, art and cultural property, and gold. Of the 12 illicit activities studied, trade in drugs ($320 billion per year) and counterfeiting ($250 billion per year) are ranked first and second in terms of illicit funds generated.

(i) December 2011: Illicit Financial Flows from the Developing World over the Decade Ending 2009, which finds that illicit outflows from the developing world during the year 2009 were US$ 903 billion which is a major drop from the US$ 1.55 trillion recorded in the year 2008. The report also finds that from 2000 to 2009, developing countries lost US$ 8.44 trillion to illicit financial flows. As in the January 2011 report, countries are ranked according to the magnitude of outflows as shown here in Annexure Table 3.

2.7.5 In these reports, the illicit financial flows (IFFs) have been estimated by adding the change in external debt (CED) to trade mispricing based on the gross excluding reversals (GER) method. The CED is computed as source of funds (change in funds plus net FDI) minus use of funds (current account balance plus change in reserves) on the underlying principle that source of funds exceeding recorded use of funds reflects unrecorded outflows. The GER is computed by comparing a country's export/import to the world (free-on-board.) as compared to what the world reports as having imported/exported from/to that country, after adjusting for cost of insurance and freight (10 per cent of f.o.b.).

2.7.6 However, both the CED and GER adjustments only consider illicit outflows. Thus, when the use of funds exceeds the source, that is when there are inward transfers of illicit capital, the CED or GER, as the case may be, is set to zero. Illicit inflows have been excluded mainly on the grounds that since illicit flows are unrecorded, they cannot be taxed or utilised directly by the government for economic development. Further, these inflows are themselves driven by illicit activities such as smuggling to evade import duties or value-added tax (VAT) or through over-invoicing of exports.

2.7.7 By not considering illicit inflows even if the reasons given are valid, it is apparent that the estimate given in GFI's November 2010 report of a total of US$ 213.2 billion being shifted out of India from 1948 to 2008 appears to be on a higher side.

2.7.8 Further, the GFI reports do not consider the net effect of illicit outflows which have come back to the country through legal channels such as FDI and investment through P-Notes. It recognises that while outward transfers of illicit capital could come back to a country through a process known as 'round tripping', as the Indian and Chinese experience shows, these inflows would not be captured and would show up as an uptick in recorded FDI. It further states that while intuitively it may make sense to net out the return of flight capital from outflows, it would be practically impossible to implement because it would not be possible to apportion recorded aggregate inflows between new investments and the return of capital flight. This recognition further reduces the estimate of outflow from India.

2.7.9 Moreover the GFI (and World Bank)models do not capture significant illicit outflows, such as through

> Mispricing occurring through trade in services and intangibles as the same are not addressed in IMF Direction of Trade Statistics

> Trade mispricing that occurs within the same invoice through related or unrelated parties

> Smuggling

> Hawala-type swap transactions

2.7.10 It is therefore reasonable to suggest that although the estimates of illicit outflows outside India made by the IMF and GFI gives useful insights, they are incomplete and further studies are required to get a correct estimate.

2.8 Has Money transferred abroad illicitly returned?

2.8.1 In 'The Drivers and Dynamics of Illicit Financial Flows from India: 1948-2008', GFI has estimated that from 1948 to 2008 a total of US$ 213.2 billion has been shifted out of India through illicit outflows. It further estimates that after taking into consideration the rate of return on external assets, the adjusted gross transfer of illicit assets by residents of India amounts to about US$ 462 billion as of end-December 2008. It needs to be ascertained whether such an amount is stashed abroad in offshore bank accounts or whether this money has at least partly already returned to India.

2.8.2 FDI statistics perhaps point to this fact. As per data released by the Department of Industrial Policy and Promotion (DIPP), from April 2000 to March 2011 FDI from Mauritius is 41.80 per cent of the entire FDI received by India. In Annexure Table 4 the FDI equity inflows country-wise have been listed. It can be seen from this table that the two topmost sources of the cumulative inflows from April 2000 to March 2011 are Mauritius (41.80 per cent) and Singapore (9.17 per cent). Mauritius and Singapore with their small economies cannot be the sources of such huge investments and it is apparent that the investments are routed through these jurisdictions for avoidance of taxes and/or for concealing the identities from the revenue authorities of the ultimate investors, many of whom could actually be Indian residents, who have invested in their own companies, though a process known as round tripping.

2.8.3 Investment in the Indian Stock Market through PNs is another way in which the black money generated by Indians is re-invested in India. PNs or overseas derivative instruments (ODIs) are issued by FIIs against underlying Indian securities, which can be equity, debt, derivatives, or even indices. The investor in PNs does not hold the Indian securities in her/his own name. These are legally held by the FIIs, but s/he derives economic benefits from fluctuation in prices of the Indian securities, as also dividends and capital gains, through specifically designed contracts. Thus, through the instrument of PNs, investment can be made in the Indian securities market by those investors who do not wish to be regulated by Indian regulators due to a variety of reasons such as not meeting the eligibility criteria for investment in Indian securities market, cost and time considerations, or the desire to keep their identity anonymous, which is possible also for the reason that PNs/ODIs can be freely traded and easily transferred without disclosing the identity of the actual beneficiaries. ThePNs can only be issued to persons who are regulated by an appropriate foreign regulatory authority and after satisfying know your customer (KYC) norms. Further, the FIIs are required to report to SEBI on a monthly basis, the name and location of the person to whom the PNs/ODIs have been issued. However, in view of the fact that the jurisdictions in which the persons to whom PNs are issued are not only countries such as the UK or USA but also well-known OFCs such as the Cayman Islands, British Virgin Islands, Switzerland, and Luxembourg, it is possible to hide the identity of the ultimate beneficiaries through multiple layers which is also evident by going through the orders passed by SEBI in some cases.[11] The ultimate beneficiaries/investors through the PN Route can be Indians and the source of their investment may be black money generated by them.

2.8.4 In the recent past, instances have come to the notice of SEBI that the GDRs issued by some Indian companies, which are listed on the Luxembourg Stock Exchange, are used for manipulation of markets. On going through a 21 September 2011 order passed by SEBI,[12] it can be seen that surprisingly mysterious 'initial investors' were found ready to invest in GDRs issued by companies which were either start-ups or having shares with very little trading and after two-three years sold the GDRs at deep discounts taking heavy losses. These instances suggest this as another possible route for reinvestment of black money.

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[11] *Order No. WTM/KMA/IMD/184/12/2009 dated 9.12.2009, Order No. WTM/KMA/IMD/207/01/2010 dated 15.1.2010 and Consent Order CO/ IVD/426/2011 dated 14.1.2011*

[12] *Order No.WTM/ PS/ISD/02/2011 dated 21.9.2011*

2.8.5 Charitable organisations, non-government organisations (NGOs), and associations receiving foreign contributions are required to file an annual return to the Ministry of Home Affairs in Form FC-3. In the said form, only the name and address of the foreign donors are mentioned, with no further details of the beneficial owners. It is possible that in many such cases, the black money generated by Indians is being routed back to India.

2.8.6 While GFI recognizes in its various reports that the outward transfers of illicit capital could come back to a country through 'round tripping', it has not taken the same into consideration in view of the practical difficulty of doing so. However, the foregoing examples do suggest that a large part of the illicit flows from India may have returned. They also highlight urgent need of proper investigations by the International Taxation Division, strengthening of the legislative framework consisting of double taxation avoidance agreements (DTAAs) and tax information exchange agreements (TIEAs), and streamlining of exchange of information from various jurisdictions, including OFCs.

2.9 Misuse of Corporate Structure

2.9.1 Corporate structuring is a legitimate means of bringing together factors of production in a way that will facilitate business and enterprise and help the economy. However, an artificial personality can also be created of a corporate entity to conceal the real beneficiaries. Opaque structuring through creation of multiple entities that own each other and the secrecy granted by certain jurisdictions facilitate such misuse.

2.9.2 A World Bank Report of 2011 titled 'The Puppet Masters' investigated 150 big corruption cases and in almost all such cases, misuse of corporate vehicles, such as companies and trusts, was found to the tune of US$ 50 billion. As a response to such blatant misuse of legal privileges, many countries are now demanding meaningful information about beneficial ownership. The FATF has also taken a strong stand on this issue and is in the process of revamping its recommendations to tighten the rules. It is expected that there will be a shift towards identifying real rather than merely legal ownership and global efforts will plug the loopholes existing in the form of such unethical practices prevalent today.

2.9.3 The Vodafone tax case provides an instance of the misuse of corporate structure for avoiding the payment of taxes. In this case, the Hutchison Group had made investments in India from 1992 to 2006 through a number of subsidiaries having 'separate corporate personality' but which were essentially post box companies based in the Cayman Islands, British Virgin Islands, and Mauritius. The Hutchison Group sold its entire business operation in India in February 2007 to the Vodafone Group for a total consideration of US$ 11.2 billion and the same was effected through transfer of a solitary share of a Cayman Islands company. When the tax authorities requested the accounts of the said company, the answer given was that as per Cayman Islands law, the company was not required to prepare its accounts.

2.9.4 With increasing realisation about the harmful effect of ownership being concealed behind complicated corporate ownership structure, such structure is coming under scrutiny. In the Indian context, it is one of the reasons for the fact that tax authorities are not able to take action in cases where money is prima facie brought back to India through round tripping and other legitimate means and it is expected that efforts taken by India in this regard as also global pressure will provide a check on these tendencies.

2.10 Need for more research

2.10.1 The need for more reliable estimates of the extent of black money both inside and outside the country arrived at through rigorous research and examination has been already recognised. This is needed for purposes of policy formulation as well as to prevent wild speculations. To achieve these objectives, a memorandum of understanding has been signed between the Central Board for Direct Taxes (CBDT), the NIPFP, the National Council for Applied Economic Research (NCAER), and the National Institute of Financial Management (NIFM) on 21 March 2011 for completing a study within a period of 18 months with the following terms of reference:

- To assess/survey unaccounted income and wealth both inside and outside the country.
- To profile the nature of activities engendering money laundering both inside and outside the country with its ramifications for national security.
- To identify important sectors of the economy in which unaccounted money is generated and examine causes and conditions that result in generation of unaccounted money.
- To examine the methods employed in generation of unaccounted money and conversion of the same into accounted money.
- To suggest ways and means for detection and prevention of unaccounted money and bringing the same into the mainstream economy.
- To suggest methods to be employed for bringing to tax unaccounted money kept outside India.
- To estimate the quantum of non-payment of tax due to evasion by registered corporate bodies.

2.10.2 The issue of generation of black money and its illicit transfer abroad has gained prominence in the last two years due to the resolve of world leaders, including Indian leaders, to address it effectively. Some of the widely circulated figures about black money of Indians stashed abroad have been, as discussed earlier, baseless exaggerations and there is strong likelihood that substantial amount of such money transferred abroad illicitly might have returned to India through illicit means. Thus a multi-pronged strategy, including joining the global crusade against black money, creating an appropriate legislative framework, setting up institutions for dealing with illicit money, developing systems for implementation, and imparting skills for effective action, is required to deal with the issue of generation of black money and its illicit transfer outside the country, and for bringing it back to India. This will be subsequently discussed in this document.

3

Institutions to Deal with Black Money

3.1 Introduction

The responsibility of dealing with the challenge of unaccounted wealth and its consequences is jointly and collectively shared by a number of institutions belonging to the central and state governments. These include various tax departments which are assigned the task of enforcement of tax laws. Among them the important ones are the CBDT and the Central Board of Excise and Customs (CBEC). However, there are various other regulatory authorities undertaking supervision and policing. They include the Enforcement Directorate (ED), Financial Intelligence Unit (FIU), Economic Offences Wing of the State Police, Central Bureau of Investigation (CBI), Serious Frauds Investigation Office (SFIO), and Narcotics Control Bureau (NCB). In addition, there are coordinating agencies such as the Central Economic Intelligence Bureau (CEIB), National Investigation Agency (NIA), and the High Level Committee (HLC), which also play an important role in fighting the menace of black money. This chapter discusses the role and responsibilities of these institutions and their administrative framework.

3.2 Central Board of Direct Taxes

3.2.1 The CBDT, New Delhi, is part of the Department of Revenue in the Ministry of Finance. While the CBDT provides essential inputs for policy and planning of direct taxes in India, it is also responsible for administration of direct tax laws through its Income Tax arm. The CBDT is a statutory authority functioning under the Central Board of Revenue Act 1963. The officials of the Board in their ex-officio capacity also function as a Division of the Ministry dealing with matters relating to the levy and collection of direct taxes. The CBDT is headed by a Chairman and comprises six Members besides. Various functions and responsibilities of the CBDT are distributed amongst the Chairman and Members, with only fundamental issues reserved for collective decision. In addition, the Chairman along with each Member is responsible for exercising supervisory control over definite areas of the field offices of the Income Tax Department, spread all over India, known as Zones and administered by eighteen cadre-controlling Chief Commissioners. Eight Directorates,[13] headed by the Director General of Income Tax, are attached to the CBDT and play the vital role of liaising between the field offices and the CBDT. The Investigation Wings are headed by the Director General of Income Tax (Investigation) . The Director General of Income Tax (International Taxation) is in charge of taxation issues arising from cross-border transactions and transfer pricing. The Income Tax Department has offices in more than 740 buildings spread over 510 cities and towns across India and has over 55,000 employees.

3.2.2 The vision of the Income Tax Department is to be a partner in the nation-building process through progressive tax policy, efficient and effective tax administration, and improved voluntary compliance. This is achieved by creating an enabling policy environment and by augmenting the revenue mobilisation apparatus for optimum revenue collection under the law while maintaining taxpayer confidence in the system.

3.2.3 The Income Tax Department is primarily responsible for combating the menace of black money. For this purpose, it uses the tools of scrutiny assessment as well as information-based investigations for detecting tax evasion and penalising the same as per provisions of the Income Tax Act, with the objective of creating deterrence against tax evasion. In doing so, it plays one of the most important roles in preventing generation, accumulation, and consumption of unaccounted black money. Some of its important functions are as follows:

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[13] *Director General of Income Tax (Administration), Director General of Income Tax (Systems), Director General of Income Tax (Vigilance), Director General of Income Tax (Training), Director General of Income Tax (Legal & Research), Director General of Income Tax (Business Process Re-engineering), Director General of Income Tax (Intelligence), Director General of Income Tax (HRD)*

a) **Policy making:** The CBDT is responsible for assisting the central government in all policy matters related to direct taxation, including amendments of the law, making rules and procedures, and facilitating compliance with them. The Foreign Tax and Tax Research (FT&TR) Division in the Board, is responsible for all policy issues relating to international taxation and transfer pricing. The officers of the FT&TR Division negotiate and renegotiate the DTAAs and TIEAs. The Division also coordinates with various international organizations such as the OECD, United Nations, Global Forum on Transparency and Exchange of Information for Tax Purposes, Inter American Centre of Tax Administrations (CIAT), and South Asian Association for Regional Cooperation (SAARC). Other divisions of the CBDT deal with policy matters related to investigations, legal amendment, litigations, audit, and administrative matters.

b) **Assessment**: Determination of a person's income is referred to as 'assessment'. The primary onus of declaring one's true income is on the taxpayer herself/himself by way of filing of a 'return' of income. The return is then processed for prima facie errors and on the basis of computerised selection and definite criteria. Some returns are selected for detailed scrutiny and verification by officers of the Income Tax Department. Such assessment is carried out by the field offices and also covers refunds, rectifications, penalties, and prosecution.

c) **Investigation**: The Investigation Wing of the Income Tax Department deals with investigations to detect tax evasion and carries out operations like surveys and searches to collect evidence of such evasion. Such operations are usually carried out after detailed preliminary investigations and in cases involving substantial evasion of taxes.

d) **Collection of Information**: There are various reporting mechanisms as part of the compliance strategy whereby the Income Tax Department receives data for the purpose of detecting cases of evasion of taxes. Data in respect of cash transactions in bank accounts, registered immovable property below the circle rate, and capital market transactions, etc. is received in the form of annual information returns (AIR). Collected data is then analysed to help identify clandestine transactions. An integrated taxpayer data management system (ITDMS) is also an effective tool for analysing the data gathered from AIRs, permanent account number (PAN) database, Income Tax Department (ITD) applications, and telephone operators to unearth unscrupulous transactions.

e) **Collection of Information Involving Cross-border Transactions**: The Income Tax Department also receives information from foreign tax authorities under the instruments of exchange of information, that is DTAAs, TIEAs, and Multilateral Conventions, which are used by the tax administration for purposes of investigation and assessment.

3.2.4 There are a number of other enforcement and regulatory agencies working in different ministries that are also involved directly or indirectly in prevention of the accumulation of black money. The primary responsibility of these agencies is the regulation of certain transactions or entities so as to check unlawful activities but in the process they have an important role in preventing accumulation of black money. The Income Tax department coordinates with these agencies to consolidate the efforts in the direction of combating the menace of black money and tax evasion.

3.3 Enforcement Directorate

3.3.1 The ED was established in 1956 to administer the provisions of the Foreign Exchange Regulation Act 1973 (FERA). However, FERA was repealed on 31 May 2000 and replaced with the Foreign Exchange Management Act 1999 (FEMA) which came into force with effect from 1 June 2000.

3.3.2 The ED has currently been entrusted with the investigation and prosecution of money-laundering offences and attachment/confiscation of the proceeds of crime under the Prevention of Money Laundering

Act 2002 (PMLA). The officers of the ED undertake multifaceted functions of collection, collation and development of intelligence, investigation into suspected cases of money laundering, attachment/confiscation of assets acquired through the commission of scheduled offences, and the criminal prosecution of the offenders in the court of law. The ED also enforces the provisions of FEMA, aimed at promoting the development and maintenance of India's foreign exchange market and providing, inter alia, for action against persons/entities involved in international hawala transactions.

3.3.3 The ED has a pan-Indian character with field offices spread over various states and regions. There is a separate legal wing headed by a Prosecutor, with two deputy legal advisers and 10 assistant legal advisers. The Directorate was restructured in March 2011 increasing the number of offices from 22 to 39 and the total strength of officers and staff to 2063. After the process of restructuring is completed, the Directorate will have headquarters in New Delhi, five regional offices at New Delhi, Mumbai, Kolkata, Chennai and Chandigarh, besides 11 zonal offices and 22 sub-zonal offices at various places.

3.3.4 The Directorate initiates investigations under FEMA for contraventions relating to foreign exchange transactions generally by resident Indians, including maintenance of bank accounts abroad with unauthorized holdings, on the basis of specific intelligence/information and takes appropriate action as per the provisions of FEMA.

3.3.5 The ED also administers the PMLA. The PMLA contains provisions related to investigation into the cases of money laundering and powers of search, seizure, collection of evidence, prosecution, etc. for which the ED is the competent authority. Under the PMLA, 'money laundering' is a criminal offence and extends to any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence (as per Annexure-1). After a 2009 amendment, predicate offences for money laundering also extend to conduct that occurred in another country which constitutes an offence in that country and which would have constituted a predicate offence had it occurred domestically. The ED initiates investigations only after a law enforcement agency registers a case under any one of the offences listed in the Schedule to the Act.

3.4 Financial Intelligence Unit

3.4.1 The FIU-IND was established by the Government of India vide an Office Memorandum dated 18 November 2004 for coordinating and strengthening efforts for national and international intelligence by investigation and enforcement agencies in combating money laundering and terrorist financing. FIU-IND is the national agency responsible for receiving, processing, analysing, and disseminating information relating to suspect financial transactions. It is an independent body reporting to the Economic Intelligence Council headed by the Finance Minister. For administrative purposes, the FIU-IND is under the control of the Department of Revenue, Ministry of Finance.

3.4.2 Under the Rules issued under the PMLA, the following types of reports have been prescribed for the reporting entities:

- Cash Transaction Reports (CTRs),
- Suspicious Transaction Reports (STRs),
- Counterfeit Currency Reports (CCRs), and
- Non-Profit Organizations Transaction Reports (NTRs)

3.4.3 CTRs and NTRs are threshold-based (` 10 lakh and above in a month) reports and are submitted on a monthly basis. STRs and CCRs are transaction-based reports and are submitted when such a transaction takes place. The FIU-IND receives over 7 lakh CTRs and 1500 STRs every month.

3.4.4 The FIU-IND's functions are defined under the PMLA. The Director, FIU-IND is empowered under Sections 12, 13, and 66 of the PMLA for exercise of powers relating to collection and dissemination of

information. Powers relating to search and seizure are exercised by the ED. Notification No. 5/2005, dated 1 July 2005 confers various powers under the PMLA on the Director, FIU-IND.

3.4.5 For ensuring the availability of information with the FIU, section 12 of the PMLA requires every banking company, financial institution, and intermediary (the reporting entities) to furnish information to the FIU and verify the identity of their clients in the manner prescribed. The reporting entities are also required to maintain and preserve records of transactions and identity of clients for a period of ten years from the date of cessation of transactions. Section 13 of the PMLA empowers the Director, FIU to call for records maintained by a reporting entity and enquire into cases of suspected failure of compliance with the provisions of the PMLA and also to impose fine.

3.4.6 Prior to Notification No. 13/2009 dated 12 November 2009, the 'regulator' for purposes of issue of guidelines for the client identification requirements and reporting to the FIU were the Reserve Bank of India (RBI), Insurance Regulatory and Development Authority (IRDA), and SEBI. After the Notification, however, the definition of regulator has been changed to mean a person or an authority or a government which is vested with the power to license, authorise, register, regulate, or supervise the activities of banking companies, financial institutions, or intermediaries, as the case may be. Accordingly, at present, various 'regulators' have issued KYC Norms for identifying clients and reporting to the FIU. They are also mandated to prescribe enhanced measures for verifying the client's identity taking into consideration type of client, business relationship, or nature and value of transactions. These regulators have issued circulars for the KYC norms.

3.5 Central Board of Excise and Customs and DRI

3.5.1 The CBEC is a part of the Department of Revenue under the Ministry of Finance, Government of India. It deals with the tasks of formulation of policy concerning levy and collection of customs and central excise duties, prevention of smuggling, and administration of matters relating to customs, central excise and narcotics to the extent under the CBEC's purview. The Board is the administrative authority for its subordinate organizations, including Custom Houses, Central Excise Commissionerates, and the Central Revenues Control Laboratory.

3.5.2 The Directorate General of Central Excise Intelligence (DGCEI) is the apex intelligence organization functioning under the CBEC. It is entrusted with the responsibility of detecting cases of evasion of central excise and service tax. The Directorate develops intelligence, especially in new areas of tax evasion through its intelligence network across the country and disseminates information in this respect by issuing Modus Operandi Circulars and Alert Circulars to apprise field formations of the latest trends in duty evasion. Wherever found necessary, DGCEI on its own, or in coordination with field formations, organises operations to unearth evasion of central excise duty and service tax.

3.5.3 The Directorate of Revenue Intelligence (DRI) also functions under the CBEC. It is entrusted with the responsibility of collection of data and information and its analysis, collation, interpretation and dissemination on matters relating to violations of customs laws and, to a lesser extent, anti-narcotics law. It maintains close liaison with the World Customs Organisation, Brussels, the Regional Intelligence Liaison Office at Tokyo, INTERPOL, and foreign customs administrations. It is headed by a Director General in New Delhi and is divided into seven zones all over India.

3.5.4 Thorough scrutiny and enquiry of cases of Suspected Transaction Reports (STRs) forwarded by the FIU is conducted by the DRI (Headquarters) and its zonal units which helps in the identification of cases of unaccounted money both within and outside the country.

3.6 Central Economic Intelligence Bureau

3.6.1 The CEIB functioning under the Ministry of Finance is responsible for coordination, intelligence sharing, and investigations at national as well as regional levels amongst various law enforcement agencies. The existing coordination mechanism in the CEIB consists of Regional Economic Intelligence Councils

(REICs) at regional level and the Group on Economic Intelligence and meetings of the heads of investigating agencies under the Department of Revenue at the centre. While the Group on Economic Intelligence is focused on matters relating to intelligence sharing, the REICs and heads of agencies meetings cover both intelligence and investigations.

3.6.2 As per the charter of the CEIB, it has been assigned the responsibility of acting as the 'think tank' on issues relating to economic offences including data collection and collation policies and preparation and maintenance of dossiers of tax evaders, violators of economic laws, white collar operators, etc. It also examines emerging trends and changing dynamics of economic offences. It takes note of the nexus among various stakeholders of these activities, their modi operandi and suggests measures for effectively dealing with them. It also analyses the macroeconomic impact of such activities and is the nodal agency for coordination at international level. It coordinates with the National Security Council Secretariat on matters having a bearing on national and economic security.

3.6.3 Human intelligence continuous to be the most important source of gathering information about evasion of various taxes and duties and generation of black money. During the course of investigation of customs offence cases, the CEIB comes across information relating to generation and parking of black money. All such information is shared with the relevant departments/agencies for further investigation and necessary action as may be warranted. In such matters inter-agency cooperation and sharing of information play a vital role.

3.6.4 Any information on black money or money laundering or hawala transactions is regularly shared with the ED and Director General of Income Tax so that proper action on all accounts is initiated in the matter. Evidence is shared with the ED to help establish cases of money laundering and hawala operations by unscrupulous importers / exporters and hawala operators. Cases of unaccounted cash recovery are reported to the DGIT (Investigation), CBDT to establish the source of the money and its proper accounting.

3.6.5 The CEIB maintains constant interaction with its Customs Overseas Investigation Network (COIN) offices to share intelligence and information on suspected import / export transactions. The COIN offices gather evidence through diplomatic channels from the foreign custom offices and other foreign establishments to establish cases of mis-declaration which are intricately linked with tax evasion and money laundering.

3.7 Other Central Agencies

3.7.1 **The NCB**, which functions under the Ministry of Home Affairs, was established on 17th March 1986 and its functions include co-ordination of actions by various offices, state governments, and other authorities under the Narcotics Drugs and Psychotropic Substances (NDPS) Act 1985, Customs Act, Drugs and Cosmetics Act, and any other law for the time being in force in connection with the enforcement provisions of the NDPS Act. It is assigned the task of counter measures against illicit drugs traffic under the various international conventions and protocols, and also assists concerned authorities in foreign countries and concerned international organisations dealing with prevention and suppression of this traffic.**The Central Bureau of Narcotics (CBN)** supervises the cultivation of opium poppy in India and issues necessary licences for manufacture, export and import of narcotics drugs and psychotropic substances. It monitors India's implementation of the United Nations Drug Control Conventions and also interacts with the International Narcotics Control Board (INCB) in Vienna and the competent authorities of other countries to verify the genuineness of a transaction prior to authorising shipments.

3.7.2 **The SFIO** functions under the Ministry of Corporate Affairs and takes up for investigation complex cases having inter-departmental and multidisciplinary ramifications and substantial involvement of public interest, either in terms of monetary misappropriation or in terms of persons affected. It also takes up cases where investigation has the potential of contributing towards a clear improvement in systems, laws, or procedures.

3.7.3 **The Registrar of Companies (ROC)** is the Registry for companies and limited liability firms and is established under the Ministry of Corporate Affairs. The Ministry of Corporate Affairs has a three-tier organisational set-up consisting of a Secretariat in New Delhi, Regional Directorates in Mumbai, Kolkata, Chennai and Noida, and field offices in all states and union territories.

3.7.4 **The Registrar of Societies (ROS):** The Registrars of non-profit societies are within state government's purview and most of the states have an ROS office. The Society Registration Act is a central Act but many states have adopted it with some state amendments and are registering non-profit societies under their respective Acts. Some state assemblies have enacted completely separate legislation on the subject. The ROS offices are reservoirs of data on societies and also function as their regulator.

3.7.5 **The Bureau of Immigration (BOI):** There are 78 immigration check-posts (ICPs) in the country of which 26 are at airports, 20 at seaports, while 32 are land ICPs. Of these 78 ICPs, 12 are controlled by the BOI, while the remaining 66 are managed by state governments on behalf of the Government of India. Immigration checks are conducted at the ICPs for all passengers, Indian and foreign, both at the time of arrival and departure. All passengers coming to India or departing from India are also required to complete Disembarkation and Embarkation Cards on arrival and departure respectively.

3.7.6 **The Economic Intelligence Council (EIC)** , which came into existence in 2003, is chaired by the Finance Minister and comprises senior functionaries of various ministries and intelligence agencies, including the Governor of the RBI and the Chairman of SEBI. The EIC meets at least once a year to discuss and take decisions regarding trends in economic offences and strategies on intelligence sharing, coordination, etc. The implementation of decisions taken by the EIC is monitored by the Working Group on Intelligence Apparatus, set up for this purpose within the EIC.

3.7.7 **The Inter-Ministerial Coordination Committee on Combating Financing of Terrorism and Prevention of Money Laundering (IMCC)** has been set up in 2002 to ensure effective coordination between all competent authorities and strengthen India's national capacity for implementing AML/CFT measures which meet international standards. The IMCC is chaired by the Additional Secretary of the Department of Economic Affairs within the Ministry of Finance. At present the committee consists of 14 agencies with substantial role in AML/CFT.

3.7.8 **The National Crime Records Bureau (NCRB)** has been set up with the objective of empowering the Indian police services with information technology and criminal intelligence with a view to enabling them to effectively and efficiently enforce the law. It therefore creates and maintains a secured national database on crimes, criminals, property, and organised criminal gangs for use by law enforcement agencies. The NCRB also processes and disseminates fingerprint records of criminals, including foreign criminals, to establish their identity.

3.7.9 **The National Investigation Agency (NIA)** is a specialised and dedicated investigating agency set up under the National Investigation Agency Act to investigate and prosecute scheduled offences, in particular offences under the Unlawful Activities (Prevention) Act, including Financing of Terrorism. The NIA has concurrent jurisdiction with the individual states, thereby empowering the central government to probe terror attacks in any part of the country. Officers of the NIA have all powers, privileges, and liabilities which police officers have in connection with investigation of an offence. The central government has the power to suo moto assign a case to the NIA for investigation. The NIA Act also provides for setting up of special courts and trials to be held on a day-to-day basis. The NIA Act can investigate offences under the specific Acts mentioned in the Schedule to NIA Act, including the Atomic Energy Act 1962, Unlawful Activities (Prevention) Act 1967, Anti-Hijacking Act 1982, Suppression of Unlawful Acts against Safety of Civil Aviation Act 1982, SAARC Convention (Suppression of Terrorism) Act 1993, Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act 2002, Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act 2005, and offences under chapter VI and sections 489-A to 489-E of the Indian Penal Code.

3.7.10 **A High Level Committee** headed by the Revenue Secretary and with representatives of the RBI, Intelligence Bureau (IB), ED, CBI, CBDT, NCB, DRI, FIU and the Foreign Tax Division has been constituted with the joint secretary (FT&TR-I) as Member-Secretary. This Committee is entrusted with the responsibility of coordinating investigations under different laws into matters concerning the illicit generation of funds within the country and their flow for illegal parking in foreign jurisdictions by Indian citizens.

3.8 CBI and Police Authorities

3.8.1 The CBI, functioning under the Department of Personnel, Ministry of Personnel, Pension and Public Grievances, Government of India, is the premier investigating police agency in India. It handles a broad category of criminal cases including cases of corruption and fraud committed by public servants, economic crimes, and other specific crimes involving terrorism, bomb blasts, sensational homicides, kidnappings and the underworld. The CBI plays an important role in international cooperation relating to mutual legal assistance and extradition matters. The Ministry of Home Affairs is the central authority for mutual legal assistance in criminal matters and the Ministry of External Affairs the nodal agency for extradition matters.

3.8.2 **State Police Agencies**: Under the Constitution of India, police and public order are state (provincial) subjects. Every State/Union Territory has its own police force, which performs not only normal policing duties but also has specialised units to combat economic offences. The Economic Offences Wing (EOW) of the Police functioning under the administrative control of states (provinces) is entrusted with the responsibility of investigation of serious economic offences and offences having inter-state ramifications. It is also mandated to interact, assist, and guide the district police on matters related to financial crimes and preventive and detection measures.

3.8.3 The various divisions of the EOW in states typically include the following sections:

> Anti Fraud and Cheating Section: Company frauds, Bank frauds, Frauds by Non-banking financial companies, Sales tax frauds, Income tax-related frauds

> Anti Land & Building Racket Section: Co-operative group housing frauds, Cases against land mafia, Frauds by Builders, Land-related bank frauds involving double mortgage, fake documents, etc., Frauds related to pre-launch schemes, Illegal sale of government lands, etc.

> Anti Forgery Section: Forgery of documents, Wills admission-related frauds, Visa-related frauds, Job rackets, Manpower export rackets

> Anti Criminal Breach of Trust Section: Multi-level marketing frauds, Export/import related frauds, Chit fund frauds, Tax evasion frauds, Share trade frauds, Corporate frauds involving criminal breach of trust

> Intellectual Property Rights (IPR)and Trademark Section: Infringement of copyrights, Audio-Video piracy, Software piracy, Spurious drugs and fast-moving consumer goods (FMCG), Book piracy, Trademark offences, Violation of trademarks in the manufacturing sector

> Anti Cyber Crime Section: Data theft, Identify theft, Credit card frauds, Online obscenity and pornography, Phishing hacking, Social networking- related complaints.

3.8.4 These various organisations of central and state governments closely monitor violation of laws regulating economic activities and their links with other criminal activities and in doing so provide a comprehensive network of checks and balances against generation of black money too. However, the federal structure of governance and their vertical reporting systems within their respective ministries and departments may have resulted in less than optimum coordination of data, information, and actions and a strengthening of this aspect may be an important way forward in the fight against generation and accumulation of black money.

4

Tackling the Menace of Black Money : The Framework

4.1 Evolution of Strategies to Control Black Money in India

4.1.1 The problem of tax evasion and generation of Black Money is not new. As far back as 1936, the Ayers Committee, while reviewing the income tax administration in India suggested large-scale amendments to secure the interests of the honest taxpayer and effectively deal with fraudulent evasion. An Income-tax Investigation Commission was appointed in 1947 to investigate tax evasion and suggest measures for preventing it in future. A Taxation Enquiry Commission (1935-54) also went into the question of tax evasion and recommended several legal and procedural changes. In 1956, Nicholas Kaldor made a specialized study of the Indian tax system, that also included prevalence of tax evasion, and his recommendations resulted in several amendments and new legislations like the Wealth Tax Act. A Direct Taxes Administration Enquiry Committee formed in 1958 suggested an integrated scheme of taxation for facilitating compliance and preventing tax evasion. It also made substantial contribution to the reorganization of tax administration. Important reforms based on the reports of various committees as well as the Administrative Reforms Commission have been made from time to time to strengthen tax compliance and plug tax evasion.

4.1.2 One of the main thrusts of these reforms consists of optimising the tax rates. The income tax rates were in the range of 25-30 per cent till the early 1960s, but gradually increased to reach a peak of 85 per cent with a 15 per cent surcharge during the 1970s. These high rates, necessitated by contingencies like drought and war, when combined with the prevailing shortages, resulted in controls and licences, and thereby provided further incentives for evasion of taxes. It was largely in this economic environment that generation of black money became highly prevalent and acquired serious proportions. The Wanchoo Committee was appointed in 1971 to examine and suggest legal and administrative measures for unearthing black money and countering evasion and checking avoidance. It comprehensively dealt with the causes of and methods of tackling tax evasion and made a number of recommendations for strengthening tax administration.

4.1.3 In the past, the government has also resorted to voluntary disclosure schemes providing amnesty to tax evaders if they declared their unaccounted income and paid due taxes on the same. These voluntary schemes have been criticized on the grounds that they provide a premium on dishonesty and are unfair to honest taxpayers, as well as for their failure to achieve the objective of unearthing undisclosed money.

4.1.4 The high marginal tax rates of over 90 per cent in the early 1970s, often considered a major reason for tax evasion and generation of black money, were brought down subsequently and have been at around 30 per cent since 1997. In the meantime, liberalisation of tariff and non-tariff barriers also removed some of the underlying reasons for black money. However, with liberalisation of restrictions on cross-border flow of goods and services and relaxation of foreign exchange control, new opportunities opened up for tax evasion through tax havens, misuse of transfer pricing, and other sophisticated methods. Globalisation reduced the cost of these sophisticated methods thereby facilitating generation of black money and its transfer across the border. These changes required new strategies to curb black money.

4.1.5 The role of tax havens has gradually come under scrutiny globally. With near-zero tax regimes, banking secrecy, and weak financial regulations, these tax havens facilitate hiding of money accumulated through tax evasion and other illegal means in addition to creating risks of terrorist financing and money laundering. At the G-7 summit in Lyons in 1996, a call was given to the OECD to prepare a report to address these issues with a view to establishing a multilateral approach under which countries could operate individually and collectively to limit the extent of these practices. The OECD came up with a report in 1998 and called for action against tax havens. The report envisaged blacklisting of and internationally coordinated sanctions against havens that persisted in luring other states' tax bases.

4.1.6 Countries have now realised that transparency and cooperation are essential for protecting their tax revenue. Such pressure has increased in recent times in view of the fiscal challenges faced by countries across the world and public resentment against unethical financial practices.

4.1.7 The G20 summit in London in April 2009 proved to be an important milestone when just before the summit, countries like Switzerland, Liechtenstein, Luxembourg, and Monaco announced their preparedness to accept OECD standards of transparency and exchange of information. As an equal member of the G20, India played a vital role in sending out a strong message to various countries that if they did not comply with international standards of transparency, they should be ready to face sanctions from the 20 largest economies. The G20 countries, including India, declared, 'We agree to take action against non-cooperative jurisdictions, including tax havens. We stand ready to deploy sanctions to protect our public finances and financial systems. The era of banking secrecy is over.'

4.1.8 With increased globalisation and economic liberalisation, there has been a manifold increase in cross-border transactions. This has also resulted in increased opportunities for sophisticated schemes for avoiding tax payment using the different tax rules of different countries and use of tax havens. Global trade amongst various arms of MNEs has also increased substantially and accounts for a significant proportion of global trade. It also means increasing misuse of transfer pricing, leading to estimations that developing countries might be losing significant resources due to transfer-pricing manipulation. One of the difficulties in preventing abuse of such transfer-pricing arrangements is the large disparity between resources deployed by these multinationals and those available with tax administrators, particularly of developing countries. This requires enormous reforms for improving the capacity of tax administrations and equipping them with the necessary resources to deal with such modern challenges.

4.1.9 In the wake of such dramatic transformation of the factors that lead to the generation of black money and the globalized development that facilitates them, the Government of India has resorted to a five-pronged strategy, which consists of the following:

(a) Joining the global crusade against black money;

(b) Creating appropriate legislative framework;

(c) Setting up institutions for dealing with illicit money;

(d) Developing systems for implementation; and

(e) Imparting skills to personnel for effective action.

4.2 Joining the Global Crusade against Black Money

A. India's actions through the G20

4.2.1 The financial crisis of 2008 and the resultant need for protecting revenues further strengthened the need for coordinated global efforts to tackle the challenges posed by tax haven-mediated arrangements for evading tax. India has been a strong proponent of transparency and exchange of information for tax purposes and has pushed the G20 forum to exert pressures on countries that do not conform to the international standards of transparency.

4.2.2 At the London summit in April 2009, India played a major role in developing international consensus for taking action against tax havens. In its September 2009 summit at Pittsburg, the G20 gave a call for developing a toolbox of counter measures against non-cooperative jurisdictions. The G20 leaders envisaged a 'toolbox' with possible sanctions, suggesting the following measures:

> increased disclosure requirements on the part of taxpayers and financial institutions to report transactions involving non-cooperative jurisdictions;

> withholding taxes in respect of a wide variety of payments;

- denying deductions in respect of expense payments to payees resident in a non-cooperative jurisdiction;
- reviewing tax treaty policy;
- asking international institutions and regional development banks to review their investment policies; and
- giving extra weight to the principles of tax transparency and information exchange when designing bilateral aid programmes.

4.2.3 It was on India's initiative in November 2010 at the Seoul Summit that the G20 gave a call for concluding the TIEA. Prior to this, some countries were not willing to enter into TIEAs and were insisting on entering into DTAAs. Both the DTAA as well as TIEA are effective tax information exchange mechanisms. Since negotiation of a DTAA takes time, which can delay development of the mechanism for effective exchange, India has taken the plea that a country cannot refuse signing a TIEA if it has been requested by other countries. It was again at India's initiative that this position was accepted and now global consensus has emerged that a country cannot insist on a DTAA and must conclude a TIEA if requested by other countries. After this development, many countries that were earlier insisting on DTAAs, have now agreed to conclude TIEAs with India as well other countries of the world.

4.2.4 Some countries have been unwilling to share past banking information. The issue of sharing even past information was taken up by the Finance Minister of India at the meeting of G20 Finance Ministers at Paris in February 2011. The issue was again raised at the G20 meet at Washington in April 2011, pursuant to which, the G20 issued a communiqué asking the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum hereafter) to suggest ways of improving the effectiveness of exchange-sharing mechanisms. The Finance Minister again raised this issue at the G20 Finance Ministers meeting at Paris in October 2011, while the Prime Minister raised it at the G20 Summit at Cannes in November 2011. India is committed to working with other countries to evolve global consensus on this issue in order to achieve complete transparency even with respect to past banking information.

4.2.5 India has also been raising the issue of automatic exchange of tax information, i.e. sharing of information without a request, between countries. The DTAAs and TIEAs so far provide for automatic exchange of information only on voluntary basis. India believes that automatic exchange of information is essential for promoting voluntary compliance and achieving transparency. The Indian Prime Minister and Finance Minister have repeatedly raised this issue. Indian efforts have contributed to the Cannes declaration that encourages countries to exchange information automatically.

4.2.6 The text of the communiqué issued at the G20 summit on the issue of transparency and exchange of information for tax purposes is enclosed here as **Annexure 2.**

B. Global Forum

4.2.7 The Global Forum was reconstituted in the wake of the global financial crisis. G20 leaders gave it a renewed mandate in 2009 and called on it to help secure the integrity of the financial system through the uniform implementation of high standards of transparency. Its mandate reflects the increasing need for international cooperation between tax administrations in the globalized era. At present, it has 108 jurisdictions as members, with the European Union and nine international organisations as observers.

4.2.8 India is vice chair of the Peer Review Group of the Global Forum which carries out monitoring and peer review of the member and relevant jurisdictions. Peer Review is carried out in two phases. Phase 1 deals with a jurisdiction's legal framework, while Phase 2 deals with the practical application of that framework. The peer review ensures that every jurisdiction in the world adheres to a minimum standard on transparency and exchange of information for tax purposes. This minimum standard embraces three basic components: availability of information, appropriate access to the information and the existence of exchange of information mechanisms. Till date, peer review reports of 70 jurisdictions have been accepted by the

Global Forum. India's initiative in these meetings has resulted in many jurisdictions changing their laws and administrative procedures in order to conform to international standards. Indian assessors nominated by the government have also contributed significantly to achieving this result.

C. Multilateral Convention on Mutual Administrative Assistance in Tax Matters

4.2.9 The Multilateral Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the Council of Europe and the OECD and was opened for signature by the member states of both organizations on 25 January 1998. This multilateral instrument, which was initially signed by 15 countries, provides for all possible forms of administrative cooperation between states in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. In response to the April 2009 call by the G20 for a global instrument to fight international tax evasion and avoidance, the Convention has been brought up to the internationally agreed standard on information exchange for tax purposes, in particular by requiring the exchange of bank information on request through an amending Protocol, which entered into force on 1 June 2011. The amended Protocol also provides for the opening of the Convention to all countries. India signed the Convention on 26 January 2012 and ratified it on 2 February 2012, thus becoming the first country outside the OECD and European countries to join it. There are at present 33 signatories to the Convention and 13 of them have ratified it as shown in Annexure Table 5.

4.2.10 This Convention provides many advantages. As more countries sign it, the task of information exchange will get increasingly facilitated. It is likely to be an important instrument for cooperation in the area of assistance in tax collection. By enabling development of automatic exchange of information, this convention supports India's call for standardising automatic exchange as a global standard. A unique feature of this convention is the facility for serving of notices issued by one tax administration through another tax administration. It is also hoped that the convention will facilitate tax examination abroad, which is being included in all TIEAs. The Convention also supports India's demand for sharing of past banking information. As more and more countries join this Convention without reservation, the instrument has the potential of becoming an effective tool for tax cooperation. However, it has provision for reservations. India will continue to work with other countries in order to build consensus against reservations.

D. Financial Action Task Force

4.2.11 India, having met the strict evaluation norms of the FATF, was granted full-fledged membership (34th Member) in June 2010. Further, in recognition of India's efforts in this regard, the Asia Pacific Group (APG) on Money Laundering and Terrorist Funding chose India as Co-chair of the Group at its annual meeting in Singapore in July 2010. For furtherance of the objectives of joining the global efforts against money laundering and bolstering the national programme, India successfully hosted the annual meeting of the APG between 18 and 22 July 2011 at Kochi, Kerala. India is fully committed to following the FATF norms of KYC and customer due diligence, illegal transfer of funds and their recovery, and international cooperation.

E. United Nations Convention Against Corruption

4.2.12 On 9 May, 2011 India became the 152nd country to ratify the United Nations Convention against Corruption, which was signed on 9 December 2005. The purposes of this Convention are: (a) to promote and strengthen measures for preventing and combating corruption more efficiently and effectively; (b) to promote, facilitate, and support international cooperation and technical assistance in the prevention of and fight against corruption including in asset recovery; (c) to promote integrity, accountability measures, and the criminalisation of the most prevalent forms of corruption in both public and private sectors.

4.2.13 The Convention requires the state parties to criminalise bribery of national public officials, foreign public officials and officials of public international organizations, embezzlement, misappropriation or other divisions of property by a public official, laundering of proceeds of crime, obstruction of justice, and illicit enrichment. Under the Convention countries should have mechanisms for freezing, seizure, and confiscation of the proceeds of crime and cooperate in criminal matters by extradition and mutual legal assistance to the greatest possible extent. The return of assets is a fundamental objective of this Convention and countries are to afford one another the widest measure of cooperation and assistance in this regard. It prescribes

mechanisms for recovery of property through international cooperation for purposes of confiscation. This Convention can help prevent perpetrators of corruption from illegally transferring their wealth abroad and will be an important tool for tackling this menace.

F. United Nations Convention against Transnational Organized Crime

4.2.14 On 5 May 2011, India ratified the United Nations Convention against Transnational Organized Crime (Palermo Convention), which was signed on 12 December 2002. The purpose of this Convention is to promote international cooperation in preventing and combating transnational organized crime more effectively. Under the Convention countries are to take measures against smuggling of migrants by land, sea, and air as well as manufacturing and trafficking of firearms and ammunition. The Convention will help India get international cooperation in tracing, seizure, freezing, and confiscation of the proceeds of crimes under a wide range of mutual legal assistance clauses, even with countries with which it has no mutual legal assistance treaties.

G. International Convention for the Suppression of the Financing of Terrorism

4.2.15 India has signed the International Convention for the Suppression of the Financing of Terrorism on 8 September 2000 and ratified it on 22 April 2003. It requires each state party to take appropriate measures, in accordance with its domestic legal principles, for the detection and freezing, seizure, or forfeiture of any funds used or allocated for the purposes of committing the offences described, as well as take alleged offenders into custody, prosecute or extradite them, cooperate in preventive measures and countermeasures, and exchange information and evidence needed in related criminal proceedings. The offences referred to in the Convention are deemed to be extraditable offences between state parties under existing extradition treaties and under the Convention itself. It will not only strengthen India's reach against those financing terrorism but also act as a check against generation and accumulation of black money through terrorism or organised crime.

H. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

4.2.16 India has also joined the United Nations Convention against Illicit Traffic in Narcotic Drugs And Psychotropic Substances on 27 March 1990.The purpose of this Convention is to promote cooperation among the parties so that they may more effectively address the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. The Convention also calls for criminalisation of money laundering, the freezing, seizure and confiscation of the proceeds of crime, and international cooperation.

4.2.17 Indian Customs is represented in matters relating to international cooperation in enforcement by the Department of Revenue Intelligence. It coordinates cooperation under various bilateral agreements or the International Convention on Mutual Administrative Assistance for the Prevention and Repression of Customs Offences (Nairobi Convention 1977). India has signed bilateral cooperation agreements/ memoranda of understanding with 20 countries. This arrangement helps in dealing with customs offences which can have direct linkages with the generation of black money.

I. Egmont Group

4.2.18 Egmont group is a group of FIUs for international cooperation and free exchange of information. FIU-IND was admitted as a member of the group in May 2007 and since then India has been playing an important role in facilitating cooperation amongst FIUs through this Group. At the Group's plenary meeting in June 2010, India was elected co-chair of the Asia group which has given Indian representatives an opportunity to participate in the meetings and deliberations of the Egmont Committee which is the policy-making body of the Group.

4.2.19 The foregoing discussion demonstrates that India has been in the forefront of the global crusade against black money by effectively raising the issues of transparency in global forums, has joined various international conventions, and is promoting full flow of information amongst jurisdictions.

4.3 Creating an appropriate legislative framework

4.3.1 The international consensus on the need for coordinated action in the fight against the menace of black money requires parallel action at country level. Accordingly, a number of proactive steps have recently been taken in order to create an appropriate legislative framework for preventing the generation of black money and for its detection.

A. Strengthening Direct Taxes provisions including those relating to International Taxation and Transfer Pricing

4.3.2 A number of significant changes were brought about through the **Finance Act 2011** to check the menace of black money and in line with our joining the global crusade, which are summarised as follows:

(a) A new section 94A was introduced in the Income Tax Act to discourage transactions between residents and persons located in jurisdictions which do not effectively exchange information with India (non-cooperative jurisdictions). The section provides that if an assessee enters into a transaction with a person in a non-cooperative jurisdiction, then all the parties to the transaction shall be treated as associated enterprises and the transaction treated as an international transaction resulting in application of transfer-pricing regulations. Further, no deduction in respect of any payment made to any financial institution shall be allowed unless the assessee furnishes an authorization allowing for seeking relevant information from the said financial institution. Similarly, no deduction in respect of any other expenditure or allowance arising from the transaction with a person shall be allowed unless the assessee maintains and furnishes the prescribed information. If any sum is received from a person located in such jurisdictions, then the onus is on the assessee to satisfactorily explain the source of such money in the hands of such person or in the hands of the beneficial owner, and in case of his failure to do so, the amount shall be deemed to be the income of the assessee. Any payment made to a person located in such jurisdictions shall be liable for withholding tax at 30 per cent or rate higher than that prescribed in the Income Tax Act.

(b) To facilitate prompt collection of information on requests received from tax authorities outside India under the provisions of DTAAs/TIEAs, the powers under section 131 and 133A of income tax authorities have been extended

(c) The time limit for completion of assessments if a request is made to foreign tax authorities has been extended to six months through the Finance Act 2011, which has been further extended to one year through the Finance Bill 2012.

4.3.3 A number of other significant changes have been proposed in the Income Tax Act through the Finance Bill 2012 which include the following:

(a) General Anti Avoidance Rules (GAAR) have been introduced with effect from 1 April 2014 to check aggressive tax planning with the use of sophisticated structures. With adequate safeguards to prevent the misuse of the provisions, it will ensure that the real substance of transactions will be taken into account for determining tax consequences.

(b) With a view to providing objectivity in determination of income from related domestic party transactions and determination of reasonableness of expenditure between related domestic parties, provisions relating to transfer pricing regulations have been extended to specified domestic transactions.

(c) In order to reduce the quantum of cash transactions in the bullion and jewellery sector and for curbing the flow of unaccounted money in the trading system in the sector, the seller of bullion and jewellery is now required to collect tax @1 per cent of sales consideration from every buyer of jewellery and bullion if sales consideration is above ` 500,000 and ` 2,00,000 respectively.

(d) In order to facilitate tax collection and improve the reporting mechanism for transactions in the mining sector, provision of collection of tax at source @1 per cent, in certain circumstances, has been introduced.

(e) To check the introduction of black money in the accounts, it has been provided that the nature and source of any sum credited as share capital, share premium, etc. in the books of a closely held company shall be treated as explained only if the source of funds is also explained by the said company in the hands of the resident shareholder.

(f) To create greater deterrence against black money, unexplained amounts deemed as income of a taxpayer under sections 68, 69, 69A, 69B, 69C and 69D of the Income Tax Act 1961 are proposed to be taxed at the maximum marginal rate without any allowance or deduction.

(g) To improve incentives for disclosure, in case of search operations, it has been provided that if the undisclosed income is declared during the time of search, there will be penalty of 10 per cent, if disclosed during the time of filing of return, the penalty will be 20 per cent, and if detected during post search assessment, the penalty will be 30 to 90 per cent of the undisclosed income.

(h) To facilitate the launch of prosecution in cases of evasion of taxes and speedy trial and early conclusion, provisions for constitution of special courts, summons trials, and appointment of public prosecutors have been included.

(i) To check introduction of black money in the share capital of a company in which the public is not substantially interested, it is provided that consideration received for issue of shares exceeding the face value of such shares will be deemed the income of the company. The provisions will not apply if the company substantiates that the fair market value has been determined on the basis of the value of its tangible and intangible assets.

(j) It has been provided that in the case of a transfer, if consideration for the transfer of a capital asset(s) is not attributable or determinable, then for the purpose of computing income chargeable to tax as gains, the fair market value of the asset shall be taken to be the full market value of consideration.

(k) The return forms have also been modified so that every taxpayer is required to disclose the name and PAN of the joint owner, if he has income/loss from a jointly owned house property.

(l) It has been provided that deduction on donations to charitable institutions, etc. will be allowed in excess of ` 10,000 only if they are made in a mode other than cash. The return form has been modified and if a person claims deduction for charity and donation, he has to provide the details such as name, address, and PAN of the donor.

(m) Sections 90 and 90A of the Income Tax Act have been amended to provide that submission of Tax Residency Certificate will be a necessary but not sufficient condition for availing the benefits of DTAAs. The return form has been modified to provide that if a person claims relief under a DTAA for taxes paid in a foreign country, then the details such as country name, tax identification number in that country, income, and taxes paid in that country need to be furnished.

(n) The reporting mechanisms for those operating assets and banking accounts abroad is strengthened by making filing of return of income mandatory for every resident (excluding person who is not ordinarily resident in India) having any assets or banking accounts located outside India even if s/he does not have taxable income. The return forms have been modified whereby every person except a person not ordinarily resident is required to submit details of foreign bank accounts, financial interests, immovable properties or other assets outside India. Any false information makes the filer liable for prosecution.

(o) The time limit for reopening of assessments, where income in relation to any asset located outside India that has escaped assessment, has been extended from six years to sixteen years.

(p) The electronic filing of tax returns has been made mandatory for individuals having total income more than ` 10 lakh and for resident individuals having any assets outside India.

4.3.4 In view of the report of GFI relating to mis-pricing, a committee was constituted by the Finance Minister to strengthen the transfer-pricing provisions in the Income Tax Act 1961. Various recommendations made by the committee have been implemented by way of legislative amendments through the Finance Acts 2011 and the Finance Bill 2012.

4.3.5 Simultaneously, the procedural aspects are also being modified to ensure that the creation of deterrence against black money generation is strengthened while ironing out aspects that can cause inconvenience for taxpayers. Clause (iv) of Rule 6DDA of the Income Tax Rules 1962 requires a recognized stock exchange to ensure that transactions once registered in the system cannot be erased or modified. However, in case of genuine human errors, modification of a registered transaction is permitted by SEBI. On analysis of National Stock Exchange (NSE) data for March 2010, it was observed that about 713 members had carried out changes, the total volume of which was more than ` 56,000 crore. In 19 of these cases, the changes were made more than 5000 times, amounting to more than ` 22,000 crore. Such frequent changes are vulnerable to tax manipulation and misuse, while absolute restriction can cause hardships in case of genuine errors. To balance the two considerations, Rule 6DDA of the Income Tax Rules 1962 has been amended to provide that stock exchanges shall send a monthly statement of such transactions in which client codes were modified.

4.3.6 To facilitate allotment of PAN numbers to foreign investors, new Forms No. 49 A and 49AA have been devised for Indian and foreign entities respectively. Simultaneously, Rule 114 of the Income Tax Rules has also been amended to ensure acceptance of a copy of National/Citizenship/Taxpayer Identification Number in the case of individuals not being citizens of India, as proof of identity and address, if duly attested by an apostille of the country where such an applicant is resident. These measures are expected to improve compliance while minimising inconvenience and thereby contribute to regulatory improvement.

B. Creating network of DTAAs and TIEAs as per International Standard

4.3.7 DTAAs promote international trade by allocating taxation rights between the country of source and the country of residence, avoiding double tax, and enabling corresponding adjustments in the face of transfer-pricing adjustments in the other country. In addition, DTAAs can also enable mutual assistance in collecting information, tax investigation, and collection of taxes between the respective countries as well as help in resolution of tax disputes.

4.3.8 Where a DTAA does not exist for whatever reason, the countries can choose to enter into a TIEA which is focused primarily on mutual facilitation of sharing tax information. The development of this network of DTAAs and TIEAs has been an important development in our capacity to prevent misuse of international transactions and transfer pricing for evading tax and generating black money.

4.3.9 After 2009, a global consensus was developed that jurisdictions should exchange banking information as well as other information in which the supplying country has no domestic interest. The international standards for exchange of information for tax purposes have accordingly been modified. Since most of the Indian DTAAs that came into existence prior to 2009 were not as per the latest international standards, negotiations were started, and in many cases have been completed, with different countries to bring them up to those standards.

4.3.10 One of the old DTAAs which was brought up to international standards was that with Switzerland. In March 2009, in view of the stand taken by the G20 countries, Switzerland announced that it was willing to adopt the international standards on administrative assistance in tax matters and withdrew its reservations about sharing banking information and sharing of information in the absence of domestic interest. After this change of policy, India moved swiftly and signed a Protocol for amending the DTAA on 30 August 2010, which came into force on 7 November 2011. As per the revised DTAA, Switzerland is obliged to

provide banking and other information in specific cases that relate to the period starting from 1 April 2011, with limited retrospective application. It is pertinent to note that with this change in policy of Switzerland, many other countries have entered into Protocols with it for bringing provisions relating to exchange of information up to international standards. In most such Protocols, Switzerland has agreed to share information prospectively only and has accepted limited retrospectivity only in case of some countries, such as India (Annexure Table 6).

4.3.11 In addition to bringing the existing DTAAs up to international standards on exchange of information, India has also started negotiations for new DTAAs with several countries. Many of these negotiations have been finalized and in all these new treaties there are provisions for exchange of information as per international standards, including exchange of banking information.

4.3.12 Before 2009, many countries were not willing to enter into TIEAs and insisted instead on DTAAs. Since it may not always be in its interest to conclude DTAAs with those countries and in view of the fact that negotiations for a DTAA take far longer, India prevailed upon these countries to enter into TIEAs with it and started negotiations with them.

4.3.13 As per international standards, if information is originally regarded as secret in the transmitting state, it shall be used only for tax-related purposes, but may be disclosed in public court proceedings or in judicial decisions. The Government of India has taken up the issue of relaxing the confidentiality clause with several countries. In all the new agreements being negotiated, attempts are being made to provide for sharing of information among the investigating agencies with the consent of the concerned country. This will strengthen India's capacity to prevent generation of black money through use of offshore entities and international transactions.

4.3.14 In 30 out of India's 82 DTAAs, there is provision for assistance in collection of taxes which facilitates repatriation of assets located outside India to the extent of the outstanding tax demand which cannot be collected in India. The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which will come into force on 1 June 2012, has provisions for assistance in collection of taxes. Thus those signatories to the Convention who have not placed reservations are obliged to provide such assistance for collection of taxes and repatriation of assets. It may, however, be noted that there is no Article on Assistance in Tax Collection with Switzerland as it has not agreed to have such a provision with any country and has not yet joined this Convention.

4.3.15 All the TIEAs signed by India have provisions for tax examination abroad. Further, as per the revised standards, under the DTAAs, countries are obliged to provide assistance in tax examination under the Article on exchange of information. In addition, India has included specific Articles on Tax Examination Abroad with a number of countries. Most of the TIEAs signed by India also contain provision for obtaining past information either in all cases or at least in criminal cases.

C. Prevention of Money Laundering Act

4.3.16 The Prevention of Money Laundering Act 2002 was enacted to prevent money laundering and provide for confiscation of property derived from, or involved in, money laundering and for matters connected therewith or incidental thereto. The Act also addressed international obligations under the Political Declaration and Global Programme of Action adopted by the General Assembly of the United Nations to prevent money laundering.

4.3.17 To strengthen the provisions of the PMLA, amendments were carried out in 2009. These amendments have introduced new definitions to clarify and strengthen the Act and strengthened provisions related to attachment of property involved in money laundering and its seizure and confiscation. More offences have been added in Parts A and B of the Schedule to the Act, including those pertaining to insider trading and market manipulation as well as smuggling of antiques, terrorism funding, human trafficking other than prostitution, and a wider range of environmental crimes. A new category of offences with cross-border implications has been introduced as Part C.

4.3.18 The problem of black money is no longer restricted to the geopolitical boundaries of any country. It has become a global menace that cannot be contained by any nation alone. In view of this, India has become a member of the FATF and APG on Money Laundering, which are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism. Consequent to the submission of an action plan to the FATF for bringing India's anti-money-laundering legislation on par with international standards and to address some of the deficiencies of the Act that have been experienced by the implementing agencies, PMLA 2002 is further proposed to be amended through the Prevention of Money Laundering (Amendment) Bill 2011, which is under consideration of Parliament. The Bill seeks to introduce the concept of 'corresponding law' to link the provisions of Indian law with the laws of foreign countries and provide for transfer of the proceeds of the foreign predicate offence in any manner in India. It also proposes to enlarge the definition of the offence of money laundering to include therein activities like concealment, acquisition, possession, and use of proceeds of crime as criminal activities and remove the existing limit of ` five lakh for imposition of fine under the Act. It also strengthens provisions for attachment and confiscation of the proceeds of crime and widens the investigative powers of the Director and clubs offences listed under Schedules A and B into a single Schedule.

D. Prevention of Benami Transactions

4.3.19 One of the important initiatives taken by the Government is the introduction of the Benami Transaction (Prohibition) Bill 2011. This comprehensive legislation was introduced in the Lok Sabha on 18 August 2011 and is currently being examined by the Standing Committee on Finance. It will iron out the infirmities in the Benami Transaction (Prohibition) Act enacted in 1988 and formalise the procedure for implementing the benami law, including the procedure for determination, confiscation, prosecution, and miscellaneous requirements.

4.3.20 This Bill defines benami property and a benami transaction in terms of a transaction or agreement where a property is transferred to or held by a person for a consideration provided or paid by another person. Such a property is held for the immediate or future benefit, direct or indirect, of the person providing the consideration. A transaction or arrangement in respect of a property carried out or made in a fictitious name or where the owner of the property is not aware of or denies knowledge of such ownership is also included in the definition of benami transaction. The Bill specifies the consequences of benami transactions in the form of confiscation of the benami property and imprisonment up to two years in addition to a fine. This Bill also provides the procedure for enquiry and determination of benami property and its consequences as well as the authorities empowered to act for this purpose, including the appellate authorities. Once the report of the Standing Committee is received, the Benami Transactions (Prohibition) Bill 2011 will be moved for passage in Parliament and the relevant rules notified thereafter.

E. Public Procurement Bill

4.3.21 The Public Procurement Bill 2012 was approved by the Union Cabinet on 12th April 2012 for introduction in Parliament. The Bill seeks to regulate procurement by ministries/ departments of the central Government and its attached/subordinate offices, central public sector enterprises (CPSEs), autonomous and statutory bodies controlled by the central government and other procuring entities with the objectives of ensuring transparency, accountability and probity in the procurement process, fair and equitable treatment of bidders, promoting competition, enhancing efficiency and economy, safeguarding integrity in the procurement process, and enhancing public confidence in public procurement.

4.3.22 The Bill is based on broad principles and envisages a set of detailed rules, guidelines, and model documents. It builds on national and international experience and best practices as appropriate for the needs of the Government of India. It will create a statutory framework for public procurement which will

provide greater accountability, transparency, and enforceability of the regulatory framework. The Bill codifies the essential principles governing procurement required for achieving economy, efficiency, and quality as well as combating corruption. It legally obligates procuring entities and their officials to comply with these principles. It also ensures that competition will be maximised in procurement, while providing for adequate flexibility for different types of procurement needs. It puts in place a strong framework of transparency and accountability through a public procurement portal and a grievance redressal system in which an independent mechanism, chaired by a retired High Court Judge, will review grievances.

F. Prevention of Bribery of Foreign Public Officials Bill

4.3.23 The Prevention of Bribery of Foreign Public Officials and Officials of the Public International Organisations Bill 2011 was introduced in the Lok Sabha on 25 March 2011 and is under consideration of the Standing Committee. The Bill seeks to prevent corruption relating to bribery of foreign public officials and officials of public international organisations and to address matters connected therewith or incidental thereto. The proposed legislation prohibits acceptance of gratification by foreign public officials or officials of public international organisations as well as the act of giving such gratification or its abetment. The bill also empowers the central government to enter into agreements with foreign countries for enforcing the provisions, makes offences under the proposed act extraditable, and provides for attachment, seizure and confiscation of property in India or the respective country and mutual assistance in this regard.

G. Lokpal and Lokayukta Bill

4.3.24 The Lokpal and Lokayukta Bill 2011, which after being passed by the Lok Sabha is now under consideration of the Rajya Sabha, provides for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto. The Bill envisages setting up of the institution of Lokpal consisting of a Chairperson and eight Members with the stipulation that half of the Members shall be Judicial Members. It shall have its own Investigation Wing and Prosecution Wing with such officers and staff as are necessary to carry out its functions. The Lokpal shall inquire into allegations of corruption made in respect of the Prime Minister after he has demitted office; a Minister of the union; a Member of Parliament; any Group 'A' officer or equivalent; Chairperson or member or officer equivalent to Group 'A' in any body/ board/ corporation/ authority/ company/ society/ trust/ autonomous body established by an Act of Parliament or wholly or partly financed or controlled by the central government; and any director, manager, secretary or other officer of a society or association of persons or trust wholly or partly financed or aided by the government or in receipt of any donations from the public and whose annual income exceeds such amount as the central government may by notification specify. However, organisations created for religious purposes and receiving public donations shall be outside the purview of the Lokpal. The Lokpal shall not require sanction or approval under Section 197 of the Code of Criminal Procedure 1973 or Section 19 of the Prevention of Corruption Act 1988 in cases where prosecution is proposed. The Lokpal shall also have powers to attach the property of corrupt public servants acquired through corrupt means.

H. Citizens' Grievance Redressal Bill

4.3.25 The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011, which is presently under consideration of the Lok Sabha outlines the responsibilities of government departments towards citizens and how someone who is denied the service due to him can seek redressel. It mandates that every public authority or government department has to publish a citizen's charter listing all services rendered by that department along with a grievance redressal mechanism for non-compliance with the citizen's charter. It also sets up a Central Public Grievances Redressal Commission, with an equivalent in every state, and provides for a designated authority from a department other than the one against which the complaint has been filed to address the complaint. The other features of the Bill are:

> The Citizen's charter has to clearly explain the complaint redressal system for that office, like which officer in that department the complaint should be registered with.

- Every government department or public authority shall create an 'information and facilitation centre' that could include a customer helpline or help desk to deliver services and handle complaints.
- Every public authority will appoint or designate Grievance Redressal Officers whose contact information will be clearly shared with the public. The Grievance Redressal Officer shall provide the public with all necessary assistance in filing complaints. Within two days of the complaint being registered, the citizen who has filed a complaint will receive - by SMS or mail - a unique complaint number and a time frame within which the complaint will be handled. That time frame cannot exceed 30 days from when the complaint was received.
- The Grievance Redressal Officer has to ensure that the person who made the complaint is informed in writing with an Action Taken Report on how his/ her complaint was handled. If this does not happen, the citizen can appeal to a designated authority. This officer can summon others and ask them to testify under oath.
- The designated authority has to ensure that the appeal is acted upon within 30 days. S/he can fine the officer concerned and compensate the citizen, if appropriate.
- If a citizen is not happy with the designated authority's response or decision, s/he can take her/his complaint to the State Public Grievance Redressal Commission (assuming that the complaint is against a government department that is under the jurisdiction of a state government). Each state shall set up this body. It will have a Chief Commissioner and a maximum of ten other commissioners. They will be appointed by a committee consisting of the Chief Minister, the leader of opposition in that state, and a sitting judge of the High Court. The commissioners will have a term of five years.
- For citizens who are unhappy with a service provided to them from a government office that is under the jurisdiction of the central government, they can finally appeal to the Central Public Grievance Redressal Commission. This body will have a Chief Commissioner and a maximum of ten commissioners who will be appointed by the President after they are chosen by a committee comprising the PM, the leader of opposition, and a sitting judge of the Supreme Court.
- If citizens are unhappy with the decision of the Central or State Commissions, they can appeal to the Lokayukta or Lokpal.

I. Judicial Standards and Accountability Bill

4.3.26 The Judicial Standards and Accountability Bill 2010 was passed by the Lok Sabha and is under consideration of the Rajya Sabha. The Bill provides a mechanism for enquiring into complaints against judges of the Supreme Court and High Courts, lays down judicial standards, and requires judges of the Supreme Court and High Courts to declare their assets and liabilities. The Bill seeks to replace the Judges (Inquiry) Act 1968 while retaining its basic features. The enactment of the Bill will address the growing concerns regarding the need to ensure greater accountability of the higher judiciary by bringing in more transparency and will further strengthen the credibility and independence of the judiciary. The Bill seeks to lay down enforceable standards of conduct for judges. The main features of the Bill are:

- It requires judges to declare their assets, lays down judicial standards, and establishes processes for removal of judges of the Supreme Court and High Courts.
- It requires judges to declare their assets and liabilities and also those of their spouses and children.
- The Bill establishes the National Judicial Oversight Committee, the Complaints Scrutiny Panel, and an investigation committee. Any person can make a complaint against a judge to the Oversight Committee on grounds of 'misbehaviour'.
- A motion for removal of a judge on grounds of misbehaviour can also be moved in Parliament. Such a motion will be referred for further inquiry to the Oversight Committee.

> Complaints and inquiries against judges will be confidential and frivolous complaints will be penalised.

> The Oversight Committee may issue advisories or warnings to judges and also recommend their removal to the President.

J. Whistleblower's Bill

4.3.27 The Public Interest Disclosure and Protection to Persons Making the Disclosure Bill 2010, (commonly known as the Whistleblowers' Bill) was passed by the Lok Sabha and is under consideration of the Rajya Sabha. The Bill seeks to provide 'adequate protection to persons reporting corruption or wilful misuse of discretion which causes demonstrable loss to the government or commission of a criminal offence by a public servant'. While the measure sets out the procedure to inquire into disclosures and provides adequate safeguards against victimisation of the whistleblower, it also seeks to provide punishment for false or frivolous complaints.

K. Direct Payment into Bank Accounts of Payees

4.3.28 As part of the Government's commitment to good governance and elimination of corruption, the Ministry of Finance has amended the relevant rules to enable all ministries and departments to facilitate payments by direct credit to the bank accounts of payees. Orders have also been issued by the Controller General of Accounts (CGA) that, with effect from 1 April 2012, all payments above ` 25,000 to suppliers, contractors, and grantee and loanee institutions shall be directly credited to their bank accounts. While government servants will continue to have the option of receiving their salary by cash or cheque, they may also opt for it to be directly credited to their bank accounts. However, all other payments to government servants of an amount above ` 25,000 shall be credited directly to their bank accounts. Further, all payments towards the settlement of retirement/terminal benefits of government servants shall also be directly credited to their bank accounts. The Finance Minister has also inaugurated a 'Government e-payment gateway' set up by the CGA which will be used by the Pay and Accounts Officers (PAOs) of the central civil ministries/ departments for implementing these measures. The Controller General of Defence Accounts (CGDA) will also be progressively using this e-payment gateway. The measure is expected to streamline the process of making payments by government departments while minimising the interface of payees with government offices for receiving their dues. This e-payment gateway will enhance transparency and accountability in public dealings of the central government and also usher in green banking by the government.

L. Unique Identity (UID)-Aadhaar

4.3.29 As announced by the Finance Minister in his Budget speech, enrolments into the Aadhaar system have crossed 20 crore and the Aadhaar numbers generated up to date 14 crore. Adequate funds have been allocated for completing another 40 crore enrolments starting from 1 April 2012. The Aadhaar platform will facilitate payments under the Mahatma Gandhi National Rural Employment Guarantee Act (MG-NREGA); old age, widow and disability pensions; and scholarships to be made directly into beneficiary accounts in selected areas. This initiative will cut down corruption and the generation of black money in India.

M. Amendments to the NDPS Act

4.3.30 On 8 September 2011, the Government introduced the Narcotic Drugs and Psychotropic Substance (Amendment) Bill 2011 in the Lok Sabha, which is presently under consideration of the Standing Committee. The Bill seeks to amend a number of provisions of the NDPS Act including modification of the definitions of 'small' and 'commercial' quantities, standardisation of punishment for consumption of drugs, and transfer of the power to regulate 'poppy straw concentrate' from the state governments to central government. It also widens the scope for forfeiture of illegally acquired property, wherein any property of a person who is alleged to be involved in illicit traffic and the source of which cannot be proved constitutes 'illegally acquired property' and is liable to be seized.

4.4 Setting up Institutions for Dealing with Illicit Money

4.4.1 The third limb of the five-pronged strategy to deal with the menace of black money, particularly to check cross-border flows, is setting up institutions to deal with the problem. Some of the initiatives taken by the Government of India in this regard are described in the following paragraphs.

A. Directorate of Criminal Investigation

4.4.2 Till recently, the tax administration in India did not have a separate set-up for targeted investigation into criminal cases. On 30 May 2011, a notification has been issued by the Government of India for creation of a Directorate of Income Tax (Criminal Investigation) or DCI in the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance. The DCI is mandated to perform functions in respect of criminal matters having any financial implication punishable as an offence under any direct taxes law. The DCI, in discharge of its responsibilities under the direct tax laws, is required to perform the following functions:

- Seek and collect information about persons and transactions suspected to be involved in criminal activities having cross-border, inter-state, or international ramifications that pose a threat to national security and are punishable under the direct tax laws;
- Investigate the sources and uses of funds involved in such criminal activities;
- Cause issuance of show cause notices for offences committed under any direct tax law;
- File prosecution complaints in the competent court under any direct tax law relating to a criminal activity;
- Hire the services of special prosecutors and other experts for pursuing a prosecution complaint filed in any court of competent jurisdiction;
- Execute appropriate witness protection programmes for effective prosecution of criminal offences under the direct tax laws, i.e. to protect and rehabilitate witnesses who support the state in prosecution of such offences so as to insulate them from any harm to their person;
- Coordinate with and extend necessary expert, technical, and logistical support to any other intelligence or law enforcement agency in India investigating crimes having cross-border, inter-state or international ramifications that pose a threat to national security;
- Enter into agreements for sharing of information and other cooperation with any central or state agency in India;
- Enter into agreements for sharing of information and other cooperation with such agencies of foreign states as may be permissible under any international agreement or treaty; and
- Any other matter relating to the above.

The DCI is headed by a Director General of Income Tax (Criminal Investigation) and functions under administrative control of the CBDT. The head office of the DCI is located at New Delhi and it has eight regional offices all over India.

B. Cell for Exchange of Information

4.4.3 The Government of India has set up an Exchange of Information (EOI) Cell in the FT&TR Division of the CBDT. The EOI works on the basis of mutual cooperation. The competent authorities of different countries provide different forms of administrative assistance to each other based on the provisions of DTAAs/TIEAs or the Multilateral Convention for Mutual Administrative Assistance. Administrative assistance under these instruments of EOI, depending on the terms of the agreement, may take the form of (a) specific exchange of information, (b) spontaneous exchange of information, (c) automatic exchange of information, (d) tax examination abroad, (e) simultaneous exchange of information, (f) service of documents, and (g) assistance in collection of tax.

C. Income Tax Overseas Units

4.4.4 With increased scope for international cooperation in areas of exchange of information, transfer pricing, and taxation of cross-border transactions, Government of India decided to create a network of Income Tax Overseas Units (ITOUs). In addition to the existing two ITOUs at Singapore and Mauritius, eight more have been opened. The objectives of these ITOUs are

- Monitor DTAA-related issues;
- Assist the authorities in handling issues arising out of international taxation and transfer pricing;
- Assist the authorities in frequent revision of existing DTAAs;
- Assist the authorities in negotiation of TIEAs;
- Expedite the exchange of information by the competent authorities (as per DTAAs and TIEAs) of these countries as required by the competent authority in India;
- Assist the authorities in collection of taxes;
- Assist the authorities in work relating to Mutual Agreement Procedure under DTAAs;
- Maintain liaison with various departments of the respective countries especially Income Tax Department, Registrar of Companies, Department of Banking Services, and Administrators of Financial Services;
- Maintain liaison with investors investing in India from these countries;
- Impart information about domestic laws of India to foreign investors;
- Maintain liaison with Indian investors in these countries to assess any tax-related problems arising for these investors;
- Assist the Mission in any other commercial/economic work assigned to the officer by the Head of the Mission; and
- Any other work assigned to the officer by the CBDT, Department of Revenue.

4.4.5 The ITOUs at Mauritius and Singapore have been very useful in discharging the functions outlined in para 4.4.4. So far, 49 pieces of information have been received from these countries. It may also be pointed out that the activities listed in para 4.4.4 have assumed great significance in the past few years. Opening of the new ITOUs and presence of tax officers in the ITOUs also acts as effective deterrence against tax evasion.

D. Strengthening the FT&TR Division in the CBDT

4.4.6 The FT&TR Division of the CBDT has been playing a pivotal role in negotiating DTAAs and TIEAs and bringing them up to international standards, exchanging of information with foreign tax administrators under these DTAAs/TIEAs through the competent authority, settling of disputes under DTAAs/TIEAs, participation in international forums for strongly putting across the views of the Government of India, administration of Advanced Pricing Agreements, in addition to advising the government on all policies relating to international taxation and transfer pricing.

4.4.7 The FT&TR Division has been strengthened by creating 4 new posts of Director, 7 new posts of Under Secretary, and 9 new posts of Section Officer (SO) along with supporting staff.

E. Strengthening of Investigation Division of the CBDT

4.4.8 The Investigation Division of the CBDT has also been enlarged from the existing 2 to 5 branches and 3 posts of Director, 3 of Under Secretary, and 5 of Officer on Special Duty (OSD) (SO-level), have been created to deal with the increasing workload relating to black money. The Directorates of Income Tax (Central Information Branch) have been redesignated Directorates of Income Tax (Intelligence) and given powers under the Income Tax Act 1961 to collect as well as verify information.

4.5 Developing Systems for Implementation

Some of the steps taken under the fourth limb of the five-pronged strategey are listed below:

A. Integrated Taxpayer Data Management System (ITDMS) and 360-degree Profiling:

4.5.1 The information collected by the Income Tax Department from various sources such as AIR, tax deduction at source (TDS), the Central Information Branch, OLTAS, etc. is collated in a computerized environment to create a 360-degree profile of the high net-worth assessees, termed ITDMS. The ITDMS is utilized for investigation of tax evasion complaints and for developing cases for search and seizure actions.

B. Setting up Cyber Forensic Labs and Work Stations:

4.5.2 During the course of search and seizure operations, specialized skills are required for identifying and safely retrieving relevant data so that the integrity of the data can be protected and its evidentiary value established in a court of law. Excellent results have been achieved in many search and seizure cases by availing of the expertise of forensic labs in Delhi and Mumbai. Apart from protecting the evidentiary value of data seized in the course of search and seizure operations, cyber forensic labs aim at retrieving hidden, password-protected, and deleted files and at giving protection against advanced software tools (logic bombs) which get activated if the system is not shut down/started with a particular set of keystrokes.

C. CAIT for Focused Investigation:

4.5.3 The Investigation Wing of the CBDT has developed a software audit tool to analyse computerised books of accounts so as to assist tax officers in tax assessments. The computer-assisted investigation tool (CAIT) can analyse accounts maintained on various accounting software available in market - such as Tally, ERP, and SAP -and thus help officers of the Income Tax Department conduct audit and investigation on a number of parameters. An MOU & SLA (memorandum of understanding and service-level agreement) was signed between the Department and the vendor M/s Audi Time Information System (I) Ltd. CAIT has been implemented in 25 locations across the country in the first phase during financial year 2011-12 and thus equipped the department with an effective software tool for detecting under-reporting or mis-reporting of income and tax evasion.

D. Goods and Services Tax Network (GSTN)

4.5.4 The Cabinet has approved a proposal to set up a special purpose vehicle -GSTN (GSTN SPV) for providing shared IT infrastructure and services to central and state governments, taxpayers, and other stakeholders for implementation of the goods and services tax (GST), both before and after the rollout of GST. During the pre-GST stage, the services on offer would include taxpayer utility, common return submission along with tracking mechanism for inter-state trade, common tax payment gateway, common registration for states (value-added tax [VAT] and central sales tax [CST]) and centre (central excise and service tax) and building interface between the GSTN Common Portal and state/centre tax systems. The GSTN SPV would be substantially funded through a one-time non-recurring grant-in-aid of ` 315 crore from the central government towards expenditure for setting up and functioning of the SPV for a three-year period after incorporation.

E. Committee on Black Money

4.5.5 A Committee headed by the Chairman of CBDT was constituted on 27th May, 2011 for examining ways to strengthen laws to curb the generation of black money in the country, its legal transfer abroad and its recovery. The Committee has submitted its report to the Ministry of Finance in March, 2012 and the recommendations are summarised at Annexure 3.

4.6 Imparting Skills to the Personnel for Effective Action.

The fifth limb of the five pronged strategy to deal with the menace of Black Money is imparting skills to the personnel dealing with black money and some of the steps taken in this regard are summarised below.

4.6.1 Capacity building by imparting skills to augment the capacity of the manpower resources of the Income Tax Department is an important limb of the five-pronged strategy formulated by the government for effectively tackling the menace of black money. To this end, efforts have been made to regularly upgrade the skills of officers and staff and provide them exposure to the international experience and global best practices in effectively dealing with black money through various training modules.

4.6.2 The Income Tax Department has, in recent times, aspired to become a facilitator of voluntary compliance in addition to being an enforcement agency and accordingly efforts have been undertaken to widen the induction-training process from just imparting knowledge and skills in the area of tax laws to inculcating attitudes and skills required for quality taxpayers' service and enhancing understanding of compliance behaviour.

4.6.3 To further streamline and systematise the process of training needs analysis and optimise skill upgradation, the Department is also setting up a Human Resource Management System (HRMS) to, *inter-alia*, identify officers who require specialized training as also the training requirements of all personnel. The HRMS will assist in training needs analysis by maintaining a database containing all information regarding the officer and job profile of the various posts in the Department to dovetail with the career-wide training, job exposure, skill upgradation, and performance management of all the employees. Thereafter officers could be selected for specialized training both on the basis of job requirements and performance in various areas of activity. Training to be imparted would be identified both for performance improvement and also for imparting specialised skills to enable handling of certain specialised assignments. The HRMS also provides for competency mapping of such trained personnel so that the most appropriate persons are picked up for various functions, including sensitive assignments such as unearthing of black money.

4.6.4 Steps are also being undertaken for capacity building and improvement of the quality of manpower in other agencies dealing with black money. For instance, the FIU-IND makes proactive efforts to regularly upgrade the skills of its employees by providing them opportunities for training on anti-money laundering, terrorist financing, and related economic issues. FIU-IND officials regularly attend domestic as well as international training programmes on relevant subjects including securities markets investigations, commodity markets investigations, corporate frauds, abuse of charitable and non-profit organizations, cyber-crimes, intelligence trade craft, counter-terrorism, tactical analysis, insurance frauds, financial-sector supervision, and AML policy development. The Directorate has initiated the process of imparting training to officers on their joining the Directorate, whether on deputation or through direct recruitment. The officers of the Directorate also participate in training programmes being conducted by other agencies.

4.7 Results Achieved

4.7.1 The five-pronged strategy adopted by the government has already yielded good results.

A. Large Network of DTAAs and TIEAs

4.7.2 In the last two years or more, India have completed negotiation of 62 DTAAs/TIEAs (29 existing DTAAs, 16 new DTAAs, and 17 TIEAs) and have signed 33 DTAAs/TIEAs (23 DTAAs, 10 TIEAs). As a result today India has a large DTAA (82) and TIEA (6) treaty network . These are listed in Annexure Table 7.

B. Information Received from Abroad under DTAAs and TIEAs

4.7.3 Indian competent authority has received some useful information from competent authorities of other countries through DTAAs/TIEAs. On 18 March 2009, India was able to obtain information from the German government regarding Indian taxpayers having accounts with LGT Bank in Liechtenstein. The information was immediately passed on to the Income Tax Department for appropriate action under the Income Tax and Wealth Tax Act. Feedback in this regard from the Chief Commissioners of Income Tax reveals that on the basis of information received regarding certain trusts/ entities in the LGT bank, Liechtenstein, and beneficiaries therein, assessment proceedings were reopened and cases centralised in different central charges in Chennai, Delhi, Mumbai, and Kolkata. This resulted in assessments being made in a total of 18 individual cases, being beneficiaries of the said trusts/entities, as per the provisions of the Income Tax Act 1961. The total assessed income in these cases was ` 39.66 crore and a total demand of ` 24.26 crore was raised. Penalty proceedings for concealment of income have separately been initiated in all these cases and penalty amounting to ` 11.94 crore has been imposed in nine of the cases. Out of the 18 taxpayers one has passed away while prosecution has been launched against all 17 other taxpayers.

4.7.4 The information obtained from Germany is subject to the confidentiality provisions of the DTAA and may only be used for the tax purposes specified therein. Thus the contents of the information

received from German tax authorities cannot be disclosed to persons other than those involved in income and wealth tax proceedings. This confidentiality provision is in line with similar provisions contained in both OECD and UN Model Tax Conventions. Notwithstanding this, names of the taxpayers against whom prosecution has been initiated have already become public. This is in accordance with the DTAA.

4.7.5 When it came to notice of the Government that information regarding Indians having bank accounts in other countries may be available with French tax authorities, the matter was taken up with them. The Indian Finance Minister later on took up the matter with the then French Minister of Finance and only because of discussions at the highest level the information made available to India under the provisions of the India-France DTAC. The information was made available to India under Article 28 of the India-France Convention. Under the DTAC, the source of information is not material. Once the information is shared under the DTAC, it is protected by the confidentiality clause of the DTAC. France also took a written undertaking from India about maintaining the confidentiality of the information before handing it over.

4.7.6 On the basis of information received from France so far in 219 cases, the department has detected undisclosed income totalling ` 565 crore and tax amounting to ` 181 crore has already been realized.

4.7.7 In addition to these two specific instances, the EOI mechanism with foreign tax authorities has expanded significantly due to the following reasons:

> The time limit for completion of assessment under Sections 153 and 153B of Income Tax Act has been extended by one year by the Finance Bill 2012.

> International developments in recent years have contributed significantly towards increasing the pace of exchange of information. Countries worldwide are now recognising that transparency is required not only for detecting tax evasion but also for preventing money laundering and terror financing.

> The infrastructure of the EOI Cell in India has improved significantly. The entire system and work flow has been automated and the responses to the enquiries are being closely monitored. With communication through the internet, the time lag in exchange of information has reduced significantly.

4.7.8 Thus, a large number of information has started flowing in from foreign countries which are being forwarded to the field authorities for further investigation. In the last few years, more than 12,500 pieces of information regarding details of assets and payments received by Indian citizens in several countries including banking information have been obtained and are now under different stages of processing and investigation. Table 4.1 gives a year-wise break-up.

Table 4.1 Tax-related Information about Indian Taxpayers from Abroad

Information received during	Pieces of Information
2008-10(disseminated in January 2011)	7,704
Jan to June 2011	480
July to December 2011	1,006
January to May 2012	3,339

4.7.9 Further, there has been significant increase in the requests for administrative assistance to foreign tax authorities sent by field authorities as shown in Table 4.2.

Table 4.2 Requests from Field Officers to Foreign Tax Authorities

Financial Year	No. of requests received from field authorities
2008-09	39
2009-10	46
2010-11	92
2011-12	386

4.7.10 India has also started sending information to foreign tax authorities under Automatic EOI. More than 58,000 pieces of information were sent to eight countries last year.

4.7.11 Boxes 4.1-4.3 detail some instances where black money has been unearthed due to enhanced exchange of information in the last year.

Box 4.1 Information from Canada on Gifts

Taxpayer (A) received gifts from taxpayers B, C, and D who are resident of Canada. The taxpayer was asked to explain the source of the gifts in the course of assessment proceedings. S/he submitted the returns of income filed by B, C, and D with Canadian tax authorities as proof of their sources of income. Indian tax authorities sought the following information from the Canadian competent authority:

a) Whether B, C, and D have the resources to make gifts as mentioned in the annexure.

b) Whether the transactions are bona fide.

c) Whether B, C, and D are assessed to income tax or any other tax applicable in Canada.

d) Whether such details have been disclosed in their returns filed before the Canadian authorities.

e) Whether the bank accounts from which the monies were drawn to effect gifts were maintained continuously, if so, copy of such accounts.

The Canadian tax authority gave the information that the income tax returns filed by these individuals indicate that none of them was reporting sufficient income to be able to give gifts in the amounts noted. Enquiries revealed that B was known to the Canadian authorities as Mr X. The Canadian authorities attached the bank statements of the taxpayer. The late C was known to Canadian authorities as Mr Y. The income reported by C/Y did not support the ability to give a gift to the Indian taxpayer.

The enquiries made by the EOI Cell revealed that the return details filed by taxpayer A before the assessing officer were fictitious / forged and the income returned as per the records of the Canadian tax authority was far below his claims. Consequently, it was seen that the foreign tax credit claimed by the taxpayer in his Indian return was also false and amounted to defrauding government tax.

Box 4.2 Evidence Found during Search Operations Supplemented by Information Received from Abroad

A search and seizure operation was conducted on the Indian company G Ltd. In the course of the operation, evidence was collected that indicated the use of international entities for tax evasion. G Ltd was a private Ltd company with Mr X being its Managing Director and major decision maker. G Ltd was engaged in the pharmaceuticals business with exports to the Ukraine, Cyprus, and Russia. G Ltd claimed bogus marketing expenses through dummy companies in the Ukraine, Cyprus, and the UK. It claimed the payments to be made to the Cyprus and UK companies as reimbursements of the expenses of the Ukraine company. These funds were diverted to the personal accounts of Mr X who accumulated wealth in foreign countries. In the course of search and seizure operation, the marketing/ business promotion

expenses were found to be unusually high at 50 per cent of the turnover. The Cyprus and Ukraine based companies had previously been owned by Mr X. The seals and stamps of these companies were found on the premises of G Ltd. Some of the employees of G Ltd were found to be closely linked with the Ukraine and Cyprus companies. Details of huge investments in the name of Mr X and his family members were found on the premises. Enquiries were made from the UK, Germany, Switzerland, Cyprus, and the Ukraine for the following:

- The ownership structure of these companies
- Details of the shareholders, ultimate beneficial owners of these companies
- Copy of incorporation documents
- Nature of business by these concerns
- Details of the bank statements and the sources of funds in the bank accounts of Mr X
- Source of funds from which the properties in foreign countries have been purchased by Mr X and family members
- Source of funds from which the properties in foreign countries have been purchased by Mr X and family members

Enquiries into the whereabouts of the Ukraine companies revealed the following facts:

As per the local tax database, one of the companies was not registered at the address mentioned in the documents seized. As per the statement of a legal representative of the company, no relationship existed with the UK and G Ltd claimed that these Ukraine companies had raised invoices in the name of Cyprus and UK companies which in turn raised invoices in the name of G Ltd. Enquiries revealed no such relation between the Ukraine and UK/ Cyprus companies. The UK enquiries revealed that Mr X and his wife used to be directors of the UK-based companies. No expenses for office premises and wages/ salaries were incurred by these concerns. The balance sheets of these companies did not have any property and the registered office address was the residential address of the accountant. This supported the conclusion of these companies being paper companies. Enquiries revealed flow of funds into the bank accounts of Mr X and his wife from the bank accounts of the Cyprus companies in whose nam, the expenses had been claimed. Enquiries from the UK into the properties of Mr X and his wife revealed huge investments. A detailed statement of the taxpayer was recorded and he failed to explain the transactions. Based on the EOI enquiries and documents seized in the course of action u/s 132, the taxpayer was denied the bogus claim of expenses of around ` 150 crore.

Box 4.3 Spontaneous Exchange of Information from Japan

The National Tax Agency Japan passed on information about remittances to the extent of US$ 48,37,714 in the bank accounts of an Indian taxpayer by a Japanese entity maintained in Hong Kong. The information was received by the EOI Cell under spontaneous EOI and the same was passed on to the income tax authorities. Based on the information received, the income tax authorities carried out a survey on u/s 133A at the business premises of Indian taxpayer. During the course of survey, ` 1,12,64,984 of unexplained cash was found. When confronted, the taxpayer admitted that the cash was not accounted. Hence the survey action was converted into a search and seizure action u/s 132 of the Income Tax Act and ` 1.13 crore of unexplained cash was seized along with incriminatory documents.

During the course of the search, when confronted with the information received from the National Tax Agency, Japan, the Managing Director of the taxpayer company admitted that the two accounts in Hong Kong were maintained in the name of Taxpayer Company and its directors. She also admitted that the difference in sale consideration from export of iron ore according to the original contract and addendum agreement was deposited in the bank accounts in Hong Kong. She admitted the undisclosed income of ` 21.61 Crore including foreign exchange fluctuation gain.

C. Action by the Investigation Wing

4.7.12 In search and seizure action under section 132 of Income Tax Act, the Investigation Wing of the CBDT has detected concealed income of ` 19,938 crore in the last two financial years. Focused searches have been conducted in a number of cases in the current year on the basis of information received from foreign jurisdictions under the provisions of DTAA. Search and seizure statistics for the last few years are given in Table 4.3.

Table 4.3 Search and Seizure Statistics 2006-2012

Financial Year	No. of Warrants Executed	VALUE OF ASSETS SEIZED (In ` Crore)				Total Undisclosed Income Admitted (In ` Crore)
		Cash	Jewellery	Other Assets	Total	
2006-07	3,534	187.48	99.19	77.96	364.64	3,612.89
2007-08	3,281	206.35	128.07	93.39	427.82	4,160.58
2008-09	3,379	339.86	122.18	88.19	550.23	4,613.06
2009-10	3,454	300.97	132.2	530.33	963.5	8,101.35
2010-11	4,852	440.28	184.15	150.55	774.98	10,649.16
2011-12	5,260	499.91	271.4	134.3	905.61	9,289.43

4.7.13 Surveys under section 133A of Income Tax Act are an important tool for ensuring that businesses are carried out according to the rules and taxes are paid in time, particularly in the micro, small and medium enterprises (MSME) and unorganized sector. Since April 2009,the Income Tax Department has detected under-reporting of income to the tune of ` 11,800 crore in surveys, and collected due taxes thereon. Table 4.4 indicates the number of surveys conducted and under-reported income detected over the last few years.

Table 4.4 Number of Surveys Conducted and Undisclosed Income Detected 2006-2012

Financial Year	No. of Surveys Conducted	Undisclosed Income Detected (In ` Crore)
2006-07	6,207	2,612.77
2007-08	6,071	3,581.77
2008-09	5,777	3,059.89
2009-10	4,680	4,857.10
2010-11	3,911	5,894.44
2011-12	3,706	6,572.75

D. Prosecution under Income Tax Act

4.7.14 The Income Tax Department launches prosecutions against tax offenders under Chapter XXII of the Income Tax Act 1961. Prosecutions are launched for tax evasion (section 276C), non-filing of tax returns (section 276CC), failure to deposit taxes deducted / collected at source (sections 276B and 276BB), false statement in verification (section 277), abetment of false return (section 278), contravention of prohibitory orders (sections 275A and 275B), etc. Sentences vary from a minimum of 3 months to a maximum of 7 years imprisonment with fine.

4.7.15 Although sparingly used, the department has utilized these provisions successfully to enhance tax compliance, with a success rate of about 48 per cent convictions or fiscal compounding in the last six years, one of the highest amongst all law enforcement agencies in India. Table 4.5 indicates the number of complaints filed, cases decided, convictions and compounding of offences, and the success rate.

Table 4.5 Number of Complaints Filed, Convictions, Compounding of Offences, and Success Rate 2005-2012

PROSECUTION DATA

YEAR	COMPLAINTS FILED	CASES DECIDED*	CASES COMPOUNDED	CASES CONVICTED	SUCCESSFUL CASES	SUCCESS RATE
2005-06	326	125	84	1	85	68.0
2006-07	73	100	57	2	59	59.0
2007-08	263	280	13	11	24	8.6
2008-09	162	146	13	14	27	18.5
2009-10	312	599	291	32	323	53.9
2010-11	244	356	83	51	134	37.6
2011-12	105	471	342	12	354	75.2
TOTAL	**1,485**	**2,077**	**883**	**123**	**1,006**	**48.4**

** Cases decided have no direct correlation with complaints filed.*

E. International Taxation and Transfer Pricing

4.7.16 The Directorate of Transfer Pricing has detected mispricing of ` 67,768 crore in the last two financial years (Table 4.7) (` 44,531 crore in the current financial year). This has effectively stopped transfer of equivalent amount of profits out of the country.

4.7.17 The Directorate of International Taxation has collected taxes of ` 48,951 crore from cross-border transactions in the last few financial years as can be seen from Table 4.6.

Table 4.6 Collection from Cross-border Transactions 2002-2012

Financial Year	Collection of International Taxation Directorate
2002-03	` 1,356 crore
2003-04	` 1,729 crore
2004-05	` 4,418 crore
2005-06	` 8,049 crore
2006-07	` 9,147 crore
2007-08	` 11,790 crore
2008-09	` 15,740 crore
2009-10	` 16,198 crore
2010-11	` 21,509 crore
2011-12	` 27,442 crore

Table 4.7 Transfer-pricing Adjustments 2004-2012

Financial Year	Number of TP Audits Completed	Number of Adjustment Cases	% of Adjustment Cases	Amount of Adjustment (in ` Crore)
2004-05	1,061	239	23	1,220
2005-06	1,501	337	22	2,287
2006-07	1,768	471	27	3,432
2007-08	219	84	39	1,614
2008-09	1,726	670	39	6,140
2009-10	1,830	813	44	10,908
2010-11	2,301	1,138	49	23,237
2011-12	2,638	1,343	52	44,531

F. Information disseminated by the FIU

4.7.18 Since it became functional in 2005, the FIU-IND has been regularly disseminating substantial financial intelligence relating to tax evasion and money laundering to the CBDT, CBEC, DRI, DGCEI, and ED. Information has also been shared with financial-sector regulators like the RBI, SEBI, and the IRDA for assistance in investigation of cases of financial irregularities as well as for formulation of tighter regulatory policies in the respective sectors supervised by them. Year-wise details of the number of STRs disseminated by the FIU-IND to these law enforcement agencies and regulators are given in Table 4.8.

Table 4.8 Year-wise Details of Number of STRs Disseminated by the FIU-IND 2006-2012

Agency	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	Total
ED	35	68	90	221	317	1,615	2,346
CBDT	254	677	1,766	5,360	7,475	10,956	26,488
CBEC, DRI, and DGCEI	10	14	26	96	121	1,130	1,397
RBI	1	2	5	19	8	51	86
SEBI	27	35	30	76	59	117	344
IRDA		1	6	7	5	2	21

4.7.19 The FIU-IND has also been regularly responding to request for information from revenue authorities and anti-money-laundering agencies like the CBDT, ED, and CEIB. In a large number of cases, information has been made available to these agencies by searching the database of the FIU-IND or by obtaining the information from the reporting entities. Year-wise break-up of requests from intelligence and law enforcement agencies seeking information from the FIU-IND is given in Table 4.9.

Table 4.9 Year-wise Break-up of Requests for information from Intelligence and Law Enforcement Agencies

Subcategory	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	Total
Requests Received from Intelligence Agencies	40	87	190	226	428	473	1,444
Requests Received from Law Enforcement Agencies	0	13	42	118	186	117	476
Total	**40**	**100**	**232**	**344**	**614**	**590**	**1,920**

4.7.20 In several cases, information has been obtained by the FIU-IND from its counterpart FIUs in other countries. Table 4.10 shows year-wise figures of requests made to foreign FIUs on behalf of intelligence and law enforcement agencies.

Table 4.10 Year-wise Break-up of Requests Made to Foreign FIUs 2006-2012

Exchange Type	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	Total
Information Requests Made to Foreign FIUs	2	13	17	46	67	46	191

G. Cases under the PMLA

4.7.21 The PMLA came into force with effect from 1 July 2005. The Directorate of Enforcement has so far registered 1437 cases for investigation under the PMLA. During investigation, 22 persons were arrested and 131 provisional attachment orders issued in respect of properties valued at ` 1,214 crore. The Directorate has filed 38 Prosecution Complaints in PMLA-designated courts for the offence of money laundering.

4.7.22 As regards the Foreign Exchange Management Act (FEMA) which came into force with effect from 1 June 2000, the statistics for the period 1 June 2000 to 31 March 2012 are as follows:

(a) No. of Cases Registered : 23,118

(b) No. of Show Cause Notices Issued : 4,819

(c) No. of Cases Adjudicated : 3,259

(d) Amount of Penalties Imposed : ` 1,678 crore

5 The Way Forward

5.1 Introduction

5.1.1 A comprehensive analysis of the factors leading to generation of black money in India along with the various measures attempted to counter it till date makes it apparent that there is no single panacea that can rid society of this menace. At the same time, it is not impossible to curb, control, and finally prevent the generation of black money in future as well as repatriation of black money, if a comprehensive mix of well-defined strategies is pursued with patience and perseverance by the central and state governments and put into practice by all their agencies in a coordinated manner.

5.1.2 Given the democratic nature of governance in India, the first pre-requisite for a long term strategy to succeed is its public acceptance, based on broad based political consensus and the commitment to implement it. The strategy outlined in this document is not the considered view of the Government of India. Through this document the government is placing the various options before the general public in order to arrive at a well considered strategy to address the issue. It is expected that all stakeholders who are likely to benefit from prevention and control of black money generation will support this important initiative and provide inputs for finalising it.

5.2 Strategies for Curbing Generation of Black Money from Legal and Legitimate Activities

5.2.1 It would be fair to say that most of those involved in generation of black money are not indulging in activities that are criminal in themselves. For a business owner creating black money by evading taxes, preventive strategies need to reduce the incentives for evading taxes and create credible and effective deterrence. In essence, the strategies in such cases treat the person generating black money as a rational economic agent who can be made to comply with the law by creating appropriate incentives and disincentives in favour of reporting and tax compliance. Such a strategic mix will consist of the following four different pillars.

A. Reducing disincentives against voluntary compliance

B. Reforms in vulnerable sectors of the economy

C. Creating effective credible deterrence

D. Supportive measures

A. Reducing Disincentives against Voluntary Compliance

5.2.2 There can be several factors that disincentivise a person against reporting her/his income or wealth. Primarily, they consist of the cost that the person incurs in complying with the law and its reporting regulations. These costs consist of two major components, the tax that needs to be paid as part of the compliance and the costs that need to be incurred in addition to the taxes for complying with the regulatory obligations. Both of them are important disincentives and reducing them can improve disclosure and lessen the generation of black money.

A.1 Rationalization of Tax Rates

5.2.3 One of the most important factors in ensuring tax compliance is the tax rate. The Laffer curve[1] postulates that when the tax rates on producer surplus approach 100 per cent, then tax revenues may approach zero, since economic agents would not be left with any incentive to produce. The higher the tax rate, higher is the disincentive against tax compliance and greater the propensity to generate black money. Thus reducing tax rates, particularly the maximum marginal rates of progressive taxes, can increase tax revenue in two ways, first by increasing tax base and second by increasing compliance with the tax rules

[1] *Laffer curve is a relationship between government revenue raised by taxation and all possible rates of taxation.*

and thus can be one of the major policy tools for curbing the generation of black money.

5.2.4 In the past two decades, India has followed the approach of gradually bringing down tax rates of all major taxes imposed by the central government. The rising tax revenues as a result of this approach reflect the greater voluntary compliance and apparent success of the policy measures.

5.2.5 While rationalization of tax rates remains one of the fundamental and core strategies for curbing black money generation, the long-term success of this simple approach is dependent upon other strategic pillars that include creation of credible deterrence and necessary changes in public perception about tax evasion. If the tax administration is relatively weak, no tax rate changes can ensure compliance.

A.2 Reducing Transaction Costs of Compliance and Administration

5.2.6 The high transaction costs associated with compliance with the law and regulation is the other major disincentive that hinders compliance and pushes people towards generation of black money. It includes the opportunity cost of time and resources to the tax payer and tax administration. In a way these costs are far more significant than the tax, because unlike taxes, which are in the nature of transfer from the private to the public sector, these costs are real costs to the society.

5.2.7 The transaction costs consist of the costs of compliance, which are borne by the citizens or taxpayers and the costs of administration, which are incurred by the state, but eventually borne by the citizens by way of taxes that finance such expenditure. Among the two, the costs of compliance are generally more important since they are incurred by a larger number of economic agents. Interestingly, while the budgetary process and administrative and regulatory oversights are highly effective in controlling the costs of tax administration, the same may not always be the case with the costs of compliance. Given the fact that the costs of compliance can be a major disincentive against compliance and reporting, reducing them will remain one of the most significant aspects of any strategy mix directed against black money generation. In the area of tax administration, the cost of collection in India has traditionally been one of the lowest in the world, remaining below 1 per cent for several years now. In most developed economies such costs hover around 1 to 2 per cent. The low cost of collection in Indian tax administration can be interpreted both as a positive achievement (due to lower burden on the exchequer) as well as negative development as it suggests lack of infrastructure and resources available to tax administrations, which in turn induces increased cost of compliance for the taxpayer. It may be possible in India too to significantly cut down the costs of compliance borne by the citizens, by raising the cost of administration to some extent. Simply put, investments in improving administrative facilitation of compliance with tax and other regulatory measures may lead to positive gains for the society.

5.2.8 One of the major opportunities for reduction in transaction costs has been created by the recent advancements in the area of information and communication technology. Both the direct and indirect tax administrations have significantly brought down the costs of compliance by various measures of e-governance, electronic reporting, e-filing of refunds, computerized central processing of returns, and electronic issue and transfer of refunds. This has become possible due to the successful allocation of PAN numbers and use of electronic services. Future strategies should strive for further development of electronic and net-based services and for improving the resources of tax administration, with the ultimate aim of reducing the cost of compliance for the taxpayer.

A.3 Further Economic Liberalization

5.2.9 Non-tariff barriers to economic activity are generally worse than tariff barriers. Where one cannot get a permit to undertake a legitimate activity, the transaction costs approach infinity, and create insurmountable incentives for unreported and unaccounted activities that will inevitably generate black money. The successive waves of economic liberalization during the last two decades have attempted to do away with such non-tariff barriers. The process must be relentlessly continued. The Electronic Delivery of Services Bill 2011 that seeks to provide for electronic delivery of public services by the government to all

persons to ensure transparency, efficiency, accountability, accessibility, and reliability in delivery of such services has been tabled before Parliament in December 2011. Once it is enacted, it will provide a major impetus towards this objective.Together, these measures can significantly cut down the transaction costs of compliance with the regulatory regime and reduce the disincentives against voluntary compliance, thereby restricting the generation of black money from legitimate economic activities.

B. Reforms in Sectors Vulnerable to Generation of Black Money

5.2.10 It can be seen from the discussions in the earlier sections that a large proportion of black money is generated from certain vulnerable sectors of economy, suggesting that effective reforms in those sectors can be a major strategy for curbing generation of black money in future. One of the best examples in this regard is gold trading, which was one of the major sources of black money generation and even crime prior to the reforms induced in that sector. While gold inflows into India remain persistently high, gold smuggling is no longer the menace as it used to be a few decades earlier. Similar or more effective reforms of other vulnerable sectors like real estate can yield a significant dividend in the form of reducing generation of black money in the long term.

B.1 Financial Sector

5.2.11 The financial sector is the most important sector in the economy when it comes to transfer of funds generated through whatever means into further productive activities. Therefore it is one sector that cannot possibly remain untouched by black money. Often black money enters it as part of financial instruments or other processes, which at times involve money laundering thereby highlighting the potential of this sector in detection and prevention of black money along with its sources and perpetrators. Fine tuning of financial regulation therefore remains one of the key areas in creating deterrence against generation of black money and detecting black money in the process of being laundered.

5.2.12 Significant progress made in the efficacy of the oversight mechanism for financial markets needs to be pursued further. For this purpose, it is essential that the relevant authorities are able to get trained manpower with proper domain knowledge of financial investigation and oversight. One of the solutions could be to place efficient officials with requisite domain knowledge and skills from the financial investigative agencies in the operations / vigilance machinery of banks and financial institutions to keep proper vigil and ensure that rules and regulations are followed in these institutions.

5.2.13 In the last two decades, many foreign entities, including banks, financial institutions, and fund transfer entities have established businesses in India. A Committee headed by the Chairman, CBDT, has recently reported that Indian tax residents have been carrying out substantial monetary transactions through these entities or with their branches abroad. The Committee also recommended that India insist on entities operating in the country to report all global transactions above a threshold limit. For this purpose, appropriate laws, rules or contractual / licensing arrangements with these entities may be framed and implemented, as has been done in some other countries. In the Finance Bill 2012 a beginning has been made by making filing of return of income mandatory for every resident (excluding not ordinary residents) having any assets or banking accounts located outside India even if s/he does not have a taxable income. Return forms have been notified in this regard. Similar strengthening of other reporting regimes can allow appropriate systems for flagging of dubious transactions in future and improve the probability of their timely detection and prevention.

B.2 Real Estate

5.2.14 The real estate sector in India constitutes about 11 per cent of the GDP. Investment in property is a common means of parking unaccounted money and a large number of transactions in real estate are not reported or are under-reported. This is mainly on account of very high levels of property transaction taxes, commonly in the form of stamp duty. High transaction taxes in property are one of the biggest impediments to the development of an efficient property market. With tax rates of over 5 per cent being imposed as stamp duty on buying of property, which otherwise also involves high transactions costs in terms of search, advertising, commissions, registration, and contingent costs related to title disputes and litigation, the

property market remains one of the most inefficient asset markets in India. Unless the underlying distortions in this market are taken care of by appropriate reforms, it may be difficult to prevent such misuse.

5.2.15 As per the division of powers between the states and the centre, the real estate sector has largely been left to the state governments to regulate and tax. Even after the 73rd and 74th amendments to the constitution of India which recognized local rural and urban bodies as the third tier of government, the power to legislate with respect to real estate properties and transactions therein remains with the states. Different state governments have undertaken reforms in this sector at differing pace, while their implementation is further subject to the capacity and commitment of the respective local urban bodies.

5.2.16 The role of the central government in reforms of the real estate sector is generally limited and advisory in nature. However, this has not prevented the Government of India from initiating steps to incentivize reforms. Its flagship programme, the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), being implemented since 2005-06 aims to support urban infrastructural development by providing both monetary and non-monetary support, for reforms in different sectors of the local economy. It includes reforms of the stamp duty regime to restrict it to no more than 5 per cent. Some states have carried out this reform, but others are still persisting with very high stamp duty regimes. For states that are resource constrained there is a case for identifying and implementing adequate revenue-neutral substitutes to facilitate the rationalisation of stamp duties.

5.2.17 There are many other pending reforms required for the emergence of an efficient competitive real estate market. These include repeal of the Urban Land Ceiling Regulation Act (ULCRA), reforms of the Rent Control Act that will balance the interests of tenants and owners and free properties of its distortions, revision of bye-laws to streamline the approval process for construction of buildings, development of sites, simplification of legal and procedural frameworks for conversion of land from agricultural to non-agricultural purposes, introduction of the Property Title Certification System in Urban Local Bodies, introduction of computerised process of registration of land and property, introduction of e-governance in local administration and tax payments, creation of computerised fiscal cadastres and rationalisation of property tax designs. Each of these areas had been given a thrust by making it conditional to the release of financing for urban projects by the central government. Evidence suggests that the mission has achieved considerable success. However, a lot more needs to be done in this regard. There may also be a case for integration of local urban authorities in a nationwide digital database and sharing of data and information with state and central agencies.

5.2.18 The current provisions of the direct tax legislation provide for mandatory furnishing of the tax identification number by the buyer and seller of an immovable property if the value exceeds Rs 5 lakh. Also, every registry of property is required to furnish annually information regarding transactions in immovable property if the value exceeds Rs 30 lakh. However, as many registrar offices still operate on a manual system, there are a number of gaps and lapses in the reporting of such transactions.

5.2.19 To reduce the element of black money in transactions relating to immovable property and facilitate focused action based on actionable intelligence by monitoring agencies, simple reporting systems can be evolved that will facilitate the development of a nationwide database. Such a database should be computer-driven with minimal interface between the authorities and the people, and accessible to all financial regulatory authorities.

5.2.20 One of the measures for deterring use of the real estate sector for generation and investment of black money could be the provision of deducting tax at source on payments made on real estate transactions and mandating it as a pre-condition for registering of the transacted property. The provisions of tax collected at source on the developers of the property can also be considered as a possible policy measure. Electronic payment and electronic reporting can mitigate the compliance burden.

5.2.21 Further, to reduce the element of black money in transactions relating to immovable property, the provision of no objection certificate (NOC) may be introduced in the income tax law with safeguards to reduce administrative complications and increased ease of compliance, so that an appropriate and uniform database is set up and a proper national-level regulation also put in place. The new system should be computer-driven with minimal interface between the tax authorities and taxpayers, and enforced by a dedicated unit within the investigative machinery of the income tax department on the basis of pre-determined parameters and standard operating procedures.

B.3 Bullion and Jewellery Sector

5.2.22 Bullion and Jewellery is an important sector for both generation and consumption of black money and is also targeted by black money holders looking towards protecting the value of their black money from inflationary depreciation. Moreover, a fairly large number of transactions in this sector remain totally unreported and therefore facilitate investment and consumption of black money.

5.2.23 There is also urgent need to improve the reporting and monitoring systems in this sector. Since there are a number of financial laws already applicable to such businesses, it can be achieved to some extent through amendments to or modifications of the laws governing income tax, and customs duty. In this regard, the Income Tax Act has made it mandatory to obtain PAN or Form-60 / Form-61 for purchase of bullion above Rs 5 lakh. However, given the need to catch all transactions, the best bet would be the through the proposed GST Act. This is an area that needs careful analysis in terms of efficacy and assessment of costs and benefit before the required regulations are enacted.

B.4 Cash Economy

5.2.24 Cash has always been a facilitator of black money since transactions made in cash do not leave any audit trail. So far, efforts to regulate and control cash transactions have been constrained due to two reasons. The first is that the poor have to deal in cash, particularly in the rural sector, and accordingly payments on account of labour wages or those made to rural artisans and institutions need to be made in cash. Second, the costs of transaction imposed by any regulations are likely to spread across the economy and affect both consumers and producers, thereby leading to resistance and lack of support for such a move.

5.2.25 However, given the primary importance of cash in relation to both generation and use of black money, there is no alternative but to target cash transactions in a way that will not affect those complying with the law, while making it difficult for those intending to generate and utilise black money. This will require keeping fairly high transaction limits and exempting those with a reasonable audit trail at either end of the transactions. Further work needs to be done in this regard in future by way of legal curbs and regulations that can restrict the generation and flow of black money within the economy.

5.2.26 As of now there are no legal restrictions to keeping very large amounts of cash with oneself or transporting it from one place to another. One is neither required to report it nor provide any explanation for it. There have been suggestions that the government may consider amending existing laws, including the Coinage Act 2011, The Reserve Bank of India Act 1934, FEMA, and the Indian Penal Code, or enacting an entirely new statute aimed at regulating the possession and transportation of cash above a particular threshold limit. This may include creating a limitation on cash holdings for private use, as well as provisions for confiscation of cash held beyond such prescribed limits. However, such laws need a broader political consensus to emerge for their acceptance in Parliament.

5.2.27 Another important measure in this regard could be the promotion of banking channels including use of credit and debit cards, since they leave adequate audit trails and hence disincentivise black money generation. The opposite is true of trade practices that block the audit trail, such as cheque discounting, which can be discouraged applying the same logic. With electronic transfer facilities being available to trade, one can foresee this as one of the major thrusts towards strengthening accountability and discouraging unaccounted activities.

Towards this end, some important initiatives have already being taken which include the reduction of the validity period of cheques and demand drafts from six to three months with effect from 1April 2012, which will discourage discounting of negotiable instruments. Payments by debit and credit cards through Indian e-service intermediaries like 'RuPay'[2] can further bring down the costs of using such cards, improve their acceptability, and thereby encourage payments in these modes and reduce the cash economy. It is imperative that payment of wages and salaries in the private sector should also be through banking channels and should become cashless, in line with the government objective of financial inclusion. Government can also deliberate providing tax incentives for use of credit/debit cards as practised in Republic of Korea. Provisions for collection of tax at source at a low level on cash purchases may also be considered as a possible policy option.

B.5 Mining and Allocation of Property Rights over Natural Resources

5.2.28 Natural Resources including mines, forests, land, water, and spectrums belong to the country as a whole, but their efficient allocation and utilization demands that government assigns property rights to private parties in lieu of financial payments made to the public exchequer. This process calls for significant improvement in transparency and public accountability and appropriate price discovery mechanisms, in the absence of which these sectors can become vulnerable to illegal encroachments, while their allocation at highly subsidised rates can lead to windfall gains for the allottees. There is therefore need for comprehensive reforms requiring coordination and consensus among states and the centre.

5.2.29 In order to ensure transparent and efficient allocation of natural and man-made resources, oversight in the form of comprehensive regulations, independent regulator, and appointment of ombudsmen for grievance redressal, particularly for scarce resources - as in land, minerals, and forests - can be considered as a remedy.

B.6 Equity Trading

5.2.30 While equity trading has witnessed large-scale reforms during the last couple of decades, it has also seen new challenges being faced by the regulators consisting of cartel-based price manipulation and profiteering, proxy investments through conduits, and routing of investments through tax havens in case of FIIs. Among these, the issue of investing through tax havens is dealt with subsequently in this chapter, but there are many other areas in this sector that need further reforms.

5.2.31 The RBI has already strengthened the implementation of KYC norms. In this regard, there have been suggestions that it could consider stricter implementation of these norms and limit the number of accounts that can be introduced by a single person and the number of accounts that can be maintained in the same branch by any entity and maintain vigilance about the same address being used for opening accounts in different names. Stricter adherence to, and enforcement of, KYC norms can help ensure proper compliance by banks and financial institutions. The government, as well as the RBI, also needs to put a better regulatory framework in place and act promptly against errant persons / institutions.

5.2.32 To prevent misuse of 'off-market' and 'dabba-trading' or trading outside the recognised stock exchanges, further amendments in the income tax law may need to be introduced to allow losses in off-market share transactions to be set off only against profits derived from such transactions. Such a measure may create barriers to misuse of such trading and plug an important loophole for generation of black money.

B.7 Misuse of Corporate Structure for Generation of Black Money

5.2.33 The various ways in which corporate structure can be misused to evade taxes have already been discussed in detail in preceding chapters. It would suffice to state here that efforts made by the Government of India to create greater transparency and facilitate exchange of information need to be carried further. There is also need to create a robust database of remittances made by corporates out of India and carry out an analysis of their backward and forward linkages in order to understand the nature and legitimacy of the transmitted funds. The FIU-IND may be empowered by law to receive reports (similar to other reports submitted to it) on all international fund transfers through the Indian financial system, on the lines of the FIUs of Australia and Canada.

[2] *RuPay is the Indian domestic card payment network being set up by National Payments Corporation of India (NPCI).*

B.8 Non Profit Organisations and the Cooperative Sector

5.2.34 There are several fiscal and regulatory privileges under different laws available to non-profit and cooperative organisations. Their income, subject to various conditions, is treated differently for taxation purposes from that of privately owned profit-oriented concerns. This creates incentives for potential evaders to camouflage their concerns as non-profitable, charitable, or cooperative in nature. This can only be dealt with through a multi-pronged strategy of reducing the privileges available to them on one hand and subjecting them to a stricter regulatory regime on the other. However, given the role of genuine NPOs in the welfare of the downtrodden and the broader government policy of supporting such endeavours, this is a somewhat complex issue that may easily evoke strong emotional responses and hence can be implemented only after a larger consensus is reached within society.

5.2.35 At present, no government agency has a complete database of NPOs. The CBDT has the largest such database. There may be information with other agencies such as the Ministry of Home Affairs and the CEIB. It has been suggested that the CBDT may be assigned the role of a centralized agency with which every NPO would be required to be registered and by which it would be allotted a unique number. This would be in line with the decision taken by the government in light of the possible misuse of the sector for undesirable activities. Suggestions made by the NPO Sector Assessment Committee, an Inter-ministerial body, should be accepted and the office of the Director General of Income Tax (Exemption) appropriately strengthened in terms of manpower, infrastructure, and capacity building.

5.2.36 The regulation and enforcement of KYC norms in the cooperative sector may be strengthened by the state governments as well as the central government. Responsibility may be fixed for any lapse in this regard as well as for any subsequent failure to alert authorities as regards any suspicious transactions in such accounts.

C. Creation of Effective Credible Deterrence

5.2.37 Since neither the tax rates nor the transaction costs of compliance can be brought down to zero, there will always remain a certain incentive for generation of black money, which can only be tackled by having effective credible deterrence in place. The reason why deterrence is placed third in this list of strategies is not because it is less important than the previous strategies but because it works in tandem with the strategies mentioned earlier. To exemplify, deterrence that is created with huge compliance costs can turn out to be counterproductive since the disincentive against generation of black money will be overshadowed by the disincentive against compliance resulting from high transaction costs. Similarly, if the tax rates remain very high along with restrictions and barriers in economic activities, the level of deterrence that will be required to offset the consequently high incentives for evasion and non-compliance will be very difficult to achieve. Finally, very high levels of deterrence based on severe penalties or punishments create further distortions of incentives and can result in rent-seeking behaviour requiring additional levels of monitoring, supervision, surveillance, and litigation, all of which add to transaction costs and further increase the incentives for evasion and non-compliance.

5.2.38 It is this complex interplay of factors that the monitoring agencies responsible for creation of effective deterrence are required to address. With a rapidly growing and a globalising economy, and with developments in information technology and networking, the technological challenges are becoming ever more complex. All these challenges need to be tackled by multi-pronged strategies discussed in the following paragraphs.

C.1 Integration of Databases Leading to Actionable Intelligence by Monitoring Agencies

5.2.39 Modern administration and investigation must be focused on collecting all relevant data, its seamless and automated collection from different sources under different laws and regulations, and its integration into a collective national database. It should generate meaningful information that can be processed into actionable intelligence by the respective state agencies for their respective purposes. This will ensure that their actions are focused and well targeted, thereby ensuring that investigations are directed towards potential evaders while those complying with laws and regulations do not have to bear any additional costs

of scrutiny or investigations. Though different state agencies are already coordinating their actions to tackle the menace of black money with considerable success, there is need for further integrating the systems and databases of different agencies to avoid the duplication of efforts and formulation of a coherent and effective strategy for combating black money.

5.2.40 Efforts are already being made to integrate the systems and organisations of different agencies. Taxpayers are required to file different kinds of returns and reports based on their tax liability such as returns of income and wealth tax, tax deducted at source (TDS), international remittances, and of international transactions with associated enterprises, tax audit reports, and reports of international transactions. The information obtained through all these returns and forms is compiled in the database of the Income Tax Department. Information is also collected from different agencies such as banking and financial institutions, registrars of immovable properties, land records office, mutual fund organisations, and credit card agencies as per the provisions of the Income Tax Act. All this information is stored in the database of the Income tax Department. Based on this information, the system selects cases for scrutiny every year. The future strategies should strive to further strengthen the ability to flag potential evaders by processing the database.

5.2.41 Similar systems and databases are being maintained by other government agencies as well. For example, banks maintain individual accounts and have information about each and every banking transaction of taxpayers. The Customs and Excise Department has the information related to exports, imports, and manufacturing. The information available with all these Departments and agencies is required to be integrated on real-time basis subject to confidentiality provisions of various Acts. This is a real challenge considering the huge taxpayer base of India and the huge data available with each and every department/agency. It requires a common taxpayer identifier and real-time connectivity of the systems of different agencies. The integration exercise further requires regular updating of the database and safeguards against the misuse of the data.

5.2.42 This coordination is required at all levels including the generation, layering, and introduction/ accumulation of black money. The integration has to be through legal provisions, systems, organisations as well as at informal level. The Government of India has introduced different legal provisions for improving the coordinated efforts. The introduction of VAT and the proposal to introduce the GST are examples of such measures. It is common knowledge that one of the major sources of generation of black money is the out of books sales. These out of books sales are resorted to by taxpayers to evade different taxes such as excise duty, sales tax, and income tax. With the introduction of VAT, the credit of the duty on the input can be claimed only if VAT has been paid thereon. Thus it discourages out of books sales. In the earlier system, e-tax was required to be paid at the point of first sale in the state and thereafter the goods became tax paid. Thus no sales tax was required to be paid on the resale of goods. Now each vendor has to pay taxes on the addition by him to the value of the goods. This ensures better reporting and discourages the generation of black money. The introduction of the GST will be a major step in the integration of the efforts of different agencies dealing with black money.

5.2.43 The information and intelligence gathering mechanisms of various economic agencies need to be more broad based so that the entire gamut of economic activity is captured in an electronic manner, mined, and analysed. All the agencies continuously need to get technologically upgraded in this area to effectively tackle the menace of black money. The skills of manpower resources available with the agencies also need to be upgraded continuously and exposed to global best practices in their sphere of work.

C.2 Strategies to Strengthen Direct Tax Administration

5.2.44 As the contribution of direct taxes in revenue collections rises, direct tax administration must be strengthened to ensure that it keeps pace with the rising needs of the growing economy. This factor is also important because direct tax databases are one of the largest databases available in the country and being an accounts-based tax, it has the potential of creating appropriate audit trails that can build strong deterrence against evasion as well as help catch evaders and trace black money kept in various forms both within the country and abroad. There are several measures that are likely to form an inherent part of this strategy and they are discussed in the following paragraphs.

5.2.45 Direct Tax Administration has a major role to play in the process of unearthing black money. The personnel manning the Department need to be properly equipped for discharging this role. Scrutiny assessment of the returns of income is an important tool for detecting money on which payment of any taxes is being evaded. However, it needs to be complemented by the ability of the Tax Administration to prosecute the evaders by collecting appropriate evidence against them. In order to achieve this objective, a lot of capacity building will need to be undertaken as the requirements of criminal investigation are quite different from those of civil scrutiny. The Directorate of Criminal Investigation, if provided the right training, infrastructure, powers, and resources, may become a very effective deterrent against tax evasion and black money.

5.2.46 The Large Taxpayer Units (LTU) handles cases of corporates having presence at several locations. This office plays a crucial role in the tax scrutiny of large taxpayers. One crucial aspect of the functioning of the LTU is coordinated functioning of the Income Tax and the Excise Departments. This enables in-depth analysis of the finances of big corporates and helps prevent tax evasion. The LTU may become more effective if the audit cycle of the Income Tax, Service Tax and Excise Departments is aligned. Presently these three agencies are under the umbrella of the LTU. However, they scrutinise different accounting periods at the same time. This reduces the scope of the simultaneous scrutiny and examination of the assessee. Further, there is a need for special training of the officers and staff members to make them aware of issues relating to big corporate houses. The officers need to be trained in the Enterprise Resource Planning (ERP) software implemented by these large taxpayers. The books of accounts of the big corporate houses are generally maintained under this software which requires special skills for verification and unearthing of tax evasion. With the introduction of the GST, VAT may also come under the umbrella of the LTU making it all the more effective.

5.2.47 The Directorate of International Taxation has played a crucial role in unearthing black money by detecting mispricing in international transactions with associated enterprises. The Directorate has unearthed a number of such transactions in the recent past and has brought them to tax. However, the manpower and the technology available to the Directorate need to be improved.

5.2.48 Under the provisions of the Income Tax Act 1961, there is a requirement for specified entities to report high value transactions through AIRs. The department has received significant information involving suspected unreported income through AIRs. In a large proportion of these cases, the transactions do not contain valid PANs. Analysis reveals that in many cases, companies have not filed income tax returns even though they are live and TDS has been deducted in such cases. Similar analysis reveals that though data is available in the Department that can throw up cases where returns are not being filed though such entities are deriving income during the relevant year, appropriate action is sometimes constrained for want of adequate manpower.

5.2.49 Given the importance of TDS in modern tax administration, there is urgent need to both plug the manpower gaps as well as strengthen systems for TDS monitoring and its integration in terms of data with existing databases. On the lines of the Central Processing Centres (CPCs) which are already functional and gradually dealing with the bulk of processing of returns of income, CPCs are envisaged for TDS too, which will make TDS monitoring far more efficient, thereby also collecting more data and creating greater audit trail of transactions in the economy, which itself is a major deterrent against tax evasion and non-compliance of reporting regulations.

5.2.50 Till date, PAN has been allotted to more than 11 crore entities while income tax returns have been filed by 3.5 crore entities. There is thus a huge gap between the number of entities to whom PAN has been allotted vis-à-vis the number of deductors filing income tax returns. The Parliamentary Standing Committee for Finance has pointed to this gap and advised the Department to take suitable action. Such action again needs adequate manpower as well as persistent action towards ensuring that the provisions of PAN are implemented and accurately complied with.

5.2.51 Similarly, around 3 crore pieces of CIB information are uploaded into the system which contains financial data of taxpayers. The data includes substantial percentage of cases where PAN has not been reported by the taxpayer entities. This data needs to be efficiently processed using computerised systems

to create meaningful information and actionable intelligence. These involve further sophistication of underlying systems as well as follow up action, both of which require further manpower with adequate expertise. Providing adequately trained manpower can help improve the efficiency of the Department by leaps and bounds.

5.2.52 The data-mining capacities of the Department need to be strengthened with risk-analysis tools. Due to the voluminous data coming for analysis from different sources, the work cannot be done manually and intelligent software needs to be designed to this end. There is also need for setting up a Directorate of Risk Management.

C.3 Strengthening of the Prosecution Mechanism

5.2.53 Sometimes taxpayers may be willing to take a calculated risk of tax evasion and may even justify it as a 'commercial risk'. Such calculated risk taking may be more effectively deterred by effective prosecution. The Income Tax Act 1961 has elaborate procedure for criminal prosecution. For instance, if a taxpayer wilfully attempts to evade payment of any tax, interest, or penalty, he may be subject to rigorous imprisonment of six months to seven years and fine, if the tax sought to be evaded is more than Rs 100,000. Further, prosecution can be launched for various other offences such as making false statements or withholding tax. In case an offence is committed by a company, Indian or foreign, every person who at the time of commission of such offence was in charge of, or was responsible for the company in the conduct of its business is deemed to be guilty and is liable for prosecution. However, despite these provisions being in the statute, the actual state of criminal prosecution in tax matters in India is somewhat dismal. In very few cases, do the tax authorities opt for prosecution and subsequent conviction in tax evasion cases is rare and cannot be found even in high-profile search cases. The absence of a specialized prosecution wing and the cumbersome procedure contribute to this state of affairs.

5.2.54 The government has taken a number of corrective steps in the recent past. A Directorate of Criminal Investigation has been established to perform functions in relation to offences listed under the Income Tax Act and will act as a specialized arm of the government dealing with criminal prosecution in case of tax evasion. The Finance Bill 2012 provides for constitution of special courts for trial of offences under the Income Tax Act. Judges having specialized knowledge in tax matters can be appointed to preside over the special courts for speedy disposal of cases. Further, it reduces the maximum punishment prescribed under various offences from three years to two years for simplification of the trial. Offences carrying maximum punishment of more than two years are subject to 'warrant case' procedure which is more time consuming compared to offences carrying a punishment of less than two years which are subject to 'summons case' procedure which is much quicker and thus will result in quicker trial. The Finance Bill 2012 also provides for appointment of specialized public prosecutors for representing the case of tax authorities before the courts.

C.4 Enhanced Exchange of Information

5.2.55 With increased globalisation and liberalisation of national economies and removal/relaxation of control of foreign investments/foreign exchange, there has been manifold increase in cross-border transactions giving taxpayers greater opportunities for tax evasion and avoidance compared to taxpayers operating only in domestic markets. While the taxpayers operate globally, the tax administrators remain confined to their respective jurisdictions. Thus, to effectively tackle the tax evasion/avoidance adopted by taxpayers, it is imperative that tax administrators cooperate with each other. A key element of such international cooperation in tax matters is through the exchange of information mechanism entered into by countries by way of DTAAs and TIEAs as also through Multilateral Instruments for Exchanging Information.

5.2.56 The officers of the Income Tax Department can use the legislative framework to obtain information from foreign jurisdictions by seeking details such as ownership across the layers of corporate chains, formation documents and subsequent updates, details of beneficiaries and other terms in cases of trusts, accounting records and statements, banking information, and tax returns.

5.2.57 Simultaneously, there is need for capacity building among our tax officers for expediently utilising information exchange networks. A manual on exchange of information addressing these issues is under preparation. Further, as the exchanges with foreign jurisdictions will increase substantially, a computerized EOI Cell is therefore being created in the FT&TR Division of CBDT, with two Director-level and four Under Secretary-level officers. This EOI Cell, designed on the lines of best practices followed by other countries, is developing a comprehensive database of inbound and outbound exchanges, a high level of security, and the facility of electronic exchange with competent authorities of other countries. The EOI Cell needs to be fully integrated with the Income Tax Department and other investigation agencies. It can also be utilised to obtain administrative assistance in different matters such as exchange of information, assistance in tax collection, tax examination abroad, simultaneous tax examination, and service of documents. The EOI Cell is also planning to integrate itself with the systems of other countries. This will help reduce the time lag in the exchange of information.

C.5 Income Tax Overseas Units

5.2.58 To facilitate international cooperation in areas of exchange of information, transfer pricing, and taxation of cross-border transactions, ITOUs have been opened with the objectives of monitoring issues related to double taxation avoidance, assistance in handling issues arising out of international taxation and transfer pricing, expediting negotiation of TIEAs with tax havens and non-cooperative jurisdictions, facilitating expedient exchange of information, and facilitating mutual assistance in collection of taxes. These units need to be expediently and optimally utilised for matters related to taxes as well as exchange of information in order to curb black money.

5.2.59 The way forward for the ITOUs is coordination with the competent authority office of the foreign country on real-time basis on mutual administrative assistance in tax matters including the exchange of information, assistance in tax collection, simultaneous tax examination, tax examination abroad, and service of documents. The ITOUs will also assist the competent authority with resolving cases under Mutual Agreement Procedures and Advanced Pricing Agreements.

C.6 Efforts to be undertaken at International Forums

5.2.60 India needs to continue raising issues for enhanced transparency and co-operation amongst jurisdictions. Some of these issues include automatic exchange of information, sharing of past information, country-wise reporting, registers of beneficial ownership, and need for toolbox of countermeasures.

C.7 International Taxation and Transfer Pricing

5.2.61 International taxation and transfer pricing are new focus areas both to check the menace of black money and for augmentation of tax collection. By shedding some light upon the dark side of international taxation and transfer pricing in the previous chapter, we have stimulated a closer and more critical consideration of the ramifications of transfer pricing and international taxation practices and thereby highlighted the need to make their administration more effective. The Government has already introduced the Advance Pricing Agreement (APA) in the financial year 2012-13. The APA is an instrument through which the arms' length price of an international transaction will be determined in advance. This will not only ensure avoidance of trade mispricing but will also ensure that there is tax certainty for the MNEs located in India or doing business with India. There is also need to step up research into multi-layered cross-border transactions and ever-changing transfer-pricing manipulations to prevent considerable opportunities for capital flight, tax avoidance, and generation and transfer of black money.

C.8 Effective Curbing of Structuring through Tax Havens

5.2.62 India has consistently taken the stand against structuring of transactions through tax havens by creating a complex chain of subsidiaries for avoidance of taxes. Indian tax administration has always been of the view that foreign investors in India should pay taxes on their income either in India or the country of their residence, and does not endorse attempts to avoid taxes in both the countries by use of such opaque tax-avoidance structures. The legislative measures included in the Finance Bill 2012 and the introduction of GAAR can create necessary deterrence against such structuring and thereby plug this loophole for tax evasion.

C.9 Strengthening of Indirect Tax Administration

5.2.63 Indirect Tax Administration has undergone major reforms during the last two decades. Most of these pertain to rationalisation of custom duties on international trade and they have indirectly contributed to the economic growth in recent times. Another important development in the field of indirect taxation is the introduction of service tax, which is now contributing significantly to the central government's revenue collections. Liberalization of international trade and dilution of tariff barriers have significantly reduced the incentives for black money generation, but not completely removed them. Future strategies must address this aspect and counter it by strengthening of tax administration and creation of effective deterrence against evasion of indirect taxes.

5.2.64 One of the main thrust in indirect tax administration can be the collection of more data and creation of greater data-processing capacity that can then be integrated with other data and help multiply the system's sensitivity in flagging potential evaders and initiating action against them.

5.2.65 As an example, for curtailing TBML, there should be institutional arrangement for examining cases of mismatch between export and corresponding import data, as done by the Data Analysis and Research for Trade Transparency System (DARTTS) of US Customs. Indian Customs can consider setting up a Trade Transparency Unit (TTU) along these lines for which appropriate legal framework may be introduced. Existing Customs Cooperation Agreements mostly provide for mutual administrative assistance in individual cases under investigation. These agreements should have institutional arrangement for exchange of Harmonised System of Nomenclature (HSN) chapter-wise data of export and import. Similar arrangements can be made for Preferential Trade Agreements (PTA) and Free Trade Agreements (FTA).

C.10 Strengthening of FIU-IND

5.2.66 Further strengthening of the FIU will remain an important part of the overall strategy for creating stronger deterrence against generation of unaccounted wealth and its use in various legal and illegal activities. The FIU-IND has already initiated project FINnet (financial intelligence network) so as to adopt industry best practices and appropriate technology to collect, analyse and disseminate valuable financial information for combating money laundering and related crimes. Project FINnet would greatly enhance efficiency and effectiveness in the FIU-IND's core function of collection, analysis, and dissemination of financial information. The contract with the system integrator was signed in February 2010 and the new technical infrastructure is being rolled out. Such efforts will need to be expanded further.

5.2.67 The development and identification of 88 red flag indicators by a Working Group of the representatives of the Indian Banks' Association (IBA), the Bank of India, and FIU-IND has been a major development in the supervision of financial activities. These red flags, which are to be shared with the reporting entities and regulators, are currently in the process of being implemented for generation of alerts.

C.11 Strengthening of CEIB

5.2.68 Upgradation of IT capability and networking for the CEIB to effectively fulfil its primary role of collation, analysis, and dissemination of intelligence and information to the concerned agencies needs to be undertaken. A decision was taken at the meeting of the Economic Intelligence Council chaired by the Hon'ble Finance Minister to set up a multidisciplinary school of economic intelligence for developing capacity building in the area of the economic intelligence. Steps are being taken to set up the school and determine its curriculum.

C.12 Strengthening of Other Institutions

5.2.69 The Directorate of Revenue Intelligence and Enforcement Directorate can be further strengthened to play an important role in the coordinated functioning of various monitoring agencies. Capacity building

of the functionaries, use of updated technology, and integrated utilisation of databases may be important steps towards achieving this end.

C.13 Other Steps to Curb Generation of Black Money within India

5.2.70 There is a need to recognise serious and habitual tax evasion as crime and implement a strict regime of fiscal and penal consequences to provide effective deterrence against habitual tax evasion. The prosecution mechanism in the Income Tax Department needs to be strengthened and direct tax laws and procedures streamlined. Review of the system of legal advice in prosecution matters and putting in place effective machinery to implement prosecution provisions, including a witness protection programme, are areas that also need to be looked into. The Income Tax Department has already initiated action in all these directions.

5.2.71 The law and procedures for collecting and reporting of information, including third-party information both from domestic and international sources, and its effective utilization, also need to be revamped. Mechanisms for verification of information need to be strengthened. Effective data mining of vast information collected needs to be put in place so that any possible case of non-disclosure or tax evasion is red-flagged and reported and immediate action taken to collect the due taxes and prosecute tax offenders in serious and habitual cases.

5.2.72 The joint task force (JTF) approach needs to be adopted for dealing with serious cases of corruption, tax frauds, terror financing, money-laundering, ponzi / MLM schemes, banking / financial frauds, illegal betting / lottery, etc. The JTF in such cases could consist of all the concerned agencies led by the agency connected with the main infraction of the law.

5.2.73 The effort to tackle the menace of generation and control of black money will need adequate resources to be made available to all the relevant agencies. Emerging areas such as international taxation, transfer pricing, criminal investigation, and exchange of information as well as action thereon, require commensurate resources of manpower, training, technology etc. and necessary budgetary allocation.

D. Supportive Measures

D.1 Creating Public Awareness and Public Support

5.2.74 In a democratic form of government, political will and decisions are often a function of public demand and perception. It is important that citizens are kept in the loop about government strategies, and this paper is one of the steps that the government has specifically adopted in this regard. People must be given to understand how the government views the problem of black money and how it plans to tackle and control it. There is also need to initiate greater public dialogue and debate about the virtues of tax compliance and the menace of black money, while rising above the rhetoric and sincerely attempting to develop a broader understanding of what leads to it and how it can possibly be controlled. It needs to be understood by one and all that state authorities do not possess magic wands with which they can achieve anything that they desire or are directed to achieve.

D.2 Enhancing the Accountability of Auditors

5.2.75 Unlike many developed countries, Auditors in India have not been requisitely accountable, resulting in frequent undermining of this important aspect. Apart from recent cases of distortionary corporate governance involving highly reputed firms, cases are detected regularly by the regulatory authorities where the Auditors have failed to point out gross violations and even blatant misrepresentations. In the absence of adequate effective provisions, the Auditors are hardly ever held accountable for these lapses. Another aspect of this problem is the way in which a firm opts for an Auditor in this environment of low accountability and prevalent evasion, since a strict Auditor ready to blow the whistle can hardly expect to thrive amidst competitors, many of whom may be more than willing to cooperate and compromise at different levels. As a result, a very important regulatory tool is virtually losing its role in contributing towards greater compliance. There will be need in future to look into various aspects of the functioning and regulation of the role of Auditors and various other professionals verifying the declarations and statements made by firms and ensure that there are adequate safeguards and sufficient accountability of such professionals.

D.3 Protection to Whistleblowers and Witnesses

5.2.76 In India, the law has not been able to provide adequate protection to informants / whistleblowers, nor do government departments have effective witness-protection programmes. As a result, credible information is not forthcoming and witnesses either do not turn up or turn hostile resulting in acquittals in prosecution cases. The DCI in the CBDT has been empowered to run such a programme. Accordingly, a witness-protection law can be considered as an option. Subsequently, witness-protection programmes may need to be implemented by all law enforcement agencies.

D.4 Need to Join International Efforts and Use International Platforms

5.2.77 In a globalized world, where all stakeholders are interdependent, no country can take unilateral measures without adversely impacting its own interests. Thus, in such a scenario, there is greater need to integrate with international efforts and use the international platforms for achieving domestic strategies aimed at curbing black money generation within the country.

5.2.78 India, in earlier summits of the G20, has raised concerns over tax evasion and the difficulties in obtaining necessary information pertaining to past years in cases of tax evasion. Some countries/jurisdictions, unlike most of developed and developing countries, differentiate between 'tax fraud' and 'tax evasion'. For them, while tax fraud is a crime, tax evasion is not. These countries refuse to grant international cooperation and exchange of information regarding tax evasion. This difference in perception assists deliberate concealment of wealth for the purpose of evading tax, something regarded as a crime all over the developed world, and impedes effective exchange of information. There is need to remove this distinction in order to help efforts of government authorities in pursuing tax cheats who have parked funds outside their countries.

5.2.79 India has also been actively advocating making the automatic exchange of information a standard in various International forums including the G20 . At present there is no obligation for countries to exchange information automatically. However, it is necessary to promote automatic exchange of information since this is the best form of exchange of tax information which can promote voluntary compliance and decrease tax evasion. India has requested the G20 countries that they should start exchanging information automatically amongst themselves and then they can give a call and encourage other counties to do so.

5.2.80 Accounting standards can significantly contribute towards greater transparency and help in strengthening deterrence against generation of black money. This is why G20 countries should continue to insist on a 'single set of high quality, global accounting standards' as advocated by it during the Busan Declaration of G20 Finance Ministers. The G20 countries should specifically endorse the idea and implementation of a country-by-country financial reporting standard, which would include the obligation for each multinational company to report in every country in which it operates its relevant particulars including the details of its financial performance, sales, purchases, labour costs, financing costs including facilitation payments, pre-tax profit, tax charges, and book value.

D.5 Need to Fine-tune Relevant Laws and Regulations

5.2.81 There is also need to strengthen the legal framework for regulation. With a changing environment in which those laws are to be implemented, there is urgent need to modify our laws and practices too to make them effective in the prevailing environment. While such efforts are under way in the area of central taxation laws, there are many other laws, related directly or indirectly to the generation of black money that may have to be modified and made more effective. Some of them may be in the nature of paradigm shifts, like the Right to Information Act which has been a major initiative in empowering the citizen and inculcating transparency in the system. Other legislative measures can be aimed at strengthening the deterrence against perpetrators of financial crimes. An example is the recent amendment in the Income Tax Act, whereby the period of limitation for reopening income tax assessments is proposed to be enhanced from the present six years to sixteen years for bringing to tax undisclosed assets held abroad.

5.2.82 Black money cannot be effectively fought unless the judicial machinery to deal with it is specialized and the trial of offences is expeditious and punishments exemplary. Legal support to various law enforcement

agencies should be enhanced. All financial offences should be tried through fast-track special courts. The Ministry of Law may have to take up this issue on priority and make arrangements for setting up fast-track courts all over the country in a time-bound manner. Judicial officers may be provided inputs as required in technical aspects of economic offences.

5.2.83 A professional National Tax Tribunal could be formed to deal with all tax litigation. It has also been suggested that for criminal trial of economic offences, the High Courts may consider setting up exclusive economic offences courts with special summary procedure. Under economic laws, different punishments are prescribed for different offences. Minimum punishments should also be prescribed for economic offences for greater deterrence. Enhanced punishment, at par with other serious economic offences, is likely to provide more effective deterrence against corruption.

D.6 Strengthening of Social Values

5.2.84 The fight against the menace of black money needs to be fought simultaneously at ethical, socio-economic, and administrative levels. At ethical level, we have to reinforce value / moral education in the school curriculum and build good citizens, particularly highlighting the ills of tax evasion and black money. At socio-economic level, the thrust of public policy should be to discourage conspicuous and wasteful consumption / expenditure, encourage savings, frugality and simplicity, and reduce the gap between the rich and the poor.

5.3 Strategies for Curbing Generation of Black Money through Illegal or Criminal Activities

5.3.1 Illegal and criminal activities are an equally significant source of black money generation and curbing them is as an equally important priority of the government. Since many of these activities fall within the ambit of law and order issues, they lie primarily in the domain of state governments. Without undermining the role of the central government, it can be said that strategies for curbing these illegal activities require active participation of state governments, making it even more important that a broader national consensus is achieved in these areas and all political stakeholders commit themselves to pursuing these strategies.

A. Organised Crime

5.3.2 Organised crime, wherever and whenever it exists, lead to profiteering and accumulation of wealth that cannot be reported, thereby generating black money. Such black money is either laundered and brought back into the accountable economy or is taken out of the country or remains within the country, where it may get invested in benami properties, both tangible and intangible in nature. Organised crime can exist in many areas and can often get mixed up with unreported legitimate activities in vulnerable sectors. For example, a property dealer resorting to forceful illegal eviction of tenants can be indulging in both legitimate and illegitimate activities to generate black money. Strict action by state governments is necessary to curb these crimes.

B. Corruption

5.3.3 Today corruption is perceived as one of the major challenges faced by the country, and this government is fully committed to countering it. While a detailed discussion touching on all the factors that lead to corruption and the wider reforms of policies and their execution may be outside the scope of this paper, it can be stated that curbing corruption also requires multi-pronged strategies consisting of both broader reforms as well as more focused capacity building of institutions that are assigned the responsibility of preventing it.

5.3.4 The government has introduced the Public Procurement Bill 2012. This Bill intends to regulate public procurement by all ministries and central government departments. It aims at ensuring transparency, fair and equitable treatment of bidders, promoting competition, and enhancing efficiency and economy in the public procurement process.

5.3.5 Social-sector schemes involving huge public expenditure under various programmes reportedly suffer from manipulations and leakages. Direct transfers to the accounts of beneficiaries can provide a solution, as they would prevent manipulations like bogus muster rolls. While efforts such as the UID and direct

transfer of subsidies will stop leakages in some sectors, in other sectors the problem will have to be addressed differently.

5.3.6 Institutions of the Lok Pal and Lokayukta need to be put in place at the earliest, in the centre and states respectively, to expedite investigations into cases of corruption and bring the guilty to justice. The legislative step in respect of the Lok Pal has already been taken and the bill is under the consideration of the Parliament. In addition, other bills in this context that are pending with the Parliament for enactment are Public Interest Disclosure and Protection to Persons Making the Disclosure Bill 2010 (Whistleblowers' Bill), Judicial Standards and Accountability Bill 2010 and Citizens' Grievance Redressal Bill 2010.

C Other Criminal Activities that lead to Significant Black Money

5.3.7 There are many illegal activities and crimes that lead to significant income that cannot be reported due to the illegal nature of the activities generating it. These include counterfeit currency, drug trade, and terrorism. Each one of them can be a major source of black money generation and controlling them is one of the great challenges before society. It requires all agencies of both the central and the state governments to actively draw out long-term strategies to bring them to a halt.

5.4 Strategies for Repatriation of Black Money Stashed Abroad and Issues Related to Confidentiality of Information

A. Repatriation of Black Money Stashed Abroad

5.4.1 The Government of India has repeatedly expressed its commitment to bringing back black money stashed abroad by Indian citizens. However, it is a goal that cannot be achieved unilaterally by government action. It requires coordination and cooperation of the other country. To achieve this end, the government has been rigorously working to evolve an environment and create legal mechanisms for such cooperation through global consensus and specific bilateral treaties. The network of DTAAs and TIEAs, which has been highlighted in Chapter 4, is a major step in this direction. However, these DTAAs/TIEAs do not have provisions for repatriation of undisclosed assets. There are limited provisions in some of the existing laws. However, there is no international consensus to have mechanism for repatriation of undisclosed assets located abroad. Without international consensus on this issue it is difficult to implement domestic law on repatriation of assets located abroad. The only exception is the provision under the United Nations Convention against Corruption (UNCAC) where, if it is established that the undisclosed asset represents corruption money, it can be seized and repatriated. India has ratified the UNCAC on 9 May 2012 and thus in cases of corruption, it will be an effective tool for repatriation of assets located abroad.

5.4.2 The Restitution of Illegal Assets Act 2011, passed by Swiss Parliament in October 2010, provides for freezing, forfeiture and restitution of politically exposed persons, or their associates, where a request made under MLAT cannot produce a result due to failure of state structures in the requesting state. The failure of state structure would be in cases where the requesting state cannot satisfy the requirements of MLATs owing to the total or substantial collapse, or the unavailability of its national judicial system. Since India has a well-functioning judicial system as also a well-functioning MLAT with Switzerland, we do not need to take recourse to this Act.

5.4.3 Under the Income Tax Act, tax, penal interest, and penalty (from 100 per cent to 300 per cent of the tax evaded) is levied whenever there is information about undisclosed assets located abroad. In most cases this is equivalent to or more than 100 per cent of value of the undisclosed asset. The tax liability (including penalty) can then be recovered from Indian assets. If the tax liability cannot be recovered from Indian assets, assistance of the other country (where the undisclosed asset is located), can be taken if in the DTAA there is a provision for assistance in tax collection. This provision exists in 30 of India's 82 DTAAs (Norway, Botswana, Romania, Denmark, Poland, Turkmenistan, Kazakhstan, Sweden, South Africa, Belarus, Trinidad and Tobago, Jordan, Czech Republic, Morocco, Portuguese Republic, Belgium, Kyrgyz Republic, Bangladesh, Ukraine, Uganda, Sudan, Armenia, Iceland, Tajikistan, Luxembourg, Qatar, Mexico, Uruguay, Mozambique, and Georgia). Steps are being taken to include this provision in other DTAAs as well.

5.4.4 India has ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 2 February 2012 and it will be in force from 1 June 2012. This Convention provides for assistance in tax collection from countries that are parties to the Convention (provided they have not placed any reservation on this type of assistance) and thus India will become better equipped to repatriate the money from these countries to the extent of tax liability.

5.4.5 Stolen Assets Recovery (StAR) is a partnership between the World Bank Group and UNODC (United Nations Office on Drugs and Crime) that supports international efforts to end safe havens for corrupt funds. Towards this end, it brings together governments' regulatory authorities, financial institutions, and civil society for collective responsibility and action for the deterrence, detection, and recovery of stolen assets. India has taken steps to associate itself with the StAR initiative.

5.4.6 Within this legal framework, the Indian government has been taking steps to recover illegal money that has been stashed abroad. The Government will need to expand the legal framework of DTAAs and TIEAs as in last few years it has been a very useful source of information. Government will also need to sustain its efforts to obtain such information and take strict follow-up action against tax evaders. Building global consensus on assistance on repatriation of money in tax-evasion cases would facilitate the process.

B. Voluntary Disclosure Schemes and Tax Recovery

5.4.7 One of the options suggested for bringing back black money stashed overseas is scheme for voluntary disclosure of such deposits. This option has been successfully adopted by some countries (USA, UK, France, Germany, etc.). In these schemes, only partial benefits in the form of immunity from prosecution were made available in lieu of voluntary disclosure, as taxes along with lumpsum interest and penalty has to be paid. In the past, India has also opted for voluntary disclosure schemes. A similar scheme, targeted at black money stashed abroad can be a one time option, in view of the increasing capacity of tax administration to access information from foreign jurisdiction. However, these schemes have also been criticized for creating future expectations of similar schemes and resultant moral hazard. In recent years, the general public sentiment is also perceived to be against giving any immunity to tax evaders who have parked their money outside India. While such schemes help in recovering some of the lost tax revenue, their overall feasibility needs to be assessed in this background.

5.4.8 A gold deposit scheme has also been suggested from some quarters in this regard which essentially provides that if the depositors part with gold now, they will get it back as gold. This may also carry a nominal rate of return and should be transferable so as to be used as collateral for sale. The most important part of the scheme is that there should be complete tax immunity if the holders come forward to make the deposit and the depositors ought not to be asked where they get the gold from. However, the issue of complete tax immunity needs to be examined in light of other policy objectives.

C. Agreement between Countries for Revenue Sharing

5.4.9 There is administrative agreement between the UK and Switzerland which allows Switzerland to share taxes with the UK on accounts of UK citizens in Swiss Bank. In this regard it may be noted that on 24 August 2011 UK and Switzerland have initialled a tax agreement in respect of capital income derived by UK residents from assets in Switzerland. The agreement facilitates the levying of tax by the UK on such income in two ways:

(i) A retrospective charge in respect of accounts that were operative as at 31 December 2010 and on 31 May 2013; and

(ii) A tax charge on any future income.

In terms of the retrospective tax charge, the UK resident will be charged tax either as a one-off lump-sum payment (tax rate between 19 and 34 per cent of the value of assets) without disclosure of name; or s/he can allow disclosure of her/his account and then be taxed in accordance with the law. The tax charge on future income will be subjected to a final withholding tax of 27 per cent (for capital gains) and 48 per cent

(for investment income). This is basically a revenue-sharing agreement. The agreement is expected to enter into force at the end of 2013. Similar revenue-sharing agreements have also been made between Germany and Switzerland and Austria and Switzerland.

5.4.10 India has already taken up this issue with Switzerland. However, it needs to assess the costs and likely benefits of the step before taking any policy decision. It may be seen that the agreement between the UK and Switzerland is more of a revenue-sharing model which allows revenue sharing at the cost of disclosing identity. The disclosure of name is allowed only when the UK resident, holding assets in Switzerland, volunteers to disclose her/his name or when UK tax authorities make a request after establishing foreseeable relevance criteria.

5.4.11 Thus, India will have to take a decision first as to whether such type of agreement will meet its national objective where it can get an opportunity to share taxes with the Swiss government on assets held by Indian residents in Switzerland without learning the identity of the defaulting Indian residents. The Government of India looks forward to discussion on this important issue within and outside parliament before taking any further steps.

D. Confidentiality of Information under DTAAs/TIEAs

5.4.12 The Government is bound by the treaty provisions under which information is received. As per the international standard, tax information exchanged under DTAAs/TIEAs is protected by the confidentiality clause of the respective DTAA/TIEA under which information is received. The confidentiality provisions of these DTAAs/TIEAs generally allow disclosure or use of information only for tax purposes. India has been trying to renegotiate its DTAAs or conclude new DTAAs/TIEAs by excluding the confidentiality clause but has not met with much success. While some countries have agreed to include a provision that allows sharing of information with other law enforcement agencies subject to fulfilment of certain conditions they have generally refused to accept India's request to completely eliminate the confidentiality provisions, as they strongly feel that the information should not be made public until the tax case comes up before a court. These countries insist on such confidentiality in order to protect human rights which are also recognised in India. For example, if we receive information about 100 Indians having bank accounts abroad from a country, it does not prove automatically that all these 100 accounts represent black money of Indian citizens stashed aboard. There may be cases where the account holder may be an NRI who is not assessed to tax in India with respect to those sums or the sum deposited may already have been disclosed to the Income Tax Department. It is only after enquiry and completion of assessment that one can say for sure whether the amount deposited in the foreign bank account represents black money of an Indian citizen stashed abroad.

5.4.13 In order to ensure that there is no delay in these names becoming public after completion of assessment, the government has taken a view that in cases where any undisclosed overseas asset is detected (including undisclosed foreign bank accounts) one need not wait for disposal of first appeal or imposition of penalty in order to launch prosecution. Accordingly, prosecution was launched in 17 cases immediately after completion of assessments based on information received from German authorities about Indians having bank account in LGT banks and these 17 names have become public on initiating prosecution. Similar procedure can be followed in other cases where undisclosed overseas assets have been detected.

5.4.14 Further India is also under international obligation to maintain the confidentiality of the information received under DTAAs/TIEAs. In this context it is subject to the peer review process of all the countries being undertaken by the Global Forum on Transparency and Exchange of Information for Tax Purposes. India is a vice chair of the Peer Review Group of the Global Forum. The Peer Review Group is assessing all the countries against a set of references. One of the terms of reference (C.3) clearly mandates confidentiality of information as well as correspondences between competent authorities. Any breach of the confidentiality clause will not only affect India's rating in its peer review but also its international image

and give a signal that India is not committed to its international obligations. This may seriously put at risk India's efforts to get similar information from other countries in the future. Thus public disclosure of information received from Germany, France, or other countries need to be used in a way that is in accordance with India's international obligations and do not jeopardise any future efforts in this regard.

5.4.15 There is another related question, namely how the treaty with France is relevant for not disclosing the names of Indians having accounts in Swiss banks. Under the DTAA countries are obliged to exchange information available within their country if it leads to detection of tax evasion and it does not matter from which country the information has been sourced. Hence France is under obligation to exchange information with India under the India-France DTAA if it is holding information about Indian citizens' bank accounts which is likely to lead to detection of tax evasion even if the bank accounts are located in a third country. Further, it is also an international standard that the supplying state should exchange information even if it does not have domestic interest in it.

5.5 This document makes a serious attempt at putting together a framework for addressing the issue of black money, its generation and strategies for recovering illicit wealth. It is expected that this document would provide a basis for a more informed public debate on the subject. The complexity of the factors that underline the problem necessitates a broad based consensus across the political and institutional divide as well as between governments at different levels. The success in forging a consensus on the policy modalities to regulate and eventually eradicating this scourge will go a long way in making the country more equitable and efficient for facilitating human enterprise.

Annexures

Annexure 1 :Offences as Listed in the Schedule of the PMLA

	Designated Category of Offence	Name of Act in the Schedule of the PMLA
1	Participation in an organised criminal group and racketeering	Indian Penal Code, 1986 (s. 120B – criminal conspiracy) – Part B of the Schedule
2	Terrorism, including terrorist financing	The Unlawful Activities (Prevention) Act, 1967 (ss. Read with section 3; 11 read with ss.3 and 7; 13 read with s.3. 16 read with s.15, 16A,17,18,18A,18B,19,20,21,38,39 and 40) - Part A of the Schedule
3	Trafficking in humanbeings and migrant smuggling	The Bonded Labour System (Abolition) Act. 1976 (ss. 16, 18 and 20) - Part B of the ScheduleThe Transplantation of Human Organs Act. 1994 (ss.'18, 1S and 20) – Part B of the ScheduleThe Child Labour (Prohibition and Regulation) Act, 19BO (s 14) - Part B of the ScheduleThe Juvenile Justice (Care and Protection of Children) Act, 2000 (ss. 23 to 26) - Part B of the ScheduleThe Emigration Act, 1 983 (s.24) - Part B of the ScheduleThe Passport Act, 1967 (s.12) - Part B of the ScheduleThe Foreigners Act, 1946 (ss. 14, 14B and 14C) - Part B of the Schedule
4	Sexual exploitation, including sexual exploitation of children	The Immoral Traffic (Prevention) Act, 1956 (ss.5,6, 8 and 9) – Part B of the Schedule
5	IIlicit trafficking in narcotic drugs and psychotropic substances	The Narcotic Drugs and Psychotropic Substances Act, 1985 (ss.15 to24,25A,27A and 29) - Part A of the Schedule
6	Illicit arms trafficking	The Arms Act. 1959(ss. 25 to 30) - Part B ofthe Schedule
7	Illicit trafficking in stolen and other goods	The Indian Penal Code, 1860 (ss. 411 to 414) – Part B of the Schedule
8	Corruption and bribery	The Prevention of Corruption Act, 1988 (ss. 7 to 10 and 13) - Part B of the Schedule
9	Fraud	The Indian Penal Code, 1860, (ss.417 to 424) -Part B of the Schedule
10	Counterfeiting currency	The Indian Penal Code. 1860 (ss. 489A and 489B) - part A of the Schedule

	Designated Category of Offence	Name of Act in the Schedule of the PMLA
11	Counterfeiting and piracy of products	The Copyright Act, 1957 (ss. 7 to 10 and 13)-part B of the Schedule. The Trade Marks Act, 1999 (ss. 103, 104, 105, 107 and 120)–Part B of the ScheduleThe Information Technology Act. 2000 (ss.72 and 75)- Part B of theScheduleThe Biological Diversity Act, 2002 (s. 55 read with s.6) - Part B of theScheduleThe Protection of PlantVarieties and Farmers Rights Act, 2OO1 (ss. 70 to 73 read with s.68) - Part B of the ScheduleThe Indian Penal Code. 1860 (s. 255. 257 to 260,475,476, 486 to 488) - Part B of the Schedule
12	Environmental crime	The Environment Protection Act 1986 (ss. 5 read with section 7 and 8) - Part B of the ScheduleThe Water (Prevention and Control of Pollution) Act, 1974 (ss. 41(2) and 43) - Part B of the Schedule The Air (Prevention and Control of Pollution) Act, 1981 (s. 37) - part B of the ScheduleThe Wild Life (Protection) Act. 1972 (s. 51 read with ss. 9, 17A,39. 44, 48 and 49B) - Part B of the Schedule
13	Murder, grievous bodily Injury	The Indian Penal Code, 1860 (s. 302, 304,307, 308, 327, 329) – Part B of the Schedule
14	Kidnapping, illegal restraintand hostage-taking	The Indian Penal Code, 1860 (s. 364A) – part B of the schedule
15	Robbery or theft	The Indian PenalCode. 1860 (ss. 392 to 402) - Part B of the schedule
16	Smuggling	The customs Act. 1962 (s. 135)- part B of the Schedule
17	Extortion	The Indian Penal Code. 1860 (ss. 384 to 389) - Part B of the Schedule
18	Forgery	The Indian Penal Code, 1860 (ss.467, 471 to 473) – Part B of the Schedule
19	Piracy	The Suppression of UnlawfulActs against Safety of Maritime Navigation and fixed Platforms on Continental Shelf Act, 2002, (s.3) – part B of the Scheduleand Fixed Platforms on Continental Shelf Act, 2002 (s. 3)- part B of the Schedule
20	Insider trading and market manipulation	The Securities and Exchange Board of India Act, 1992 (s. 12A read with S.24)-Part B of the Schedule

Annexure 2 : Text of G20 Communiques

1. Communiqué at the Meeting of G20 Finance Ministers and Central Bank Governors, Paris, 18-19 February 2011

   "We urge all jurisdictions to extend further their networks of Tax Information Exchange Agreements and encourage jurisdictions to consider signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters."

2. Communiqué at the Meeting of G20 Finance Ministers and Central bank Governors, Washington DC, 14-15 April 2011

   "We agreed to maintain momentum for action to tackle non-cooperative jurisdictions and to fully implement the G20 anti-corruption action plan. We asked the Global Forum to report to us on ways to improve the effectiveness of exchange of tax information."

3. Communiqué at the Meeting of G20 Finance Ministers and Central Bank Governors Paris, France, 14-15 October 2011

   "We reaffirmed our objective to achieve a single set of high quality global accounting standards. We look forward to discussion of progress made in tackling non-cooperative jurisdictions and tax havens in Cannes. We underlined in particular the importance of comprehensive tax information exchange and encourage competent authorities to continue their work in the Global Forum to assess and better define the means to improve it."

4. The Leaders' Declaration at G20 Seoul Summit November 2010:

   "We reiterated our commitment to preventing non-cooperative jurisdictions from posing risks to the global financial system and welcomed the ongoing efforts by the FSB, Global Forum on Tax Transparency and Exchange of Information (Global Forum), and the Financial Action Task Force (FATF), based on comprehensive, consistent and transparent assessment. We reached agreement on:

   The FSB to determine by spring 2011 those jurisdictions that are not cooperating fully with the evaluation process or that show insufficient progress to address weak compliance with internationally agreed information exchange and cooperation standards, based on the recommended actions by the agreed timetable.

   The Global Forum to swiftly progress its Phase 1 and 2 reviews to achieve the objective agreed by Leaders in Toronto and report progress by November 2011. Reviewed jurisdictions identified as not having the elements in place to achieve an effective exchange of information should promptly address the weaknesses. We urge all jurisdictions to stand ready to conclude Tax Information Exchange Agreements where requested by a relevant partner."

5 The Leaders' Declaration at G20 Cannes Summit November 2011:

   "We are committed to protect our public finances and the global financial system from the risks posed by tax havens and non cooperative jurisdictions. The damage caused is particularly important for the least developed countries. Today we reviewed progress made in the three following areas:

-In the tax area, the Global Forum has now 105 members. More than 700 information exchange agreements have been signed and the Global Forum is leading an extensive peer review process of the legal framework (phase 1) and implementation of standards (phase 2). We ask the Global Forum to complete the first round of phase 1 reviews and substantially advance the phase 2 reviews by the end of next year. We will review progress at our next Summit. Many of the 59 jurisdictions which have been reviewed by the Global Forum are fully or largely compliant or are making progress through the implementation of the 379 relevant recommendations. We urge all the jurisdictions to take the necessary action to tackle the deficiencies identified in the course of their reviews, in particular the 11 jurisdictions whose framework does not allow them at this stage to qualify to phase 2. We underline in particular the importance of comprehensive tax information exchange and encourage competent authorities to continue their work in the Global Forum to assess and better define the means to improve it. We welcome the commitment made by all of us to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and strongly encourage other jurisdictions to join this Convention. In this context, we will consider exchanging information automatically on a voluntary basis as appropriate and as provided for in the convention;

- In the prudential area, the FSB has led a process and published a statement to evaluate adherence to internationally agreed information exchange and cooperation standards. Out of 61 jurisdictions selected for their importance on several economic and financial indicators, we note with satisfaction that 41 jurisdictions have already demonstrated sufficiently strong adherence to these standards and that 18 others are committing to join them. We urge the identified non-cooperative jurisdictions to take the actions requested by the FSB;

- In the anti-money laundering and combating the financing of terrorism area, the FATF has recently published an updated list of jurisdictions with strategic deficiencies. We urge all jurisdictions and in particular those identified as not complying or making sufficient progress to strengthen their AML/CFT systems in cooperation with the FATF.

We urge all jurisdictions to adhere to the international standards in the tax, prudential and AML/CFT areas. We stand ready, if needed, to use our existing countermeasures to deal with jurisdictions which fail to meet these standards. The FATF, the Global Forum and other international organizations should work closely together to enhance transparency and facilitate cooperation between tax and law enforcement agencies in the implementation of these standards. We also call on FATF and OECD to do further work to prevent misuse of corporate vehicles."

Annexure 3 : Recommendations of the Committee Headed by Chairman, CBDT on Black Money

A Committee headed by the Chairman of CBDT was constituted on 27th May, 2011 for examining ways to strengthen laws to curb the generation of black money in the country, its legal transfer abroad and its recovery. The Committee has submitted its report to the Ministry of Finance on 29th March, 2012 and its recommendations are summarized below:

A. Preventing generation of black money

6.1 India must ensure transparent, time-bound & better regulated approvals / permits, single window delivery of services to the extent possible and speedier judicial processes. The Electronic Delivery of Services Bill, 2011 that seeks to provide for electronic delivery of public services by the government to all persons to ensure transparency, efficiency, accountability, accessibility and reliability in delivery of such services has been tabled before the Parliament in December, 2011.

6.2 The fight against the monstrosity of black money has to be at ethical, socio-economic and administrative levels. At the ethical level, we have to reinforce value / moral education in the school curriculum and build good character citizens, particularly highlighting the ills of tax evasion and black money. At the socio-economic level, the thrust of public policy should be to discourage conspicuous & wasteful consumption / expenditure, encourage savings, frugality and simplicity, and reduce the gap between the rich and the poor.

6.3 The Government is also considering legislating public procurement law. The Public Procurement Bill, 2012 intends to regulate public procurement by all ministries and central government departments. It aims at ensuring transparency, fair and equitable treatment of bidders, and promote competition and enhance efficiency and economy in the public procurement process.

6.4 In order to ensure transparent and efficient allocation of natural and man-made resources, oversight in the form of comprehensive regulations, and ombudsman for grievance redressal, particularly for scarce resources - as in land, minerals, forests, telecom, etc. - needs to be introduced and implemented expeditiously.

6.5 Social sector schemes involving huge public expenditure under various programmes reportedly suffer from possible manipulations and leakages. Direct transfers to the accounts of beneficiaries can provide a solution, as it would prevent manipulations like bogus muster rolls, etc. While efforts such as UID and direct transfer of subsidies will stop leakages in some sectors, in other sectors the problem will have to be addressed differently. We, accordingly, recommend that social audit be made mandatory for all social sector schemes that do not involve direct transfer of credit to the bank account of the beneficiary, at the district / field level, and a second and subsequent AG audit at the HQ level. We also recommend that a system of random inspections by teams of sponsoring Ministry / Department / Agency may monitor utilization of public funds for social sector schemes.

6.6 There should be a dedicated training center for all law enforcement agencies dealing with financial crimes and offences, as this requires special skills. A delegation from the CBDT had recently visited USA and studied the training methodology of the Federal Law Enforcement Training Center (FLETC), Brunswick GA. A multi-disciplinary institution for training in investigation of financial crimes may be established on the lines of FLETC of USA.

6.7 Oversight in the private sector is almost absent, except for some professionally managed companies. It mainly consists of self-regulation, and audit under the Company and Income Tax laws. That the system

of professional audit may be quite ineffective even in professionally managed enterprises is aptly demonstrated by the Satyam case. We are of the view that the burden of dual audit should be reduced to single audit (for both company and tax law) and the audit system be detached from the management and control of the business. We, therefore, recommend that the central government establish a regulator (under Company law / Income Tax law) to empanel auditors in different grades and randomly assign them to the private sector firms, based on category and payment capacity, with mandatory rotation and maximum tenure of two years.

6.8 The proposed national level GST regime should be expeditiously implemented, as the spin-off from its implementation would provide adequate resources to more than compensate the loss apprehended by certain state governments.

6.9 At present, no government agency has complete database of NPOs. CBDT has the largest data-base about this sector. There may be information with other agencies such as MHA, CEIB, etc. It is desirable that CBDT be assigned the role of a centralized agency with which every NPO would require to be registered and would be allotted a unique number. This would be in line with the decision taken by the Government in the light of possible misuse of the sector in undesirable activities. There are suggestions made by the NPO Sector Assessment Committee, an Inter-ministerial body, which should be accepted and the office of DGIT (Exemption) appropriately strengthened in terms of manpower, infrastructure and capacity building.

6.10 There should also be sharing of real-time data under Foreign Contribution Regulation Act (FCRA) and DGIT (Exemption) and coordination amongst various enforcement agencies. The registration under section 12AA and approvals under sections 10(23C) / 10(21) / 35 / 80G of the Income Tax Act for charitable organizations are required to be in accordance with international best practices. For this purpose, the Income Tax Department should devise a mechanism to facilitate effective monitoring and better control over the tax administration of NPOs through modification in existing procedure of granting registrations or according approvals by allotting a PAN-linked system-generated specific number, making mandatory the quoting of this number in the tax returns and devising suitable changes in the existing tax return forms. This would filter out bogus claims and would also help in maintaining authentic data base of NPOs.

6.11 Accountability of both public and private offices needs to be enhanced. As we are mainly concerned here with public sector accountability, we recommend that apart from good practices being followed such as Fiscal Responsibility and Budget Management (FRBM) Act and outcome budget, performance-linked appraisal system of rewards and punishments, already under consideration, should be expeditiously implemented.

6.12 In the recent investigations by Income Tax department on the mining industry in Karnataka, it has come to light that state law allows unregistered dealers (URD) to trade in minerals, possibly as a measure to raise revenue. This is contrary to the central Mines and Minerals (Regulation and Development) Act, 1957 and encourages illegal mining and unregulated trade in minerals. This situation requires immediate remedy and all laws relating to licensing and regulation in mining need a thorough review. It also came to light that there was mismatch between exports and inward remittance, as also between information available with different authorities. The anomaly between the central and the state laws with regard to URDs should be immediately removed.

B. Discouraging use of black money

6.13 Government may consider amending existing laws (The Coinage Act 2011, The Reserve Bank of India Act 1934, FEMA, IPC, Cr PC, etc.), or enacting a new law, for regulating the possession and

transportation of cash, particularly putting a limitation on cash holdings for private use, and including provisions for confiscation of cash held beyond prescribed limits. This would address the concerns expressed by various courts, and also the Election Commission of India for reducing the influence of money power during elections.

6.14 To reduce the element of black money in transactions relating to immovable properties, provision for NOC should be introduced in the Income Tax law with safeguards to reduce administrative complications and increased ease of compliance, so that an appropriate and uniform data-base is also set up, and a proper national-level regulation is put in place. The new system should be computer driven with minimal interface between the tax authorities and the tax-payer, and enforced by a dedicated unit within the investigative machinery of the Income tax department on the basis of pre-determined parameters and standard operating procedures. The electronically generated NOC, within a specified period, would also act as a tax clearance certificate.

6.15 The Accounting Standard No.7 should be modified by the ICAI to be made applicable to real estate developers also. AS-7 and AS-9 should be notified under the Income Tax Act, 1961.

6.16 There is no uniformity in the matter of levy of agricultural income tax among states. Agriculture generates around 14 per cent of the country's GDP. Giving credit to agricultural income for income tax purposes without verification of claim allows an avenue for bringing black money into the financial system as agricultural income. State governments may consider levy of agricultural income tax with facility for computerized processing and selective verification. This will on the one hand enhance revenues of state governments, and on the other hand prevent laundering of black money in the garb of agricultural income.

C. Effective detection of black money

6.17 The regulation and enforcement of KYC norms in the co-operative sector may be strengthened by the State Governments as well as the Central Government. Responsibility may be fixed for any lapse in this regard, as well as for any subsequent failure to alert authorities as regards any suspicious transactions in such accounts.

6.18 The RBI could consider stricter implementation of KYC norms and limit number of accounts that can be introduced by a single person, the number of accounts that can be maintained in the same branch by any entity and alerts about same address being used for opening accounts in different names. Stricter adherence to, and enforcement of, KYC norms is needed for ensuring proper compliance by banks and financial institutions. The Government, as well as the RBI, also need to put a better regulatory framework in place and act promptly against errant persons / institutions.

6.19 The Ministry of Corporate Affairs, which already has a centralized data-base of all companies, may examine placing a cap on the number of companies operating from the same premises and number of companies in which a person can become director.

6.20 The government may consider introducing alternative financial instruments to reduce the attraction of gold as savings instrument. It may also consider revising customs duties, as also graded wealth tax, on gold and jewellery to discourage investments in unproductive assets. The taxation structure on bullion and jewellery, including VAT / Sales Tax should be harmonized.

6.21 Better reporting / monitoring systems are to be put in place to trace the dealings in bullion / jewellery through the Income Tax / Customs / Sales Tax Acts. While the Income Tax Department has made it mandatory to obtain PAN or Form-60 / Form-61 for purchase of bullion above ₹ 5 lakh. Similar rules should be framed for purchase / sale of bullion / jewellery, and collection of tax at source on purchases especially in cash.

6.22 Use of banking channels and credit / debit cards should be encouraged, while trade practices such as cheque discounting should be discouraged. The validity period of cheques / DDs has been reduced from 6 to 3 months w.e.f. 1st April 2012, which will discourage discounting of negotiable instruments. Payments by debit / credit cards through e-service intermediaries will simplify and encourage payments in these modes and reduce the cash economy. It is imperative that payment of wages and salaries in the private sector should also be through banking channels and become cash-less, in line with the government objective of financial inclusion.

6.23 Income Tax Department, which has a large data-base of financial transactions, should immediately set up the Directorate of Risk Management for proper data mining and risk analysis. The third-party reporting mechanism of the Income Tax Department should be made computer-driven and cover most high-value transactions in the financial sector.

6.24 Foreign remittances using corporate structures and the formal financial sector instruments may be a popular method of transferring funds (even of illegal origin) to foreign jurisdictions or for routing back to India through Foreign Institutional Investment (FII). There is a need to create a robust database of such remittances and carry out an analysis of their backward and forward linkages in order to understand the nature and legitimacy of the transmitted funds. FIU-IND may be empowered by law to receive reports (similar to other reports submitted to FIU-IND) on all international fund-transfers through the Indian financial system. The FIUs of Australia and Canada are already mandated to receive such reports.

6.25 SEBI by a circular issued in January 2011 has introduced changes in the reporting formats that capture details of downstream issuances of PNs during the month. From March 2012, these detailed reports are to be filed on a monthly basis but have a lag of six months. Though such details would be useful in identifying suspicious transactions, the six month lag in the information available is likely to reduce the strength of corrective action that can be taken by SEBI. These regulations need to be modified to ensure that information on downstream issuances is collected for the most recent month. This would ensure active surveillance and timely intervention as and when required by SEBI. Further, the most critical feature of an effective monitoring mechanism lies in ensuring strict KYC norms. PN subscribers should be subject to KYC norms of either the home country or the host country whichever is stricter. Though such provision implicitly exists in the extant provisions, these need to be built into SEBI regulations explicitly for better compliance.

6.26 The oversight mechanism for the financial markets must have trained manpower with proper domain knowledge of financial investigation. This will involve placing officials from the financial investigative agencies in the operations / vigilance machinery of the banks and financial institutions to keep proper vigil and ensure that rules and regulations are followed in the banks and other financial institutions.

6.27 Foreign entities - banks, financial institutions, fund transfer entities, etc. - have set up businesses in India. It has been found that Indian tax residents have been having substantial monetary transactions through these entities or with their branches abroad. Some countries have implemented laws to make it obligatory to furnish information of all transactions undertaken abroad. We recommend that India may also insist on entities operating in India to report all global transactions above a threshold limit. For this purpose, appropriate law, rules or contractual / licensing arrangement with these entities may be framed and implemented.

6.28 In India, there is no law to protect informants / whistle-blowers, nor does any department have effective witness protection program. As a result, credible information is not forthcoming and witnesses

either do not turn up or turn hostile resulting in acquittals in prosecution cases. Apparently, the National Investigative Agency runs a program, and the recently created Directorate of Criminal Investigation (DCI) in the CBDT has been empowered to run such a program. Accordingly, we recommend that a witness protection law may be enacted expeditiously and witness protection program should be implemented by all law enforcement agencies.

6.29 DRI maintains constant interaction with its Customs Overseas Intelligence Network (COIN) offices to share intelligence and information through Diplomatic channels on the suspected import / export transactions to establish cases of mis-declaration, which are intricately linked with tax evasion and money laundering. The scope and reach of COIN offices should be further expanded and strengthened. Customs officers should be stationed in major trading partner countries to liaise with customs authorities of those countries and cause verifications of suspicious trade transactions.

6.30 Institutions of the Lok Pal and Lokayukta may be put in place at the earliest, in the centre and states, respectively, to expedite investigations into cases of corruption and bring the guilty to justice.

D. Effective investigation and adjudication

6.31 Government must consider ways to mitigate the manpower shortage issues which are seriously hampering the functioning of various agencies particularly the CBDT and CBEC. Further, both Boards have submitted proposals for restructuring of their respective field formations. These need to be taken up and implemented on a fast track basis to show the Government's resolve to tackle the issue of black money.

6.32 Simultaneously, more administrative and financial autonomy must be expeditiously devolved on CBDT and CBEC for formulating tax policies in keeping with the overall government views on economic growth and development, for better tax administration and for providing tax-payer services as per best international practices. This has consistently been recommended by many earlier Committees and Commissions on Tax Administration.

6.33 With the emergence of complex legal matrix, infraction of one law invariably leads to infraction of another. Inter-agency coordination is critical in the fight against black money. There is a need to evolve an effective coordination mechanism that identifies the laws violated, the law violators, and a permanent joint mechanism to investigate all such cases. Some developed countries have an approach of joint task force and de-confliction programs to deal with this issue. It is time we study how this approach and program functions, adapt it to Indian conditions and implement it.

6.34 The information and intelligence gathering mechanisms of various economic agencies need to be more broad-based so that the entire gamut of economic activity is captured in an electronic manner, mined and analyzed. All the agencies need to continuously get technologically upgraded in this area to effectively tackle the menace of black money. The skills of manpower resources available with the agencies also need to be upgraded continuously and exposed to the global best practices in their sphere of work.

6.35 Intelligence sharing is one of the most critical areas for effective law enforcement. For this purpose, there should be a platform for more effective sharing of intelligence / information between central and state agencies. Information exchange among various economic law enforcement / intelligence organizations should become technology driven, preferably through a common technology platform. At the same time data-security should be ensured to prevent unauthorized access to information both technologically and through access control, and periodical security audit.

6.36 For curtailing TBML, there should be institutional arrangement for examining cases of mismatch between export and corresponding import data, as done by the Data Analysis & Research for Trade Transparency System (DARTTS) of US Customs. Indian Customs should set up a Trade Transparency Unit (TTU) on these lines for which appropriate legal framework may be introduced. Existing Customs Cooperation Agreements mostly provide for mutual administrative assistance in individual cases under

investigation. These agreements should have institutional arrangement for exchange of Harmonized System of Nomenclature (HSN) chapter-wise data of export and import. Similar arrangements should be made for Preferential Trade Agreements (PTA) and Free Trade Agreements (FTA).

6.37 Effective battle against black money cannot be ensured unless the judicial machinery to deal with it is specialized and the trial of offences is expeditious and punishments exemplary. The legal support to various law enforcement agencies should be enhanced. All financial offences should be tried through fast track special courts. The Ministry of Law should take up this issue on priority and make arrangements for setting up fast-track courts all over the country in a time-bound manner. Judicial officers may be provided inputs as required in technical aspects of economic offences.

6.38 Diverse activities are covered by 'primary' enactments to regulate sale receipts, actual production, charging amount in excess of statutory amounts, etc. In some cases, investigation by income tax authorities reveals infringement of state laws. In such cases, the courts admit evidence 'accepted' by state authorities. Provision may be considered for enactment in the law of evidence or the income-tax law to the effect that even if evidence is produced under the primary law, where no independent verification is made, it will not be conclusive proof for tax purposes.

6.39 Small 'entry operators' / 'bill masters' help launder large sums of money at miniscule commissions. The appellate tax bodies tend to tax their income at nominal rates. There is no effective deterrence except for taxing commission on such bogus receipts. Taxing the entry amounts in the hands of beneficiaries usually does not stand judicial scrutiny. The amendments proposed in the Finance Bill 2012 are expected to take care of the issue in the hands of the beneficiaries. Therefore, the offence of providing fake bills and entries should be dealt with firmly.

6.40 As taxation is a highly specialized subject, most reversals in court rulings are to be found in tax jurisprudence. Government may consider creating an all-India judicial service for specialized judiciary in different laws to achieve uniformity of application.

6.41 The National Tax Tribunal is yet to come into existence. Rapidly developing specialized institutions with requisite domain knowledge, to deal with complex problems confronting the country, is a priority. A professional National Tax Tribunal, with representation from the tax administration also, should be immediately formed to deal with all tax litigation.

6.42 Improvements in the matter of reporting, analysis and communication need to be achieved by further upgrading the computerization programme of the judicial system. It will enable the law enforcement agencies in taking well informed decisions.

6.43 We further recommend that for criminal trial of economic offences, the High Courts may consider setting up exclusive economic offences courts with special summary procedure. Judicial officers posted in these courts could take refresher courses in taxation laws to properly equip them in dealing with complex tax cases.

6.44 Under economic laws, different punishments are prescribed for different offences. Minimum punishments should also be prescribed for economic offences, to have greater deterrence. Different law enforcement agencies may consider lowering the punishment of 3 years to 2 years to facilitate speedier trial through summary procedure. Maximum punishments under the NDPS Act are 10 and 20 years. Under the NDPS Act, a second serious offence is punishable with death. Certainly, corruption cannot be treated as less diabolical than drug-related offences or money-laundering. Therefore, maximum punishment in serious cases of corruption should be enhanced to 10 years. Similarly, the minimum punishment for different offences of corruption should be enhanced from present 6 months, 1 year and 2 years to 1 year, 2 years and 3 years - at par with PMLA or Customs Act. Enhanced punishment, at par with other serious economic offences, is likely to provide more effective deterrence against corruption as summarized in the following Table:

Existing and proposed minimum and maximum punishments under economic laws

		PRESENT IMPRISONMENT			PROPOSED	
		Maximum	Minimum	Death	Maximum	Minimum
1	Income Tax Act	7	0		7	3 months
2	Wealth Tax Act	7	0		7	3 months
3	Customs Act	7	0		7	3 months
4	Central Excise Act	7	0		7	3 months
5	P C Act	7	0		10	6 months
6	PML Act	10	3		No change	No change
7	NDPS Act	20	0	Yes*	Life Imprisonment	6 months

NOTES :

* For second conviction punishable with 10-20 years imprisonment.

1. Imprisonment is in years, unless otherwise mentioned.
2. There should be no provision of death sentence for economic offences.

E. Other Steps

6.45 Directorate of Currency (DoC) may be strengthened to introduce coins and currencies would be machine readable, to enable routing of cash transactions through banks easy, user-friendly and reduce the menace of FICN. This will go a long way in enabling the banks to not discourage cash deposits, thus reducing cash economy. The DoC needs to be strengthened to achieve these objectives.

6.46 To prevent misuse of 'off-market', and 'Dabba-trading' or trading outside the recognized stock exchanges, amendment to income tax law may be introduced to allow losses in off-market share transactions to be set off only against profits derived from such transactions.

6.47 As housing finance companies and the property buyers are provided fiscal incentives, it also leads to speculation and flipping transactions. To prevent this, Section 54 of the Income Tax Act should be amended to provide for availing this benefit only twice by a taxpayer in his lifetime.

6.48 The period of limitation for reopening income tax assessments should be enhanced from present six years to sixteen years for bringing to tax undisclosed assets held abroad.

6.49 One of the ways to get assets / money held abroad into the national mainstream is through a compliance scheme. The Committee is of the view that if the above recommendations are implemented properly, it would be possible to get information regarding assets held abroad as well as check the generation of black money within the country and its illicit transfer abroad. Already there are provisions in the Income Tax Act to waive prosecution and reduce penalties in genuine cases of inadvertent infraction of tax laws. Such taxpayers can always avail of the benefits under these provisions and declare any undisclosed income / assets in India or abroad.

Annex Table - 1 : Liabilities of Swiss Banks towards Indians

Year End	Exchange Rate	Liabilities of Swiss Banks towards Indians	Liabilities towards All Countries	Liability towards Indian (Fiduciary Business)	Liability towards All Countries (Fiduciary Business)	Total Liabilities towards Indians	Total Liabilities towards all Countries	Liabilities towards Indians as % of Total Liabilities
2010	47.79	1.66 Billion CHF (Rs. 7,924 crore)	1349.24 Billion CHF	0.29 Billion CHF (Rs. 1,372 crore)	145.18 Billion CHF	1.95 Billion CHF (Rs. 9,295 crore)	1,494.42 Billion CHF	0.1302
2009	45.19	1.39 Billion CHF (Rs. 6,286 crore)	1335.98 Billion CHF	0.57 Billion CHF (Rs. 2,594 crore)	179.03 Billion CHF	1.97 Billion CHF (Rs. 8,879 crore)	1,515.01 Billion CHF	0.1297
2008	45.52	1.59 Billion CHF (Rs. 7,214 crore)	1,739.90 Billion CHF	0.82 Billion CHF (Rs. 3,710 crore)	280.23 Billion CHF	2.40 Billion CHF (Rs. 10,924 crore)	2,020.13 Billion CHF	0.1188
2007	34.79	2.92 Billion CHF (Rs. 10,168 crore)	2,070.44 Billion CHF	1.38 Billion CHF (Rs. 4,811 crore)	364.33 Billion CHF	4.31 Billion CHF (Rs. 14,979 crore)	2,434.77 Billion CHF	0.1769
2006	36.17	4.99 Billion CHF (Rs. 18,041 crore)	1,900.27 Billion CHF	1.47 Billion CHF (Rs. 5,332 crore)	328.26 Billion CHF	6.46 Billion CHF (Rs. 23,373 crore)	2,228.53 Billion CHF	0.2900

Annex Table - 2 : Liabilities of Swiss Banks - All Countries

Country	December 2010				December 2006			
	Liabilities of Swiss Banks (in Billion CHF)	Liability (Fiduciary Business) (in Billion CHF)	Total Liabilities (in Billion CHF)	%age	Liabilities of Swiss Banks (in Billion CHF)	Liability (Fiduciary Business) (in Billion CHF)	Total Liabilities (in Billion CHF)	%ge
India	1.66	0.29	1.95	0.13	4.99	1.47	6.46	0.29
Germany	52.78	2.62	55.40	3.60	148.08	8.01	156.09	7.00
France	37.55	2.87	40.42	2.63	64.71	7.74	72.45	3.25
Luxembourg	37.47	2.47	39.94	2.60	50.25	4.68	54.93	2.46
United Kingdom	324.09	7.54	331.63	21.55	447.70	15.72	463.42	20.79
Russia	10.51	2.84	13.35	0.87	7.53	5.09	12.62	0.57
Other Countries of Europe	88.38	15.58	103.96	6.77	123.04	33.64	156.66	7.03
United States of America	240.62	2.99	243.61	15.83	395.59	8.38	403.97	18.13
Australia	24.55	0.37	24.92	1.62	29.28	0.94	30.22	1.36
Japan	33.32	0.43	33.75	2.19	44.16	0.96	45.57	2.04
Canada	6.93	1.47	8.40	0.55	8.48	2.17	10.65	0.48
New Zealand	1.74	0.51	2.25	0.15	1.70	0.87	2.57	0.12
Offshore Financial Centres	377.51	68.22	445.73	28.97	427.82	149.31	577.13	25.90
Latin America and Caribbean	26.90	10.73	37.63	2.45	24.75	31.74	56.49	2.53
Africa and Middle East	43.46	21.39	64.85	4.21	64.74	49.94	114.68	5.15
Asia and Pacific (including India)	43.43	5.15	48.58	3.16	62.44	9.07	71.51	3.21
Total	1,349.24	145.18	1,538.60	100.00	1,900.27	328.26	2,228.50	100.00

Annex Table 3 : Illicit Flow, GFI Report, December, 2011

Rank	Country	Illicit outflow (billions of USD)
1	China	2,467
2	Mexico	453
3	Russia	427
4	Saudi Arabia	366
5	Malaysia	338
6	Kuwait	269
7	United Arab Emirates	262
8	Venezuela, BR	171
9	Qatar	170
10	Poland	160
11	Nigeria	158
12	Kazakhstan	123
13	Philippines	121
14	Indonesia	119
15	India	104
16	Ukraine	92
17	Chile	84
18	Argentina	83
19	Islamic Republic of Iran	66
20	Egypt	60

Annex Table 4 : Share of Top Investing Countries FDI Equity inflows

All figures in US$ Million

Rank	Country	2008-09	2009-10	2010-11	2000-1 to 2010-11 Cumulative Inflows)	Percentage of Cumulative Inflows
1.	Mauritius	11,229	10,376	6,987	54,227	41.80
2.	Singapore	3,454	2,379	1,705	11,895	9.17
3.	U.S.A.	1,802	1,943	1,170	9,449	7.28
4.	U.K.	864	657	755	6,639	5.12
5.	Netherlands	883	899	1,213	5,700	4.39
6.	Japan	405	1,183	1,562	5,276	4.07
7.	Cyprus	1,287	1,627	913	4,812	3.71
8.	Germany	629	626	200	2,999	2.31
9.	France	427	303	734	2,264	1.75
10.	U.A.E.	257	629	341	1,890	1.46
	Total FDI Inflows	27,331	25,834	19,427	129,716	100.00

Annex Table 5 : List of Countries that Have Signed and ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters

Country	Original Convention			Protocol (P) Amended Convention (AC)		
	Signature (opened on 25-01-1988)	Deposit of instrument of ratification, acceptance or approval	Entry intoforce	Signature (opended on 27-05-2010)	Deposit of instrument of ratification acceptance or approval	Entry into force
ARGENTINA				03-11-2011 (AC)		
AUSTRALIA				03-11-2011 (AC)		
AZERBAIJAN	26-03-2003	03-06-2004	01-10-2004			
BELGIUM	07-02-1992	01-08-2000	01-12-2000	04-04-2011 (P)		
BRAZIL				03-11-2011 (AC)		
CANADA	28-04-2004			03-11-2011 (P)		
COSTA RICA				01-03-2012 (AC)		
DENMARK	16-07-1992	16-07-1992	01-04-1995	27-05-2010 (P)	28-01-2011	01-06-2011
FINLAND	11-12-1989	15-12-1994	01-04-1995	27-05-2010 (P)	21-12-2010	01-06-2011
FRANCE	17-09-2003	25-05-2005	01-09-2005	27-05-2010 (P)	13-12-2011	01-04-2012
GEORGIA	12-10-2010	28-02-2011	01-06-2011	03-11-2010 (P)	28-02-2011	01-06-2011
GERMANY	17-04-2008			03-11-2011 (P)		
GREECE	21-02-2012			21-02-2012 (P)		
ICELAND	22-07-1996	22-07-1996	01-11-1996	27-05-2010 (P)	28-10-2011	01-02-2012
INDIA				26-01-2012 (AC)	21-02-2012	01-06-2012
INDONESIA				03-11-2011 (AC)		
IRELAND				30-06-2011 (AC)		
ITALY	31-01-2006	31-01-2006	01-05-2006	27-05-2010 (P)	17-01-2012	01-05-2012
JAPAN	03-11-2011			03-11-2011 (P)		
KOREA	27-05-2010	26-03-2012	01-07-2012	27-05-2010 (P)	26-03-2012	01-07-2012
MEXICO	27-05-2010			27-05-2010 (P)		
MOLDOVA	27-01-2011	24-11-2011	01-03-2012	27-01-2011 (P)	24-11-2011	01-03-2012
NETHERLANDS	25-09-1990	15-10-1996	01-02-1997	27-05-2010 (P)		
NORWAY	05-05-1989	13-06-1989	01-04-1995	27-05-2010 (P)	18-02-2011	01-06-2011
POLAND	19-03-1996	25-06-1997	01-10-1997	09-07-2010 (P)	22-06-2011	01-10-2011
PORTUGAL	27-05-2010			27-05-2010 (P)		
RUSSIA				03-11-2011 (AC)		
SLOVENIA	27-05-2010	31-01-2011	01-05-2011	27-05-2010 (P)	31-01-2011	01-06-2011
SOUTH AFRICA				03-11-2011 (AC)		
SPAIN	12-11-2009	10-08-2010	01-12-2010	11-03-2011 (P)		
SWEDEN	20-04-1989	04-07-1990	01-04-1995	27-05-2010 (P)	27-05-2011	01-09-2011
TURKEY				03-11-2011 (AC)		
UKRAINE	30-12-2004	26-03-2009	01-07-2009	27-05-2010 (P)		
UNITED KINGDOM	24-05-2007	24-01-2008	01-05-2008	27-05-2010 (P)	30-06-2011	01-10-2011
UNITED STATES	28-06-1989	30-01-1991	01-04-1995	27-05-2010 (P)		

Annex Table 6 : Summary of New Swiss Treaties

Country	Date of Signing	Date of Entry into Force	Information relating to the date from which information will be given	Date from which information will be given	Prospective/ Retrospective
India	30.8.2010	7.11.2011	Fiscal year beginning on or after first day of January following the date of signature	1.4.2011	Limited retrospetive
USA	23.9.2009	Not yet in force	Any date beginning on or after the date of signature of the Protocol	On entering info force, the information will be given from 23.09.2009	Limited retrospetive
UK	7.9.2009	15.12.2010	First day of January of the year next following the entry into force of the Protocol	1.1.2011	Only prospective
Netherland	26.2.2010	9.11.2011	Any date beginning on or after the first day of March following the date of signature	1.3.2010	Limited retrospective
Russia	25.9.2011	Not yet in force	First day of January next following the entry into force	On entering info force, the information will be given from the next January	Only retrospective
France	27.8.2009	4.11.2010	Calendar year or fiscal year beginning on or after 1 January of the year immediately following the date of signature	1.1.2010	Limited retrospective
Germany	27.10.2010	Not yet in force	Period beginning on 1 January of the year following the signing	1.1.2011	Limited retrospective

Table 7 : List of DTAAs/TIEAs in force/under negotiation

S-No-	Name of the country	Date of Entry into force of DTAA/TIEA	Current status of re-negotiation to update Article on EOI and Other Articles
1	2	3	4
DTAAs			
1	Greece	17/03/1967*	Under renegotiation
2	Egypt	30/09/1969*	Under renegotiation
3	Tanzania	16/10/1981*	Renegotiations completed. Comprehensively revised DTAA signed on 27th May 2011 and entered into force on 12th December 2011
4	Libya	01/07/1982*	Under renegotiation
5	Sri Lanka	19/04/1983*	Renegotiations completed
6	Mauritius	06/12/1983*	Under renegotiation
7	Zambia	18/01/1984*	Renegotiations completed
8	Finland	18/11/1984	Renegotiation completed. Comprehensively revised DTAA signed on 15th January 2010 and entered into force on 19th April 2010
9	Kenya	20/08/1985*	Renegotiations completed
10	Thailand	13/03/1986	Renegotiations completed
11	Korea	01/08/1986	Under renegotiation
12	New Zealand	03/12/1986	Under renegotiation
13	Norway	31/12/1986	Renegotiations completed. Comprehensively revised DTAA signed on 02nd February 2011 and entered into force on 20th December 2011
14	Romania	14/11/1987	Renegotiations completed
15	Indonesia	19/12/1987	Renegotiations completed
16	Nepal	01/11/1988	Renegotiations completed. Comprehensively revised DTAA signed on 27th November 2011. Will enter into force on completion of internal procedure by other country.
17	Netherlands	21/01/1989	Renegotiations completed. Signed on 10th May, 2012. Will enter into force on completion of internal procedure by other country.

1	2	3	4
18	Denmark	13/06/1989	Under renegotiation
19	Poland	26/10/1989	Renegotiations completed
20	Japan	29/12/1989	Under renegotiation
21	USA	18/12/1990	Under renegotiation
22	Australia	30/12/1991	Renegotiations completed. Signed on 16th December 2011. Will enter into force on completion of internal procedure by other country
23	Brazil	11/03/1992	Renegotiations completed
24	Bangladesh	27/05/1992	Renegotiations completed
25	UAE	22/09/1993	Renegotiations completed. Signed on 16th April 2012. Will enter into force on completion of internal procedure by other country
26	UK	26/10/1993	Renegotiations completed
27	Uzbekistan	25/01/1994	Renegotiations completed. Signed on 11th April 2012. Will enter into force on completion of internal procedure by other country
28	Philippines	21/03/1994	Under renegotiation
29	Singapore	27/05/1994	Renegotiations completed. Signed on 24th June 2011, entered into force on 1st September 2011
30	France	01/08/1994	Renegotiations completed
31	China	21/11/1994	Under renegotiation
32	Cyprus	21/12/1994	Under renegotiation
33	Swiss Confederation	29/12/1994	Renegotiations completed. Signed on 30th August 2010, entered into force on 07th October 2011
34	Spain	12/01/1995	Renegotiations completed
35	Vietnam	02/02/1995	Under renegotiation
36	Malta	08/02/1995	Renegotiations for comprehensively revising the existing DTAA completed.
37	Bulgaria	23/06/1995	Under renegotiation

1	2	3	4
38	Italy	23/11/1995	Under renegotiation
39	Mongolia	29/03/1996	Under renegotiation
40	Israel	15/05/1996	Under renegotiation
41	Germany	26/10/1996	Under renegotiation
42	Turkey	01/02/1997	Under renegotiation
43	Canada	06/05/1997	Under renegotiation
44	Oman	03/06/1997	Under renegotiation
45	Turkmenistan	07/07/1997	Under renegotiation
46	Belgium	01/10/1997	Under renegotiation
47	Kazakhstan	02/10/1997	Under renegotiation
48	South Africa	28/11/1997	Renegotiations completed
49	Sweden	25/12/1997	Renegotiations completed
50	Russia	11/04/1998	Under renegotiation
51	Belarus	17/07/1998	Under renegotiation
52	Namibia	22/01/1999	Under renegotiation
53	Czech Republic	27/09/1999	Under renegotiation
54	Trinidad and Tobago	13/10/1999	Under renegotiation
55	Jordon	16/10/1999	Under renegotiation
56	Qatar	15/01/2000	Under renegotiation
57	Morocco	20/02/2000	Renegotiations completed
58	Portuguese Republic	30/04/2000	Under renegotiation
59	Kyrgyz Republic	10/01/2001	Under renegotiation
60	Austria	05/09/2001	Under renegotiation
61	Ukraine	31/10/2001	Under renegotiation
62	Ireland	26/12/2001	Under renegotiation

1	2	3	4
63	Malaysia	14/08/2003	Renegotiations completed. Signed on 9th May, 2012. Will enter into force on completion of internal procedure by other country
64	Sudan	15/04/2004	Under renegotiation
65	Uganda	27/08/2004	Under renegotiation
66	Armenia	09/09/2004	Renegotiation completed
67	Slovenia	17/02/2005	Under renegotiation
68	Hungary	04/03/2005	Under renegotiation
69	Saudi Arabia	01/11/2006	Under renegotiation
70	Kuwait	17/10/2007	Under renegotiation
71	Iceland	21/12/2007	Has provisions for exchange of banking information as per International Standards
72	Botswana	30/01/2008	Under renegotiation
73	Montenegro	23/09/2008	Under renegotiation
74	Serbia	23/09/2008	Under renegotiation
75	Syria	10/11/2008	Under renegotiation
76	Myanmar	30/01/2009	Has provisions for exchange of banking information as per International Standards
77	Tajikistan	10/04/2009	Has provisions for exchange of banking information as per International Standards
78	Luxembourg	09/07/2009	Provisions for exchange of banking information as per International Standards have been incorporated through MFN clause
79	Mexico	01/02/2010	Has provisions for exchange of banking information as per International Standards
80	Mozambique	28/02/2011	Has provisions for exchange of banking information as per International Standards
81	Taiwan	02/09/2011	Has provisions for exchange of banking information as per International Standards
82	Georgia	08/12/2011	Has provisions for exchange of banking information as per International Standards

1	2	3	4
83	Colombia	New DTAA	Signed on 13th May 2011. Will enter into force on completion of internal procedure by other country
84	Ethiopia	New DTAA	Signed on 25th May 2011. Will enter into force on completion of internal procedure by other country
85	Lithuania	New DTAA	Signed on 26th July 2011. Will enter into force on completion of internal procedure by other country
86	Estonia	New DTAA	Signed on 19th September 2011. Will enter into force on completion of internal procedure by other country
87	Uruguay	New DTAA	Signed on 8th September 2011. Will enter into force on completion of internal procedure by other country
88	Bhutan	New DTAA	Negotiations completed
89	Chile	New DTAA	Negotiations completed
90	Croatia	New DTAA	Negotiations completed
91	Fiji	New DTAA	Negotiations completed
92	Hong Kong	New DTAA	Negotiations completed
93	Latvia	New DTAA	Negotiations completed
94	Albania	New DTAA	Negotiations completed
95	Azerbaijan	New DTAA	New DTAA under negotiation
96	Iran	New DTAA	New DTAA under negotiation
97	Senegal	New DTAA	New DTAA under negotiation
98	Venezuela	New DTAA	New DTAA under negotiation
TIEAs			
1	Bermuda	New TIEA	Entered into force on 3rd November, 2010
2	Bahamas	New TIEA	Entered into force on 1st March, 2011
3	Isle of Man	New TIEA	Entered into force on 17th March, 2011
4	British Virgin Islands	New TIEA	Entered into force on 5th July, 2011

1	2	3	4
5	Cayman Islands	New TIEA	Entered into force on 8th November, 2011
6	Jersey	New TIEA	Entered into force on 8th May, 2012
7	Macau	New TIEA	Signed on 03rd January 2011. Will enter into force on completion of internal procedure by other country
8	Liberia	New TIEA	Signed on 03rd October 2011. Will enter into force on completion of internal procedure by other country
9	Argentina	New TIEA	Signed on 21st November 2011. Will enter into force on completion of internal procedure by other country
10	Guernsey	New TIEA	Signed on 20th December 2011. Will enter into force on completion of internal procedure by other country
11	Bahrain	New TIEA	Negotiations completed
12	Democratic Republic of Congo	New TIEA	Negotiations completed
13	Costa Rica	New TIEA	Negotiations completed
14	Gibraltar	New TIEA	Negotiations completed
15	Marshall Islands	New TIEA	Negotiations completed
16	Monaco	New TIEA	Negotiations completed
17	Saint Kitts & Nevis	New TIEA	Negotiations completed
18	Netherlands Antilles	New TIEA	On 12th October, 2010, Netherlands Antilles was divided into three parts. The BSE Islands became part of Netherlands municipality while Curaçao and Sint Maarten became constituent countries within the Kingdom of Netherlands. Request for negotiation of TIEA with Curaçao and Sint Maarten has been made separately.
19	Liechtenstein	New TIEA	Under negotiation
20	Maldives	New TIEA	Under negotiation
21	Panama	New TIEA	Under negotiation
22	Seychelles	New TIEA	Under negotiation
23	Andorra	New TIEA	Request for negotiation made

1	2	3	4
24	Anguilla	New TIEA	Request for negotiation made
25	Antigua and Barbuda	New TIEA	Request for negotiation made
26	Aruba	New TIEA	Request for negotiation made
27	Barbados	New TIEA	Request for negotiation made
28	Belize	New TIEA	Request for negotiation made
29	Brunei Darussalam	New TIEA	Request for negotiation made
30	Cook Islands	New TIEA	Request for negotiation made
31	Curacao	New TIEA	Request for negotiation made
32	Dominica	New TIEA	Request for negotiation made
33	Dominican Republic	New TIEA	Request for negotiation made
34	Faroe Islands	New TIEA	Request for negotiation made
35	Greenland	New TIEA	Request for negotiation made
36	Grenada	New TIEA	Request for negotiation made
37	Honduras	New TIEA	Request for negotiation made
38	Jamaica	New TIEA	Request for negotiation made
39	Montserrat	New TIEA	Request for negotiation made
40	Peru	New TIEA	Request for negotiation made
41	Saint Lucia	New TIEA	Request for negotiation made
42	Saint Vincent and the Grenadines	New TIEA	Request for negotiation made
43	Samoa	New TIEA	Request for negotiation made
44	San Marino	New TIEA	Request for negotiation made
45	Sint Maarten	New TIEA	Request for negotiation made
46	Turks and Caicos	New TIEA	Request for negotiation made
47	Vanuatu	New TIEA	Request for negotiation made

* Date of Notification

List of Abbreviations

AIR	Annual Information Return
AML/CFT	Anti-Money Laundering/Combating Financing of Terrorism
APA	Advance Pricing Agreement
APG	Asia Pacific Group
AS	Accounting Standards
BIS	Bank for International Settlements
BOI	Bureau of Immigration
CAIT	Computer-Assisted Investigation Tool
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise and Customs
CBI	Central Bureau of Investigation
CBN	Central Bureau of Narcotics
CCR	Counterfeit Currency Report
CED	Change in External Debt
CEIB	Central Economic Intelligence Bureau
CIB	Central Information Branch
CIAT	Inter-American Centre of Tax administration
CGA	Controller General of Accounts
CGDA	Controller General of Defence Accounts
COIN	Customs Overseas Investigation Network
CPC	Central Processing Centre
CPSE	Central Public Sector Enterprise
CrPC	Criminal Procedure Code
CST	Central Sales Tax
CTR	Cash Transaction Report
DARTTS	Data Analysis and Research for Trade Transparency System
DGIT	Director General of Income Tax
DGCEI	Directorate General of Central Excise Intelligence
DIPP	Department of Industrial Policy and Promotion
DRI	Directorate of Revenue Intelligence
DCI	Directorate of Income Tax (Criminal Investigation)
DTAA	Double Taxation Avoidance Agreement

DTAC	Double Taxation Avoidance Convention
ED	Enforcement Directorate
EOI	Exchange Of Information
EOW	Economic Offences Wing
ERP	Enterprise Resource Planning
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act 1999
FERA	Foreign Exchange Regulation Act 1973
FII	Foreign Institutional Investor
FINnet	Financial Intelligence Network
FIU	Financial Intelligence Unit
FLETC	Federal Law Enforcement Training Centre
FMCG	Fast Moving Consumer Good
f.o.b.	free on board
FSB	Financial Stability Board
FTA	Free Trade Agreement
FT&TR	Foreign Tax and Tax Research
G20	Group of Twenty
GAAR	General Anti Avoidance Rules
GDP	Gross Domestic Product
GDR	Global Depository Receipt
GER	Gross Excluding Reversals
GFI	Global Financial Integrity
GNP	Gross National Product
GST	Goods and Services Tax
GSTN	Goods and Services Tax Network
GSTSPV	Goods and Services Tax Special Purpose Vehicle
HLC	High Level Committee
HRMS	Human Resource Management System
HSN	Harmonised System of Nomenclature
IBA	Indian Bankers Association
ICAI	Institute of Chartered Accountants of India
ICP	Immigration Check Post
IFF	Illicit Financial Flow

IMCC	Inter-Ministerial Coordination Committee of Financing of Terrorism and Prevention of Money Laundering
IMF	International Monetary Fund
INCB	International Narcotics Control Board
INTERPOL	International Criminal Police Organization
IPC	Indian Penal Code
IPO	Initial Public Offer
IPR	Intellectual Property Rights
IRDA	Insurance Regulatory and Development Authority
ITD	Income Tax Department
ITDMS	Integrated Taxpayer Data Management System
ITOU	Income Tax Overseas Unit
JNNURM	Jawaharlal Nehru National Urban Renewal Mission
JTF	Joint Task Force
KYC	Know Your Customer
LTU	Large Taxpayer unit
MHA	Ministry of Home Affairs
MLAT	Mutual Legal Assistance Treaty
MLM	Multi Level Marketing
MNE	Multi National Enterprise
MOU	Memorandum Of Understanding
MSME	Micro Small and Medium Enterprises
NAS	National Accounting System
NCAER	National Centre of Applied Economic Research
NCB	Narcotics Control Bureau
NCRB	National Crime Records Bureau
NDPS	Narcotic Drugs and Psychotropic Substance
NGO	Non Government Organisation
NIA	National Intelligence Agency
NIFM	National Institute of Financial Management
NIPFP	National Institute of Public Finance and Policy
NOC	No Objection Certificate
NPO	Non Profit Organisation
NSE	National Stock Exchange
ODI	Overseas Derivative Instrument

OECD	Organisation for Economic Cooperation and Development
OFC	Offshore Financial Centre
OLTAS	On Line Tax Accounting Systems
OSD	Officer on Special Duty
PAN	Permanent Account Number
PAO	Pay and Accounts Officer
PMLA	Prevention of Money Laundering Act 2002
PN	Participatory Note
PTA	Preferential Trade Agreement
RBI	Reserve Bank of India
REIC	Regional Economic Intelligence Council
ROC	Registrar of Companies
ROS	Registrar of Societies
SAARC	South Asian Association for Regional Cooperation
SAP	System Analysis and Program Development
SBA	Swiss Bankers association
SEBI	Securities and Exchange Board of India
SFIU	Serious Frauds Investigating Office
StAR	Stolen Assets Recovery
SMS	Short Messaging Service
STR	Suspected Transaction Report
TDS	Tax Deduction at Source
TBML	Trade Based Money Laundering
TDR	Transferrable Development Rights
TIEA	Tax Information Exchange Agreement
TTU	Trade Transparency unit
UID	Unique Identity
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
ULCRA	Urban Land Ceiling and Regulation Act
URD	Unregistered Dealers
VAT	Value Added Tax
WTO	World Trade Organisation