

\$15.25 billion transferred abroad, SC told

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During the financial year 2016-17, a staggering amount, of US \$15.253 billion, was transferred abroad by individual account holders in Pakistan through normal banking channels. A committee of 12 experts has shared it with the Supreme Court. The apex court in its 8-page order issued on Friday said the committee has also suggested that during the said period a substantial amount of transfers took place from Pakistan under unauthorized and undocumented Hundi and Hawala mechanisms.

"Clearly, both types of outflows have a huge impact on the stability of the foreign exchange reserves of the country and adversely affect the exchange rates of the Pakistani rupee. Also as a result, the national economy can become vulnerable to pressure due to foreign currency obligations of the state; can suffer undue and disruptive inflation and can drain the exchequer of substantial amounts of tax on account of escaped income and wealth."

A three-judge bench headed by Chief Justice Mian Saqib Nisar and comprised Justice Umar Ata Bandial and Justice Ijaz Ul Ahsan on 26-03-2018 had constituted a committee of 12 experts. The committee was tasked with deliberating and recommending legislative and executive measures for tracing and retrieving such assets held abroad.

The committee had given ten recommendations to deal with the deficiencies in foreign exchange regulations and tax collection: Cash feeding of foreign currency accounts and the immunity of such transactions is under the provision of the Protection of Economic Reforms Act, 1992 ("PERA") from scrutiny of the source and the movement of funds deposited in foreign currency accounts.

Free cash movement of foreign currency of any amount within and out of Pakistan under the PERA is without check or scrutiny; thereby assisting its smuggling to foreign jurisdictions.

Misuse of retained foreign exchange by exporters: Laxity in the regulatory framework for the retained portion of export proceeds has facilitated its leakage and the accumulation of undeclared assets abroad.

Under-invoicing and over-invoicing in foreign trade transactions: The weaknesses of the information and regulatory systems for the valuation of goods/services by the FBR and the SBP have fostered unauthorized retention of foreign exchange abroad.

The Section 111(4)(a) of the Income Tax Ordinance, 2001 provided an opportunity for misuse of the immunity to inward remittances brought through normal banking channels; as such black money stashed abroad could be whitened without payment of tax.

The Hundi and Hawala means of foreign currency transfers have remained available in the market as illegal channels for transfer of ill-gotten or tax-evaded funds.

Short limitation periods in tax laws for initiating legal action against tax evaders and defaulters have blocked assessment and recovery of tax on global income and wealth of citizen.

Scant bilateral tax treaties with other countries for mutual cooperation and exchange of information have hampered detection of foreign assets accumulated by citizens.

Lacunae in tax laws and regulations have enabled avoidance of tax on technical grounds. These lacunae include vague or insufficient definition of key concepts like "resident", "non-resident", "foreign company",

"trust", "settler" and "beneficiary" of a trust.

Failure of the present income and wealth tax declaration forms to require disclosure of foreign assets and income of citizen.

In view of the committee's recommendation, the federal government had announced the scheme of voluntary disclosure of foreign assets owned by Pakistanis abroad. The federal government had promulgated the Foreign Assets (Declaration and Repatriation) Ordinance 2018.

The Supreme Court in its order observed that in many factors, identified by the committee for unauthorized foreign currency outflows from Pakistan, no legislative or regulatory provisions have so far been made by the federal government.

The order says; "The court is not an expert on economic, fiscal or financial matters. It was persuaded to initiate these suo motu proceedings for the grave public interest concerns: firstly, regarding the declining foreign exchange reserves of the country, the depreciating exchange rate of the rupee and the corresponding inflationary trend of imported essential commodities, secondly, by the governmental indifference towards the unhindered outflows of valuable foreign exchange from the economic wealth and resources of the country."

The order said that these proceedings have been aimed to draw the attention of the federal legislative and regulatory bodies towards the key issues pertaining to the matters of national priority.

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