But recovering black money requires some drastic measures. Besides, there’s a similar law in the US.

When the Narendra Modi government took charge in 2014, the people had many expectations of it.

One of the promises that the new government had committed to, was to bring back black money — that is, undisclosed foreign income and assets stashed abroad — within 100 days of coming to power.

Working on the principle that this would come to pass, the government promised that a sum of ₹15 lakh would be credited into the bank’s account of every person. Then, for nearly a year, nothing happened. There was no progress on this front and the people accused the government of merely paying lip service.

Is it draconian?

Recently, however, a law on black money was enacted, aptly called the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and the supporting Imposition of Tax Rules, 2015. Now, the reaction is that this law is draconian. Interestingly, even the ministry of finance concedes that it’s a stringent law.

This is ironical. When there wasn’t a law, strong voices demanded a tough law on black money. But now that precisely such a law has been introduced, the strong voices express concerns that it is overbearing.

The Prime Minister, in the course of his Independence Day address, assured the nation of the government’s determination to tackle the menace of black money and use its proceeds for people’s welfare; he also rightly defended the onerous provisions by observing how in the process of curing dreadful diseases there were bound to be some side effects.

Critics may see this law as marking the return of ‘inspector raj’ but that would be inaccurate and even unfair. The Prime Minister has claimed that ₹6500 crore has already been disclosed under the special window of disclosure open till September 30, and says this scheme will fill the government’s coffers by December 31.

This is a whopping figure, with nearly a month-and-a-half left post his declaration. Irrespective of what the figure may eventually be, what’s certain is that there would be no recovery at all in the absence of this law being enacted.

Similar law in the US

Additionally, the Supreme Court-appointed special investigation team on black money has made substantial recommendations, including determining the true beneficial ownership of P-Notes holders, proactive detection of the creation and use of shell companies, and limiting cash holdings.
Countries known to be tax havens, such as Mauritius, have already offered cooperation to India to amend tax treaties and prevent round-tripping of money.

Still, whatever merits these arguments may have, the recent findings and surveys of corporate India are discouraging. In fact, the findings have downgraded the government’s rating from ‘good’ to ‘average’.

So can this new law be the game-changer? Will it restore the government’s reputation and be India’s success story on this account? Or will it be yet another example of a good law being badly implemented?

The answer may lie in a similar law that’s in force in the US.

The US’s Foreign Account Tax Compliance Act (FATCA) was enacted in 2010. It is a highly stringent piece of legislation, and yet successful. The reason for its success lies in the fact that all major financial institutions would like to operate in the lucrative US markets. FATCA requires foreign financial institutions operating in the US to disclose the details of Americans with accounts in other countries.

Non-compliant financial institutions and banks could be debarred from operating in the US. Foreign financial institutions are, therefore, left with no option but to comply. They duly report the names, addresses, account numbers, balances, US identification numbers and other details of the US account holders.

Although the Indian law is not really comparable with the US one, and it does not debar foreign institutions, nonetheless, like the US law, it is stringent in its own way. It imposes harsh tax and penalties on the defaulting assessee. Like in the US, this should be enough of an incentive to comply with the law.

Early days
The Indian government believes that it will receive information through the Automatic Exchange of Information (AEOI) route under FATCA from the US and under other multilateral agreements with other countries. According to government reports, 58 countries have committed to sharing information under AEOI by 2017 and 36 countries by 2018, including the tax favourable jurisdictions. The information under the AEOI will include information of controlling persons (the beneficial owners) of the asset.

The possibility of a future discovery of undisclosed asset and income and related harsh penalty will keep the tax assesses on tenterhooks and encourage disclosure.

It is still early days to conclude and the jury is out on the impact this law will have for India. But what is critical is that steps in the right direction have been taken.

It is time the Modi government gets into action mode and does everything possible to fulfil its longstanding promise of recapturing black money and deterring its accumulation.

The enforcement and implementation of this law on anyone, irrespective of clout, who tries to evade, will be a case in point for better late than never.
It’s a tough Act to follow

But recovering black money requires some drastic measures. Besides, there’s a similar law in the US

LAHI HUMAR

When the Narendra Modi government took charge in 2014, the people had high expectations of it. One of the promises that the new government had committed to was to bring back black money—that is, undisclosed foreign income and assets stashed abroad—within 100 days of coming to power.

Working on the principle that this would come to pass, the government promised that a sum of Rs 15 lakh would be credited into the bank accounts of every person. Then, for nearly a year, nothing happened; there was no progress on this front and the people accused the government of merely paying lip service.

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The writer is a partner at J Sagar Associates, Advocates and Solicitors. The views are personal. http://www.thehindubusinessline.com/opinion/its-a-tough-act-to-follow/article7625694.ece