

# Black Money Whitening Law: A Study From Bangladesh

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## Summary

Tax avoidance and evasion are deeply entrenched in Bangladesh, where 37% of GDP comes from 'black money'. In this country of massive tax evasion, black money is not seen as tax evasion. Instead, tax amnesties are offered to whiten black money in an attempt to raise funds that revenue collectors would otherwise have found difficult or impossible to capture. The evidence on which this policy brief builds was obtained through field research, interviews in particular.

## Introduction

Bangladesh is a founding member of the Anti-Money Laundering Group in the Asia Pacific Group (APG), and for five years after 2002, Bangladesh supported the enactment of laws against money laundering. In 2002 came the enactment of the first Anti-Money Laundering Act (AML), but money laundering itself was not considered an offence. That major shortcoming was not remedied until 2008, when the current Act came into force, first as an Ordinance in 2008 and then an Act in 2009. The Bangladesh National Bank established a committee with representatives from private banks as well as the ministries of Finance, Justice, Anti-Corruption, Home Affairs and the Attorney General's Office. The law was then drafted by the Ministry of Finance and presented to the Parliament.

Since its enactment, it is estimated that over a billion Bangladeshi taka (approximately 10 million Euros) have come back into the country. The main impetus for this law came from outside: it was introduced to satisfy donors and international organizations, and tax was not a major agenda item there. After the law was passed, the government set up two control arms: a central intelligence cell in the National Board of Revenue (NBR) to seal leakages and detect black money in the tax system; and an anti-money laundering unit at the Bangladesh Bank responsible for monitoring and reporting anti-money laundering. In addition to the increasing number of banks and the allowing of unquestioned investments in the country in the stock market as well as in land and buildings, cash is also being put into the economy.

## Black money

What is black money? The National Board of Revenue (NBR) defines it as any legally or illegally earned money which is not declared to the government agency, and on which no income tax is paid to the government. This definition tends to dilute the seriousness of the matter, because it minimizes the importance of the concept of illegally obtained money or unearned income or money amassed through immoral, improper and illegitimate means. Black money is linked to corruption, crime, illegal activities and the black economy. A perhaps more accurate description of black money revolves around the concept of money illegally obtained through political and/or bureaucratic corruption, bribery at all levels of the government, semi-government, autonomous or semi-autonomous offices or organizations, as well as money amassed by businesspeople through smuggling, black marketing, shady deals, profiteering, money amassed by labour leaders, student leaders, through extortion – and especially, money amassed by functionaries of the ruling government party and its various organs, and their families, relatives and cronies.

Black money circulates in both the formal economy and the parallel black economy. The latter gains strength day by day at the expense of the formal economy, because black money naturally prefers activities related to the black economy. In Bangladesh, black money is money earned legally on which no tax has been paid, as well as money earned illegally and also untaxed. The Tax Justice Network (TJN) considers tax evasion as black money while the Bangladeshi government does not. People may say ‘it’s just corruption or bribery’ – but Global Financial Integrity estimate that black money is just 5% of the problem: 30% of the money stems from criminal activity and 60% from commercial activity.

The main sources of income in Bangladesh are earned legally, but the tax system is not very good: there is considerable corruption and local people find the tax brackets high and therefore do not wish to report their earnings. Illegally earned black money is much more and a wider area. Bangladesh is ranked 30th in Transparent International’s corrupt index,<sup>1</sup> so people feel the need to hide their money, and also as a result of illegal trade and terrorism.

Black money holders wield political power, and there is no machinery to catch these criminals. The money is held both in cash within the country and in banks outside the country. A former Bangladesh Bank employee who was involved in the creation of the 2009 Anti-Money Laundering Act explained in an interview

that tax evasion is not dealt with in the legislation on money laundering, but that the chief aim was to locate illegitimate sources of funds. The AML specifies 21 offences, and tax evasion is not among them. As a result there is no offence here but it remains a predicate offence. However, tax evasion was not considered part of the source money being utilized for money laundering.

In the 2009–2010 budget it was stated that this was the first budget to enact a law for ‘whitening’ black money. According to this law, which targets untaxed money banked outside the country, if the money is returned into the country, it will not be taxed as long as it is invested in property or the local stock exchange. In fact, the major source of illegal money in Bangladesh is corruption and procurement kick-backs as well as the misuse of foreign aid – and yet, the country’s money laundering legislation seems to focus on remittances.

Money laundering investigations in Bangladesh have remained limited to checking bank accounts for suspicious activity. The AML Law is a good law in that it helps to prevent money from being transferred abroad. Capital flight has been made difficult, and there is serious monitoring from other countries in the world.

## Black money whitening law

Tax amnesties can raise funds that revenue collectors would otherwise have found difficult or impossible to capture. There are assumed to be significant amounts of ‘untaxed income’ that are due to the Bangladeshi government but have been deposited both within and outside Bangladesh. Tax evasion falls under sections 165 and 166 of the Income Tax Ordinance, according to which concealment and false statements are punishable by imprisonment for five to six years and a fine equivalent to three or four times the amount of the unpaid tax. However, the government has found it impossible to collect these back taxes and obtain convictions. As a result, ‘tax amnesties’ have been enacted in Bangladesh for the past 12 to 13 years.

In 2005 the Finance Act again proposed to permit any amount of undeclared income or black money to be declared unconditionally. This might have some positive effect by enhancing private investment and perhaps helping to resolve unemployment. But such a practice, when continued in the longer term, could have detrimental impacts on society as a whole. It would encourage the maintenance and growth of an underground economy, as people would assume the possibility of future ‘tax amnesties’.

Thus the legally permitted system of whitening black money serves to encourage corruption. It gives a wrong signal to those indulging in corruption that they will get some sort of relief and reprieve from the government.

<sup>1</sup> <http://www.guardian.co.uk/news/datablog/2012/dec/05/corruption-index-2012-transparency-international> (accessed 26 May 2013)



Politicians of the ruling party and its various organs enjoy the privilege of a protective umbrella from the law enforcement agencies. If they can get some document to show that they have whitened their money, that document virtually provides them with a kind of immunity from criminal proceedings against them. The case of Begum Khaleda Zia whitening her black money can serve as a glaring example of such immunity provided by the facility. Theoretically, the Anti-Corruption Commission (ACC) can start proceedings and press charges regarding illegal activities. But the lengthy process of law enforcement has utterly failed to finally bring even a single accused person up to the actual punishment stage.

In fact, the government actively facilitates money laundering through the above-mentioned legal provisions for whitening black money. Even if only a small proportion of a person's black money is whitened through payment of 10% tax,<sup>2</sup> the process allows the entire black money to circulate in the formal economy as well as in the black economy, if the owner of that black money chooses to do so. Most black money goes for consumption, especially conspicuous consumption. Some is used for investment in real estate or house construction, for the purchase of apartments or of gold, etc. A portion gets deposited in the banks, especially as fixed deposits.

Now the government is actively inviting such black money into the share market by offering tax amnesties. For all practical purposes, most risks of holding black money are eliminated through the process of whitening black money – that is the real purpose of tax amnesties. But it is difficult to woo significant amounts of black money into productive investments, because the rates of return on investment in activities belonging to the black economy remain quite high.

A very significant proportion of Bangladeshi overseas migrants have been using informal channels for sending remittances. Seen in strict terms, that represents a highly important source of black money in the economy. Money pours in through the informal system of international money transfer or 'hundi' process and circulates in both the formal and the black economy. This is a main factor behind the inflationary pressures generated in the economy and the astronomical prices of both urban and rural real estate – plots, apartments, agricultural land, commercial land, shops, etc. On the other hand, remittances, whether formal or informal, serve to boost the country's economic growth rate, bank deposits, the construction of rural and urban housing, rural roads, electrification, mechanization of agriculture, fishery, and more.

### Conclusions

Bangladesh's current legislation on money laundering offences derives from the AML ordinance issued in 2008 by the caretaker government (2006–2008). Today's Act contains detailed definitions of money laundering and property and a list of predicate offences and sanctions for the offence. There are some shortcomings as regards the scope of the offence, the coverage of predicate offences and the types of property involved. There is also an absence of financial penalties available.

Moreover, there are some gaps as regards the physical elements of the offence, and the range of its predicate offences remains too narrow. Given the history of money laundering in Bangladesh, adding tax evasion to the list of predicate offences will aid in combating the illegal transfer of assets abroad and improve recovery of the same. In addition, tax amnesties should be abolished.

<sup>2</sup> A.B.M. Badrud Doza, 'Stop this sham of whitening black money', interview, Muinul Islam Daily Star, 20 May 2012 <http://archive.thedailystar.net/newDesign/news-details.php?nid=234821> (accessed 26 May 2013)



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