

E-circular dated 9th Jan 2018 : War on “Cash”
How are MSME’s effected in **India, USA, Italy, France and Spain**

Integrated Association of Micro, Small & Medium Enterprises of India

www.iamsmefindia.com

E-mail: info@iamsmefindia.com, +91-9711123111 (Executive Secretary)



Rajive Chawla
Chairman, iamSMEofIndia

Proud to say
iamSMEofIndia



Sangeet Kr Gupta
Hon. Consultant,
iamSMEofIndia

Dear Members,

Tax Advisory Jan 2018 :

Focus : Quick Recap for the New Legal changes ... regarding CASH
Transactions in India

These changes were made by the Budget 2017. And shall be applicable for
the current FY 17-18.

**IN CASE YOU
MISSED IT**

Some of the points are very important. And entail, heavy penalties

And problem is that, some of us don't know about these.....

And... by the way, there is no harm in a **quick recap**.

LET'S RECAP...

Recap: Cash payments limit reduced to just Rs 10000

If you pay 10001 Rs in Cash, or anything over that, your expense shall be 100% Disallowed. (Sec 40A).

Nowadays, even an unskilled workman draws wages are almost that much.

So, You cannot do any major expense in cash. If you do, pay tax 33% on that + Interest + Penalty as the entire expense shall be disallowed and added back to income

Remember, it covers ALL EXPENSES, whether Salary, or repairs, or staff welfare or creditors or anything and everything... even Tea Shop Bill.

Tips : When you go for Car Service, take a Credit Card / Debit Card

Same for almost any expense, in the market. Use any digital/ Banking mode to make payments above Rs. 10,000/-.

Is Indian Govt being too harsh,..... How is it in USA ?



Research

How is the Similar Law in USA ?

Do you know, Even USA has a similar Law

Nobody can dare to receive money more than USD 10000.

If anybody pays, he cannot relax. The Receiver has to compulsorily, file Form 8300.... For Report of Cash Payments Over \$10,000 Received in a Trade or Business...

Our Indian, Annual Information Return, is based on similar pattern , derived from the law already in force in USA. The US Government considers cash control as important control, to control the money flowing to and from drug trafficking, money laundering, and terrorism.

See Source 1 :

<https://www.irs.gov/businesses/small-businesses-self-employed/form-8300-and-reporting-cash-payments-of-over-10000>

See the notes on page 3 of the US Govt Return... you will see that Indian Laws are still "liberal". They also have the PAN number mandatory for this return, else more penalties.

And they also have **the requirement of Phone number of the person who gave you cash.**



This way, the US Government collects the phone number also of every person who is giving cash in the economy....

They collect all this information and it is used by the US's Financial Crimes Enforcement Network (FinCEN).

How does this form look like (and the Dreaded Instructions on page 3)

Source 2 : <https://www.irs.gov/pub/irs-pdf/f8300.pdf>

Source 3: What if a US assessee does not file his Form 8300 ? within 15 days

<http://www.federalcriminallawyer.us/2011/01/16/failure-to-report-10000-cash-felony-under-federal-law/>



Any person who does not file the Cash Receipts Return (Form 8300) in USA,

**risks going to Jail, for 1 to 5 and
in case of manipulation to Jail of 10 years**

section : 26 USC 7203.

“.....upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution...”
in case of willful..... 5 years”

Where a **person willfully fails to file Form 8300** for cash payments larger than \$10,000, he can be prosecuted for a felony.

It is also illegal to structure payments in an attempt to avoid the Form 8300 rule, such as dividing the sum into parts. See 31 USC 5324. If the total payments equal more than \$100,000 over a 12-month period, **the sentence is enhanced to 10 years in prison**. See 31 USC 5324(d)(2).

The US Attorney may also choose to charge **a person who “cooks the books”** in order to avoid reporting cash income under 26 USC 7206. This statute makes it a felony offense to withhold, falsify, or destroy financial tax records. The law says the following:

(B) Withholding, falsifying, and destroying records

Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax;

shall be guilty of a felony and, upon conviction thereof, **shall be fined not more than \$100,000 (\$500,000 in the case of a corporation)**, or imprisoned not more than 3 years, or both, together with the costs of prosecution.

Note

USD 5,00,000 means, **around INR 3.20 Crores**
(taken at Rs 64/Dollar)

So, moral of the story

Those with Subsidiaries in USA, or with Business in USA,
Please take proper precautions and file your AIR (Annual Information Return) called Form 8300. This is required to be filed not once a year as in India, but within 15 days of each transaction !!!!!.

Source : This law exists for almost 10 years In USA ...

We in India got this in last 2 years

: <http://www.federalcriminallawyer.us/2011/01/16/failure-to-report-10000-cash-felony-under-federal-law/>



What about other countries ?

FRANCE – In the wake of the Charlie Hebdo attacks last year, the French government stepped up its war on cash. In March of 2014, French Finance Minister Michel Sapin [declared](#) it necessary to “fight against the use of cash and anonymity in the French economy” in order to combat “low-cost terrorism.” As of September 2015

it is [illegal for French citizens to make purchases exceeding 1000 euros in cash](#).
<https://www.connexionfrance.com/French-news/1-000-cash-limit-from-September>

MEXICO – In 2013 the [Mexican government banned cash payments](#) of more than 500,000 pesos for real estate and more than 200,000 pesos for cars, jewelry or lottery tickets.

ITALY – In 2011 newly appointed Italian Prime Minister Mario Monti [made cash payments over 1000 euro illegal](#). “What we need is a revolution in Italians’ thinking” Monti told reporters as he announced the emergency decree which was put into law before it was even formally voted on in parliament. <https://www.bloomberg.com/news/articles/2011-12-08/italys-cap-on-cash-payments>

SPAIN – Citing budgetary austerity and the need to clamp down on tax fraud the Spanish government [banned cash payments](#) of more than 2,500 euros in 2012.

Source : <https://www.corbetteport.com/the-war-on-cash-a-country-by-country-guide/>



So, this is not an Indian Phenomenon alone !!

The world is seeing this trend over last 10 years. And some countries, much before these curbs were started in India, And sometimes even more stringent than in India



Back to India

See the Current Income Tax Act (valid for Financial year 17-18)

In order to disincentivise cash transactions, it is proposed to amend the provision of section 40A of the Act to provide the following:

Source : Section 40A(3) and (3A)

(3) Where the assessee ***incurs any expenditure*** in respect of which ***a payment*** or aggregate of payments ***made to a person in a day***, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, ***12[or use of electronic clearing system through a bank account, exceeds ten thousand rupees,] no deduction shall be allowed*** in respect of such expenditure.

Means : If you buy anything , spend anything for $x > 10000$ per day, in cash it will fully disallowed

And you pay Income tax on that disallowance @ 35% approx



Section 40 (3A) Where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently

during any previous year (hereinafter referred to as subsequent year) the assessee **makes payment** in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft ¹³ [for use of electronic clearing system through a bank account], the payment so made **shall be deemed to be the profits and gains of business or profession** and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds ¹⁴ [ten] thousand rupees:

Means : If even if it was a pre existing liability, and you now repay him/her and pay x>10000 per day, in cash it will fully disallowed



Receipt in Cash = Over Rs 2,00,000 in Cash → BANNED

Till last year, there were bars on the Payments over 20,000 (now Rs 10,000)
But it was 100% "Acceptable" to receive in cash.
Now that is also squeezed

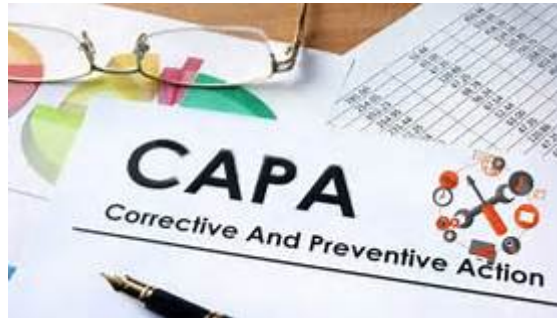
Taking money by Cheque / Digital = No Limits

But any shopkeeper, Seller, Trader, Dealer or Manufacturer or any other entity selling goods in cash over Rs 2 lakhs – **Not allowed now**

Effects :

Penalty of 100% of the receipt (Sec 271D)

Note, there is no adding back, it is simple , 100% penalty of the amount of cash received in such circumstances.



Corrective Action Plan & Preventive Action Plan

Preventive Action Plan

Educate your staff
Educate your customers
Educate your vendors

What to do ?

What to do for those who don't understand....

Don't do business with them.

There is no other option

Corrective Action Plan

First, get your current year records audited.
FAST..... Time is running out...
And take the advice of your Auditors.

Preventive Action Plan

Again, Educate your staff. Educate your customers, Educate your vendors
And enter into a Contract with a Good CA Firm for continuous Audit of your Cash Records



For queries, suggestions and feedback , you can e-mail us

Sangeet Kumar Gupta, FCA, DISA, ACMA, PGDMM, B.Com(Hons), Honorary Consultant, Integrated Association of Micro Small and Medium Enterprises of India and Faridabad Small Industries Association, 93126-08426, Camp Off : TB-06, 3rd Floor, Crown Plaza, Sector-15A, Faridabad, Haryana 121007 skgupta[at]mlga.in

I am SME of India Office ... I-am-SME Habitat Centre, B-1/21, Sector 11, Mathura Road, Faridabad

Subscription to our newsletters/ e-circulars

Please send your details, and request e-mail to info@iamsmeofindia.com / skgupta[at]finsys.in

for Discontinuation of this E-mail

To discontinue receipt of e-mails from the author, please reply mentioning "Discontinue" in the Subject.

Notes & disclaimer

The contents of this circular are for Private circulation & intended for the addressee/s only. We do not warrant that this email is free of mistakes, errors or any other defect. Care has been taken to provide authentic information, but it is advisable to confirm/verify with qualified legal practitioners, professionals before implementing any suggestions. The views expressed are not necessarily those of the Association. We encourage readers, our Members to write to

us their opinions, suggestions, ideas, comments, thoughts and bring to our knowledge mistakes, omissions etc. which we'd be pleased to correct/implement.

For personalised suggestions, and solutions, contact our I am SME of India Team and Consultants



ZEE TV – ZEE Business

Televised Show
with IamSMEofIndia
partnership on
3rd January 2018.

Panel discussions
& Interactive
Session on
“Expectations of
Entrepreneurs from
Union Budget and
the Govt.”

Recorded by Zee TV to be telecast on the National Channels.

Proud to say IamSMEofIndia

Our Chairman, Mr Rajiv Chawla, and our Consultants, Mr Ajay Garg, FCS and Mr Sangeet Kr Gupta, FCA, DISA, were a part of this panel Discussion

Our sponsors :



For an ERP Software ... that is preparing to give you the E-WAY Bills live, from GSTN portal, call our Call Centre on 9015220220 (10 lines) – Extn :3 (Marketing Wing)

www.finsys.asia

Do you know, you can make your factory gate more secure by installing the Visitor Gate Entry Software by Finsys Infotech Limited

1. Main Gate – Visitor entry –

- a. online request by the staff member who is expecting a visitor
- b. online request by the Guard / visitor (in case of a “walk-in” without appointment)
- c. Online approval by the HOD of that department or the Admin / HR Dept
- d. The photo of the visitor is captured
- e. Visitor database is created ..
- f. **You get answers to the Questions**
 - i. Who came to the factory today ?
 - ii. Which people are coming to the factory more than necessary ?
 - iii. Which person remained in the factory more than necessary- instead of 15 minutes approved time, he went out after 3 hours ?
 - iv. Who is meeting the Quality Dept staff ?
- g. Prevention of Sabotage Measures
 - i. Who came to repair the Machine ?
 - ii. Photo of the engineer who came to repair the costly imported Machine on AMC visit ? without appointment (Risk... of exposing your machine to an unauthorised person / prevention of “sabotage”)
- h. OTP is generated, and goes via SMS to the visitor to regd Mobile number. This verifies his identity is correct (This is an optional feature)
- i. Entry pass is printed with his photo,



The screenshot shows a web-based form for visitor entry. At the top, there is a date '31/03/2017', a 'Log Out' button, and a 'Menu' button. Below these are 'Save', 'Print', 'Delete', 'List', and 'Cancel' buttons. The main form contains the following fields:

- Date:** 12/01/2017
- Name:** MR. ABHISHEK
- Otp:** 75058527017
- Address:** SAMSUNG NARELA, NARELA DELHI
- Reason:** BUSINESS DEV. MEETING
- Department:** ADMINISTRATION
- Role:** A/C HEAD
- Request Date:** 13/01/2017
- Request Type:** GENERAL
- Request By:** FINTEAM
- Carry Laptop?:** NO
- Laptop Mfg.:** YES
- Serial No.:** Serial No.
- Department:** Department
- Designation:** Designation
- Remarks:** (empty)

There are also 'Open Camera' and 'Capture Image' buttons next to a photo of the visitor.

Cost of this Software : Very Nominal

Benefits of this software : Quite a lot + Your Security Gate Looks very professional

For a demo powerpoint, call our Call Centre on 9015220220 (10 lines) – Extn :3 (Marketing Wing) or email to Customer Relationship cell at : narender@finsys.in / nalini@finsys.in (9310008921)