

Taxpayer rights and obligations

“It is better to be roughly right than precisely wrong.” These words of British economist John Maynard Keynes best sum up the wave of reforms in the domain of tax administration in India in the last few years. While tax administration has seen some paradigm shifts both in the domain of direct and indirect taxes, the taxpayer still seems to be wanting for greater certainty and fairness in the levy, assessment and collection of taxes. This is where an internationally recognised concept such as taxpayer rights holds well even in the Indian context.

The Central government has development strategies in the form of campaigns like ‘Make in India’ and ‘Startup India’. The recent introduction of the Goods and Services Tax (GST), which is the most significant overhaul of the taxation system in India ever, also aims to achieve a unified market across the nation for the first time. The intent of the government is clear. It wants to transform India into a manufacturing, investment and research and development hub and consequentially, there would also be an increase in revenue generation. In the light of such economic aspirations, a fair balance between taxpayer rights and obligations will only ensure a higher degree of trust between the tax collector and taxpayer, thus leading to a higher tax yield. But one may ask, isn’t the level of trust already there? Well, not entirely.

India has seen key tax disputes ever since a similar growth-oriented road map was adopted by the government in the early 1990s. For instance, in order to attract investments, the government signed Double Taxation Avoidance Agreements (DTAAs) with states like Singapore and Cyprus on similar treaty terms as the India-Mauritius DTAA signed in 1983. As ambitious as these agreements were, they proved to be detrimental in the long run for India. Multiple disputes relating to capital gains surfaced due to exploitation of legal loopholes in these DTAAs. Another example is of ‘transfer pricing’ mechanism (the rules and methods for pricing transactions between enterprises under common ownership or control), where there was little clarity with respect to international transactions between associated enterprises before April 2001. Even after the introduction of a dedicated transfer pricing segment in the Income Tax Act, the chaos could not be curtailed as the determination of arm’s length price (the price of such international transactions in open market conditions) would almost always be a contentious exercise. India ended up being party to more than half of the global transfer pricing disputes by 2014.

After the debacle the government had to face when it lost to Vodafone on a capital gains dispute in the Supreme Court, it came up with an aggressive set of corrective measures not only to augment its revenue generation capabilities but also to counter any such abusive avoidance strategies by taxpayers henceforth. Retrospective amendments were made to the Income Tax Act to supersede the adverse judgment of the Supreme Court in 2012, which were not limited in effect to only Vodafone but several such disputes relating to taxation of capital gains and deemed income of numerous MNCs having their interest or investments in India, directly or indirectly. A step further was the implementation of General Anti-Avoidance Rules (GAAR) in India. The GAAR provisions have been made effective in India from April 1, 2017, and they can be considered as the latest chapter on the mismatch between taxpayer rights and obligations. Some major concerns with respect to taxpayer rights are left grossly unaddressed. A major example is the revocation of ‘presumption of innocence’ of the taxpayers. It is now a burden *ab initio* on these business entities to prove that their tax mitigation techniques do not qualify as ‘impermissible avoidance arrangements’. This goes against the fundamental principle of ‘innocent unless proven guilty’.

As for the GST, while the government has apparently achieved a balanced model of fiscal federalism through a dual GST system, the path ahead is simple neither for the taxpayer nor the tax collector. For example, the GST Network will process billions of invoices every month, with its concomitant economic and fiscal impacts of technical glitches and other such situations. These

snags will impact traders with genuine transactions, as the processing of their tax collections, input tax credit claims and tax refunds might get affected. A precedent is the GST in Malaysia which was implemented in 2015: cash crunch woes due to the delayed refunds were among the prominent grievances of the trading community.

Clearly, the whole economic perception of India is at stake due to some fault lines in its fiscal administration. What is positive to note though is the constructive approach of the government, aiming to improve tax administration and as a result ensuring better tax compliance. The recommendations of the Tax Administration Reform Committee, submitted to the Finance Ministry in 2014, tried to reintroduce a fair balance between the rights and obligations of taxpayers. Several of these recommendations, such as improvement in taxpayers' service, enhanced use of information and communication technology, exchange of information with other agencies, expansion of tax base, compliance management, etc. have either been accepted or implemented to ensure a better relation between the taxpayer and the tax collector.

Tax administrators in India have for long implemented enforcement-based strategies and it is only in recent years that there has been a shift in stance to service-based strategies. They have further propagated the same intent by the introduction of a citizen's charter in both direct and indirect tax statutes of India. Though the charter does not by itself create new legal rights, it surely helps in enforcing existing rights. India has also renegotiated the much-abused provisions in some of its DTAAAs, namely with Switzerland, Mauritius, Cyprus and Singapore. Capital gains-related issues and exchange of information on taxation matters have been better addressed in these amended agreements.

Taking everything into account, at least the awareness on taxpayers' obligations and rights seems to be clearer than before. While attempts are there to increase the rights and to provide better service for genuine taxpayers, the taxpayers who deliberately abuse tax provisions should not expect much leniency. A quest for balance between the rights and obligations of a taxpayer is evidently on, though it still needs to be seen when the right equilibrium between the two is achieved.

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