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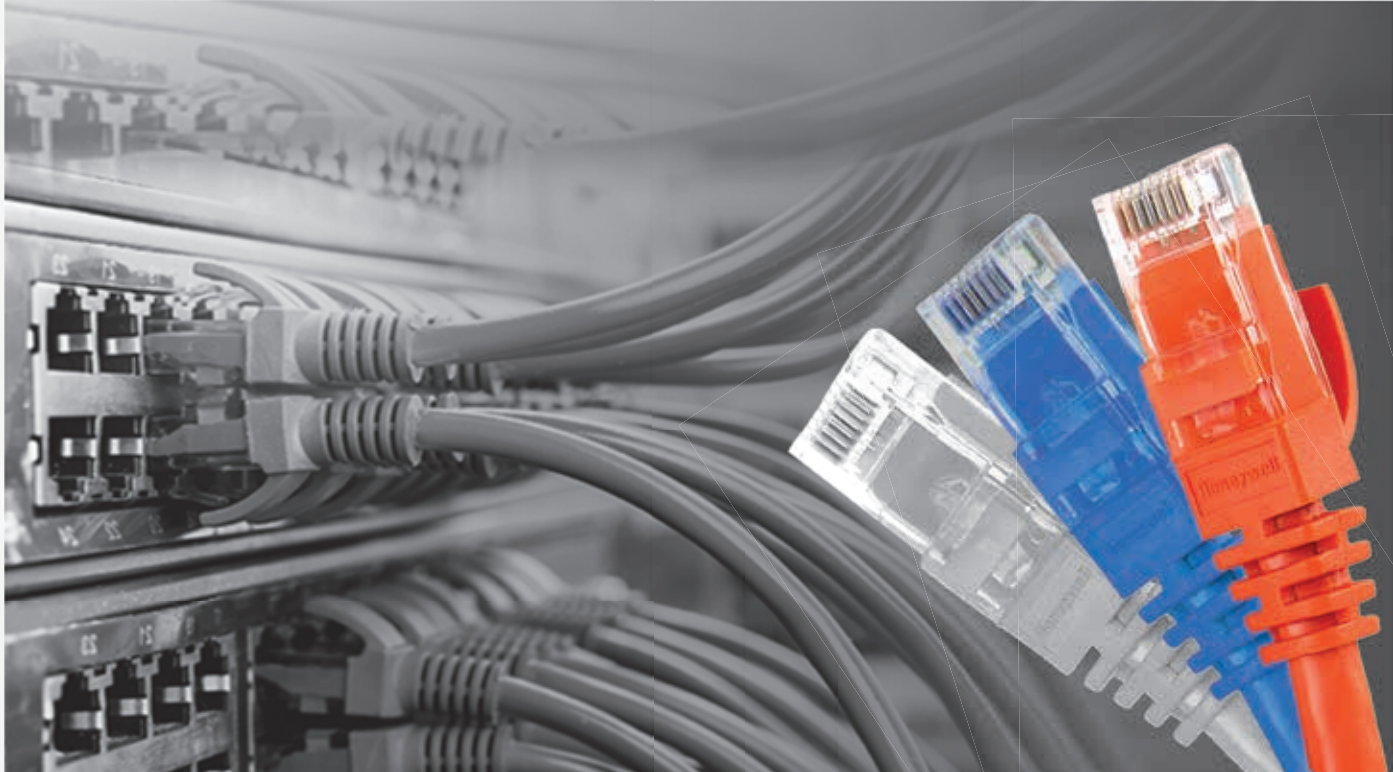
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**Founding Editor**  
Shailendra Kumar

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# REVENUE OF THE STATE IS THE STATE!

The concept of CbD, initially envisioned to assist SMEs, has since evolved, harnessing the power of technology to enhance revenue collections on a broader scale. India embarked on this journey long ago, forsaking the classic Machiavellian adage that it's better to be feared than loved, and embracing voluntary compliance. The concept of self-assessment became a torchbearer for future reforms



**SHAIENDRA KUMAR**

Founder Editor

**T**HE theme which runs through this year's special publication to be released on the occasion of TIOL Tax Congress 2023 is - "Taxation in India - Compliance by-Design". My editorial team had an intense and bare-knuckle talkfest laced with rich emotions, cachinnation and cacophony, too, and we landed on the same page. The prime mover was the unanimous view that the lynchpin of tax reforms, as a whole, in the past decade has been the underpinnings of the edifice of Compliance-by-Design (CbD). Although CbD was initially recommended to provide succour to SMEs but the new age technology enabled policymakers to universalise the concept to perk up revenue collections.

In India, the journey began long back when the lawmakers and the policy-makers decided to abandon the classic Machiavellian adage that it is better to be feared than to be loved and placed their trust in voluntary compliance. Unheard of self-assessment became a torchbearer for the future reforms. But as the adage goes - Entering a hammam is not the same as leaving it, the cycle of reforms indeed went through many painful failures - often unravelling experience! However, thankfully, the failures and setbacks did not dampen the nudging spirit and the need for more expansive reforms! And, ultimately, a trail of fiascos proved to be the condiment that gives success its flavour!

When the government took 'Ease of Doing Business' indices seriously to woo foreign investments, the domain of taxation predictably could not escape being placed under the scalpel. With machete in hand, reform protagonists chased Delphic legislative provisions, rules and administrative procedures like a 'silent sleuth' and ruthlessly scissored them into unrecognisable balls of paper strewn around in the power corridors. Regulation-freak procedures imbued with colonial DNA were simply put out to grass!

Providentially, timely conviction at the creamy layer of the government that technology can make life easier for both the taxpayers as well as the Revenue, nudged the Revenue Boards to float billion-dollar projects. And they were gifted to domestic IT companies to construct compliance-friendly architectures. After a few storms of disasters, the IT platforms stabilised and changed the unsavoury perceptions of the

rediscovered its feet and stabilised its large buckets of operations. Its stability resulted in a magnanimous surge in the number of returns filed and also tax payments which mirror well in the monthly data of tax collections. Computerisation and the use of new-age tech tools indeed led to mega improvement in the overall tax compliance on the direct as well as indirect side. What further beefed up and undergirded the new culture of

the design well-thought and planned, in advance. While pondering about new designs, what was kept in mind was the comfy feeling of the taxpayers and also the need of the Revenue to keep an eagle eye on all transactional sales as well as annual income so that what is due to the Exchequer is not dodged! The second principle which was the driving force of all reforms thus far, was to reduce the compliance costs of the taxpayers so that it does not take a 'Dracula bite' into the slice of profits of an enterprise! By weeding out many intermediaries and making the process faceless and IT-driven, the intent of the government has been to make compliance an effortless process, apart from being a frugal activity! To a large extent, CbD initiatives have borne fruits!

However, if one goes by the adage - Revenue of the state is the state, more efforts are needed to further simplify, not only the procedures but also other key components of the tax system such as tax slab rates, exemptions, exclusions and the credit rules so that compliance curve does not suffer any 'kinky' blow in the years to come! Let's not forget that certainty and predictability of taxes are other key lodestones that catapult compliance to a new plinth! True, every tax reform is made of stories, not of 'atoms'!

Hence, TKF is delighted to share with you absorbing and eye-popping 'stories' relating to the 'compliance journey' thus far and the possible future pathway for reform-minded policymakers and policy institutions like the GST Council. 📌



taxpayers!

A battery of policymakers, thankfully, kept compliance in the nucleus of their reform packages which worked well with the support of IT platforms. With the ease of digital payments, tax payments and filing of tax returns turned out to be hassle-free activities! When GST was rolled out, the GSTN did suffer a few initial bouts of debacles but, with the change at the helm, it

tax compliance was the data-sharing among various law-enforcement agencies and also the matching pace at which the architects of laws and procedures kept on re-engineering the forms, undertakings, declarations and other tools.

In pith and substance, compliance-by-design is an initiative to remould or re-engineer the compliance behaviour of the taxpayers as per

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# TAXATION IN INDIA: COMPLIANCE-BY-DESIGN



SECTION A

# BIRD'S-EYE VIEWS

# TAXATION REFORMS SHAPING INDIA'S FISCAL LANDSCAPE

The journey of tax reforms in India is a testament to the nation's commitment to align its taxation system with global standards while maintaining the core principles of fairness and efficiency. In addition to these reforms, the recent reduction in corporate tax rates and the shift to self-assessment have shaped India's tax landscape, offering incentives for businesses and taxpayers



**JUSTICE DILIP GUPTA**

President,  
Customs, Excise and  
Service Tax Appellate Tribunal

*"But, in this world,  
nothing is certain except death and taxes"*

**Benjamin Franklin**

**A**S has so aptly been said by Benjamin Franklin, the taxation system in the social and economic structure of any country is immortal. It is necessary to collect tax for the overall development of any country. The 18th-century economist and philosopher Adam Smith attempted to systematise the rules that should govern a rational system of taxation. In 'The Wealth of Nations' (Book V, chapter 2) he set down four general canons:

- I. The subjects of every State ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the State....
- II. The tax which each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person....
- III. Every tax ought to be levied at the time, or in the manner in which it is most likely to be convenient for the contributor to pay it....
- IV. Every tax ought to be so contrived as both to take out and keep





out of the pockets of the people as little as possible over and above what it brings into the public treasury of the State....The principles which can, therefore, be called out from the above for an efficient tax administration are:

- Ease of Administration and compliance;
- Clarity;
- Stability;
- Cost effectiveness;
- Convenience.

### **Need For Tax Reform**

World over, tax systems have undergone significant changes during the last twenty years as many countries across different ideological spectrum and varying levels of development have undertaken reforms. The wave of tax reforms across the world that began in the mid-1980s actually accelerated in the 1990s motivated by a number of factors. In many developing countries, pressing fiscal imbalance was the driving force. Tax policy was employed as a principal instrument to correct severe budgetary pressures. In

others, the transition from plan to market necessitated wide ranging tax reforms. Besides efficiency considerations, these tax reforms had to address the issue of replacing public enterprise profits with taxes as a principal source of revenue and aligning tax policy to change the development strategy. Another motivation was provided by the internationalisation of economic activities arising from increasing globalisation.

In the Indian context, the role of history and institutions was important in shaping the tax system in the country. Indeed, the nature of federal polity, assignment of tax powers and tax sharing arrangements have impacted on the incentives for revenue mobilisation and the structure and administration of the taxes in both the Central and the State Governments. The overlapping tax systems have made it difficult to have encompassing, comprehensive and coordinated tax system reforms. Another legacy of planning is selectivity and discretion, both in designing the structure and in

### **SNAPSHOTS**

1. The wave of tax reforms across the world that began in the mid-1980s actually accelerated in the 1990s motivated by a number of factors. In many developing countries, pressing fiscal imbalance was the driving force.

2. The Central Government, in the recent past, introduced and implemented various policy measures by way of legislation and executive orders, with the intention of simplifying the tax structure.

3. One of the most recent and notable reforms introduced in the recent past in the direct tax system is the introduction of Faceless Assessment Scheme. The Faceless Assessment Scheme was introduced in India on August 13, 2020.



implementation of the tax system.

### **Reforms In Indian Tax System**

Systematic and comprehensive attempts to reform the tax system at the Central level started only after market based economic reforms were initiated in 1991. The Tax Reforms Committee laid out a framework and a roadmap for reform of the tax system, both direct and indirect. The analytical basis for the reform in the new millennium was provided by task force reports on the reform of direct and indirect taxes and the report of the task force on the implementation of the Fiscal Responsibility of Budget Management Act, 2003.

The Central Government, in the

recent past, introduced and implemented various policy measures by way of legislation and executive orders, with the intention of simplifying the tax structure and making compliance easier on the part of the citizens. “Paying Taxes” is one of the ten factors which the World Bank takes into consideration for ranking of countries on the Ease of Doing Business Index.

### **Shift To Self-Assessment**

One notable reform which encompasses both the direct and assessment. Under the administrative assessment system, the onus is on the tax administration to examine tax returns and financial statements, calculate the amount of tax

payable, and notify the taxpayers of the tax liability. The emphasis under a self-assessment system shifts the verification process from pre- to a post-filing basis. It is said that the shift from administrative assessment to self-assessment in the Indian taxation structure has seen a constant rise in tax base and revenue.

### **Direct Taxes**

The various measures taken by the Central Government in simplifying the taxation regime are:

- a. Reduction of Corporate Tax from 30% to 25% for mid-sized companies.
- b. Domestic companies can opt for concessional tax regime @ 22% (effective tax rate: 25.17%

## The idea of a nationwide Goods and Service Tax in India was first proposed by the Kelkar Task Force on Indirect Taxes in 2000. The objective was to replace the prevailing complex and fragmented tax structure with a unified system that would simplify compliance, reduce tax cascading, and promote economic integration

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inclusive of surcharge and cess). Such a company cannot claim any income tax incentive or exemption. Such companies are not liable to pay the Minimum Alternate Tax;

c. The tax rate for new domestic manufacturing companies is now 15% (17.01% inclusive of surcharge and cess). Companies that have been incorporated on or after October 01, 2019, making fresh investment manufacturing and commencing production on or before March 31, 2023, may opt for such a concessional tax regime. Such companies cannot avail of any other income tax exemption/ incentive under the Income-Tax Act;

A company that does not opt for the above concessional tax regime and avails any tax exemption/incentive, shall continue to pay tax at pre-amended rates. However, the option of availing of the lower tax regime of 22% can be opted for after the expiry of tax during the holiday/ exemption period. Once the same has opted for it cannot be subsequently withdrawn by the taxpayer. Minimum Alternate Tax rate for companies availing

exemptions/ incentives reduced from 18.5% to 15%.

One of the most recent and notable reforms introduced in the recent past in the direct tax system is the introduction of Faceless Assessment Scheme. The Faceless Assessment Scheme was introduced in India on August 13, 2020. It is a part of the initiative taken by the Government of India to reduce the interface between taxpayers and tax officials. The Scheme is aimed at reducing the compliance burden of taxpayers and making the tax system more efficient and transparent. Under the Scheme, all assessment proceedings are conducted electronically without any physical interface between the taxpayer and the tax official. The taxpayer is required to submit the required documents and information online. The tax official then reviews the documents and information and passes the assessment order electronically.

Taxpayers can gain access to faster and more efficient tax assessments. Faceless tax assessment helps to ensure better tax compliance and reduce

evasion. It provides taxpayers with transparency and certainty in the tax assessment process. There is, therefore, no interference of tax officials or third parties in the tax assessment process and helps to reduce discretion.

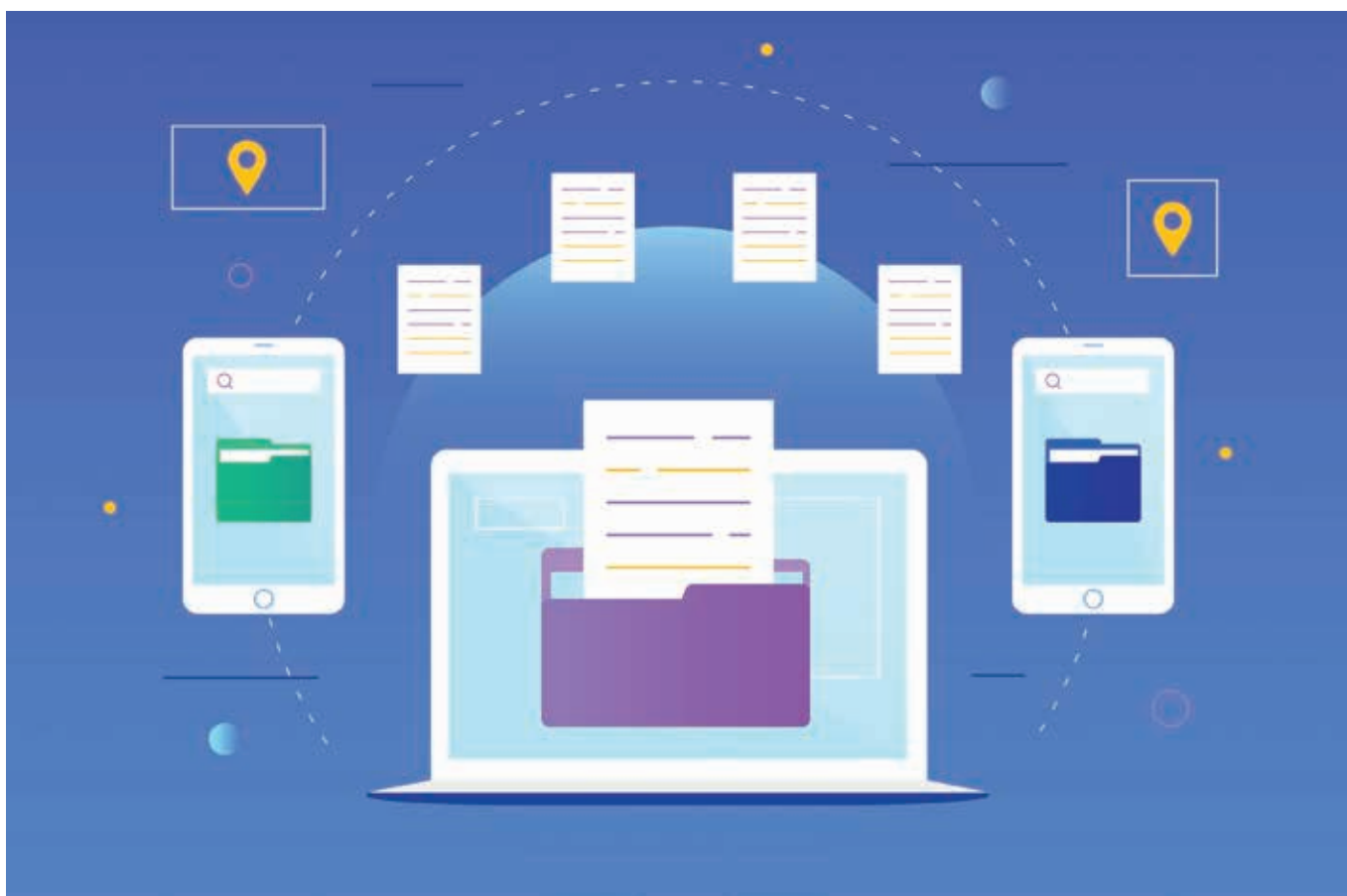
### **Indirect Taxes**

When it comes to the Indirect Tax side, a significant reform is the introduction of Goods and Service Tax w.e.f. July 01, 2017. The idea of a nationwide Goods and Service Tax in India was first proposed by the Kelkar Task Force on Indirect Taxes in 2000. The objective was to replace the prevailing complex and fragmented tax structure with a unified system that would simplify compliance, reduce tax cascading, and promote economic integration.

Goods and Services Tax is a comprehensive indirect tax levied on the supply of goods and services in India. Some of the salient features of are:

**(i) One Nation, One Tax:** It replaces multiple indirect taxes levied by the Central and State Governments, such as excise duty, service tax, value-added tax, and others. It also brings uniformity in the tax structure across India, eliminating the cascading effect of taxes.

**(ii) Dual Structure:** It operates under a dual structure, comprising the Central Goods and Service Tax levied by the Central Government and the State Goods and Service Tax levied by the State Governments. In the



Increased Compliance and Transparency aims to enhance tax compliance by bringing more businesses into the formal economy. The transparent nature of the tax system, with the digitization of processes and electronic records, helps in curbing tax evasion and increasing transparency

case of Inter-State transactions, Integrated Goods and Service Tax is applicable, which is collected by the Central Government and apportioned to the respective States. Import of goods or services would be treated as inter-state supplies and would be subject to Integrated

Goods and Service Tax, in addition to the applicable customs duties.

**(iii) Destination-based Tax:** It is a destination-based tax, levied at each stage of the supply chain, from the manufacturer to the consumer. It is applied to the

value addition at each stage, allowing for the seamless flow of credits and reducing the tax burden on the end consumer.

**(iv) Input Tax Credit:** Goods and Service Tax allows for the utilisation of input tax credit, wherein businesses can claim credit for the tax paid on inputs used in the production or provision of goods and services. This helps to avoid double taxation and reduces the overall tax liability.

**(v) Goods and Service Tax:** It would apply on all goods and services except Alcohol for human consumption. Goods and Service Tax on five specified petroleum products (Crude,

Petrol, Diesel, ATF & Natural Gas) would be applicable from a date to be recommended by the Goods and Service Tax Council. Tobacco and tobacco products would be subject to Goods and Service Tax. In addition, the Centre would have the power to levy Central Excise duty on these products. Exports are zero-rated supplies. Thus, goods or services that are exported would not suffer input taxes or taxes on finished products.

**(vi) Increased Compliance and Transparency:** It aims to enhance tax compliance by bringing more businesses into the formal economy. The transparent nature of the tax system, with the digitization of processes and electronic records, helps in curbing tax evasion and increasing transparency.

The other most significant reform on the Indirect Tax side is the introduction of Faceless Assessment System on the customs side. Faceless Assessment virtually connects customs assessment officers from different jurisdictions into a Faceless Assessment Group(s). It provides for assignment of import clearance documents that are not facilitated by the Customs Automated System to officers of the Faceless Assessment Groups irrespective of the port of import of the goods. Besides reducing the need for the trade to have a face-to-face interaction with customs officials for purposes of customs assessment, Faceless Assessment promotes specialisation and uniformity in assessments. Further, by allowing flexibility in

balancing workload between various Faceless Assessment Groups located in different customs locations, this initiative enhances the efficiency and speed of customs assessments.

Institutional set-up for the Faceless Customs initiative provides for a local set-up at port of import. The port of import is the customs station of import of goods and the importer has to enter Bills of Entry for home

consists of officers from different jurisdictions who are virtually connected on a technology platform to form various Faceless Assessment Groups to assess Bills of Entry falling under National Assessment Centres. A Bill of Entry is electronically assigned by the Customs Automated System to the Faceless Assessment Groups officers for verifying the assessment. Each Faceless

**A Bill of Entry is electronically assigned by the Customs Automated System to the Faceless Assessment Groups officers for verifying the assessment. Each Faceless Assessment Group has an All-India jurisdiction. With the introduction of Faceless Assessment Group, the assessment function has been delinked with the geographical location where the goods are available for examination**

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consumption or warehousing. Faceless Assessment is supported by the Port Assessment Group, Turant Seva Kendra and Import Shed officers at each port of import. The virtual setup consists firstly of National Assessment Centres which promote specialisation and uniformity. Customs Commissionerates have been partially re-organised as National Assessment Centres with All India jurisdiction.

The second setup is Faceless Assessment Groups which

Assessment Group has an All-India jurisdiction. With the introduction of Faceless Assessment Group, the assessment function has been delinked with the geographical location where the goods are available for examination.

To conclude, the Indian Taxation system, over the years, has seen significant structural reforms, some of which has been described above. However, the need for taxation reforms has to be constant and dynamic with changing times. 🚫

# “NAVIGATING INDIA’S DIGITAL REVOLUTION: FROM GST TO E-INVOICING!”

Unfolding the Indian Tax Landscape and Paving the Path Forward. A candid talk with Gautam Mahanti, Business Head, IRISGST



**I**N a rapidly evolving digital landscape, the world of taxation in India is undergoing a profound transformation. Welcome to the age of tax technology, where innovation is not just a choice but a necessity. As businesses adapt to the demands of the modern era, advanced tools, software, and digital solutions are emerging as the driving force behind efficient tax management. In this candid talk with Gautam Mahanti, business head of IRIS GST, an authorized GSP since 2017 and now one of the private IRPs, we explore the journey of India’s tax landscape, from the implementation of Goods and Services Tax (GST) to the advent of e-invoicing, and how these changes are shaping the future of taxation. Join us as we delve into the power of tax technology, its impact on businesses and the macro factors that will influence its trajectory in the years to come.

**Q1: What is the current state of tax technology in India’s fast-paced tax landscape?**

Tax management in India has undergone a remarkable transformation in the digital age. We have come a long way from paper based manual methods of recording, computing and posting.

Today, businesses and tax authorities are harnessing the power of tax technology to streamline their processes, reduce manual tasks, and minimize errors.

**Q2: You mentioned minimizing errors and reducing manual tasks, how does tax technology enhance efficiency and accuracy in tax-related tasks?**

Since the inception of GST, indirect compliance, particularly within the CFO’s office, necessitates unwavering precision and a zero-tolerance approach. The onus of ensuring the seller of goods and services is compliant is now with the buyer, which necessitates an integrated information supply chain.

In a landscape where numerous calculations and intricate analytics are imperative for optimizing Input Tax Credit (ITC), accuracy becomes paramount. Tax technology enhances efficiency and accuracy through automated calculations, zero-touch data flow between systems and automated data validations. It eliminates errors that can lead to compliance issues and speeds up the completion of tax-related tasks, ensuring that businesses meet their tax obligations promptly and accurately.

**Q3: So, how do you suggest tax technology is helping the current CFO office?**

Tax technology is all about simplifying and optimizing tax-related operations using the right set of tools and solutions which automate the tasks for ensuring compliance, reporting and analytics. For CFO office, this means a significant reduction in manual tasks and the potential for human errors. With automated processes in place, organizations get benefits of lower costs for managing tax operations, improved working capital cycle and risk mitigation.

**Q4: What is one thing you would like to highlight as the benefit of using tax technology over traditional methods?**

One of the most valuable aspects of tax technology is its ability to provide real-time insights and data analytics. Businesses and tax authorities can now access accurate and up-to-date information, enabling them to make well-informed decisions promptly. This newfound transparency is particularly crucial in a world where tax regulations are continually evolving.

**Q5: Talking about evolution of**

**tax environment in India, how does tax technology adapt to evolving tax regulations?**

Tax regulations are not set in stone; they evolve over time. Nowhere is this more evident than in the realm of Goods and Services Tax (GST), where the tax landscape has undergone constant modifications since its introduction in 2017, with the frequent introduction of new rules and forms. Therefore, it's imperative to select tax software that possesses the agility to seamlessly accommodate these constant changes. Businesses should seek service providers capable of implementing updates regularly without causing disruptions to their operations.

**Q6: So, tax technology in a sense is a tool for businesses to manage their tax compliance efficiently?**

I would not limit tax technology use to businesses only. In essence, tax technology is transforming the entire tax ecosystem. It's not just a tool for businesses to streamline their processes; it's also a means for tax authorities to enhance their oversight and collection efforts. This symbiotic relationship between taxpayers and tax authorities fosters a more efficient and compliant tax environment promoting overall economic development and growth.

As we move forward, the power of tax technology will only continue to grow. It has already proven its worth by reducing errors, improving accuracy, and saving time. More importantly, it enables businesses and tax authorities to navigate the ever-changing tax landscape with confidence. So, whether you're a business owner looking to simplify your tax processes or a tax authority seeking more effective ways to manage collections, tax technology is the key to a brighter, more efficient future.

**Q7: According to you, what**

**macro factors will influence the future of tax technology in India?**

As a rapidly advancing nation, India has witnessed numerous economic reforms in recent years but not limited to GST and e-invoicing. This is just the beginning, several macro factors will influence the future of tax technology and how we reap its benefits in the coming years. Notably, digitalization is a key factor, complemented by India's rise as the third-largest economy and accelerated growth rate. Additionally, societal, technological, legal, and environmental considerations wield substantial influence. These encompass aspects such as widespread internet and mobile usage, the advent and use of Artificial Intelligence in tax functions, the implications of the data protection bill, regulatory permits, and the potential to develop solutions for monitoring and reporting purposes.

**Q8: What is the forecast for the adoption of tax technology by businesses in India?**

Tax technology is more than just a fleeting trend; it's a decision businesses will inevitably need to make.

While larger enterprises have already embraced tax tech on a broader scale, the degree to which tax-based SaaS platforms penetrate the CFO office hinges on the seamless integration with ERPs, automation capabilities and user-friendly actionable analytics. This growth will be further catalyzed by industry-specific solutions, offering customization and dedicated support to ensure businesses reap the full benefits of tax technology.

In the realm of Enterprise tax technology, another significant area garnering attention is litigation management, especially in light of the increasing number of notices received by the businesses.

Concurrently, small taxpayers are primarily focused on business

growth and day-to-day operations. Therefore, platforms equipped with features enabling enhanced access to credit, market opportunities, and risk mitigation of vendor non-payment hampering their ITC will be the primary drivers of subscription among this segment, with compliance naturally falling into place as a by-product of such user-friendly solutions.

The SME and MSME sectors currently remain largely untapped, constrained by traditional lending models. The emergence of GST data and e-invoicing offers the potential to harness these data sets to create data-based lending models, thereby unlocking access to credit for this segment. In this evolving landscape, fintechs and neo-banks are poised to assume a pivotal role and set the trajectory of future growth.

**About IRISGST**

An authorized GSP (Goods and Services Tax Suvidha Provider) and now an IRP (Invoice Registration Portal), IRIS GST provides a comprehensive tax technology and fintech product suite. This suite empowers businesses of all sizes in India to effectively navigate the constantly evolving tax landscape with state-of-the-art tax tech solutions, advanced analytics, and exceptional customer support. In doing so, businesses can seamlessly meet their compliance requirements within the Goods and Services (GST) Tax system.

For Enterprises: Invoicing, GST Filing, Reconciliation, E-Invoicing, EWB, Litigation Management.

For Small Taxpayers: Invoicing, Self-compliance monitoring, Vendor monitoring, E-invoicing, EWB, Payment Collection.

For FIs: GST Public Data, Consented GST Data, E-invoicing data sets. 

*IRIS is awarded as the Best Taxtech company by TIOL consecutively for 2021 (Silver) and 2022 (Jury).*

# TAX SMART: A SIMPLE AND EFFECTIVE APPROACH TO TAX SYSTEM DESIGN

A nation needs taxes to fund its vital functions, such as defence, social welfare, and infrastructure projects. But a tax system must also be able to collect enough money without slowing down the economy. The secret to achieving this delicate balance lies in the design of the tax system



## M. GOVINDA RAO

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**T**AXES Matter. They are required for ensuring the security and safety of people and providing basic physical infrastructure which the markets fail to provide adequately. While the objective of any tax system is to mobilise resources needed for incurring public expenditures to create generalised externalities, this should be done without harming the markets. In other words, while the tax system erodes private incomes, it is necessary to design them to create the ecosystem required to carry on private businesses and thus, complement the markets.

### Objectives of a Tax System

The best practice approach to tax design and reform attempts to maximise revenues while minimising the three costs associated with it namely, the cost of collection, the compliance cost, and the cost in terms of economic distortions. The cost of collection is the administrative cost and the simpler the tax system, the lower the cost. Compliance cost is the cost of paying taxes and this too is lower when the tax system is simple and transparent. The higher the compliance cost, the greater the incentive to avoid and evade the tax. The taxes alter the relative prices of commodities and services in the economy and cause unintended consequences on resource allocation. The distortions are high when the structure is complicated and the marginal tax rates are high. Thus, the best practice approach to tax design and reform is to broaden the base,



have low and less differentiated rates, and evolve a simple and transparent tax system.

It is important to design the structure and operational details of the tax system so that voluntary compliance with the tax is encouraged and the incentive to evade is minimised. Besides the simplicity and reasonableness of the tax rates and effective administrative and enforcement systems, voluntary tax is encouraged when there is a strong linkage between the payment of the tax and the benefits from public services. In other words, when people see that paying taxes improves their access to public services and is not wasted, the willingness to pay will be more and voluntary compliance higher.

### Key Factors in Tax Design

Tax compliance is a multiplicative function of the rate of tax, probability of detection, and penalty rate. Tax compliance is low when the tax rates are high because, at

high rates, the incentive to avoid and evade the tax is high. In fact, in 1973–74, there were 11 tax rate brackets in personal income tax with rates monotonically rising from 10 percent to 85 percent and with a surcharge of 15 percent added, the marginal tax rate on those individuals with income above Rs. 20 lakh was 97.5 percent. At this rate, evasion and avoidance became rampant, and less than one percent of the population paid the tax and the revenue from the tax was just about 0.8 percent of GDP. Under such a tax system, tax evasion is not even considered immoral!

In fact, the reduction in the tax, number of rate categories and the marginal tax rate were implemented in 1992 after the recommendations of the tax reform committee chaired by Raja Chelliah. Later, in the 1996–97 budget, the simplification of the tax structure by limiting the rate categories to three (besides exemptions) and reducing the marginal rate to 30 percent significantly increased tax

## SNAPSHOTS

1. Although the GST was designed to be revenue-neutral, it was expected to generate a significant increase in revenue productivity over the medium and long term due to improved compliance with the tax.

2. Not surprisingly, in many countries, the VAT has turned out to be a “money machine” and this has led to as many as 166 countries of 193 countries with UN membership opting to adopt one form of VAT or another.

3. Reducing the incomes of the rich does not increase the incomes of the poor. The objective of equity is better served through the expenditure side of the budget by allocating resources toward alleviating poverty.



compliance and revenue productivity.

From the viewpoint of revenue collections, levying tax at lower rates is possible if the tax base is broad. This requires minimising exemptions and various types of incentives and concessions. Taking multiple objectives in the tax structure design results in narrowing the tax base, complicates the tax system, and opens up avenues for evasion and avoidance of the tax. Complexity in the tax system increases compliance costs and creates unintended resource allocation distortions. The Constitutional assignment of the tax on agricultural incomes to the States and the unwillingness of the States to levy the tax has created a serious anomaly and has opened up an easy avenue to misclassify and evade the tax, thereby denting the compliance of the tax.

### **Self-Policing Principles in GST**

The value-added tax (VAT) on goods and services or the Goods and Services Tax (GST) is an important example of designing the tax system with self-policing principles. The taxpayer is forced to declare his turnover to avail of the input tax credit and in the process voluntarily comply with the tax. Not surprisingly, in many countries, the VAT has turned out to be a “money machine” and this has led to as many as 166 countries of 193 countries with UN membership opting to adopt one form of VAT or another. However, there are some important prerequisites for

ensuring voluntary compliance and reaping potential revenue productivity. First, the structure of the tax should be simple. Having a large exemption list and multiple rates makes the tax base narrow and creates scope for tax evasion through the misclassification of goods and services in favour of lower-tax rate items. In fact, 81 percent of the countries that have embraced VAT since the year 2000 have opted to adopt a single rate of tax besides a list of exemptions. This not only removes the incentive to misclassify but also reduces complications and the inverted duty structure. The objective of equity is served better by keeping the threshold high so that the focus is on the ‘whales’ rather than the ‘minnows’ (Keen, 2013).

the tax rates low. At low rates of tax, the incentive for evasion is less, and compliance is better. In India, having multiple rates of GST and levying the highest rate at 28 percent creates an incentive to create a ‘grey market’ for such goods by keeping the entire chain of transactions out of the tax purview. This is particularly true of taxes on building materials such as cement, steel and paints which are taxed at 28 percent.

Third, an important prerequisite for enhancing compliance with the tax is the adoption of a standard numbering system. The probability of detection improves with standard numbering and is traceable in an interlinked numbering system. In the Indian context, the linking of GST registration number with the

**The objective of tax policy is to raise revenues and designing the tax to pursue too many objectives does not help them to achieve them while defeating the main objective of raising revenue. GST has self-enforcing features and if properly designed it could turn out to be a “Money Machine”**

In any case, the tax policy has proved to be ineffective in reducing income inequality (Rao, 2015/16). Reducing the incomes of the rich does not increase the incomes of the poor. The objective of equity is better served through the expenditure side of the budget by allocating resources toward alleviating poverty.

Second, it is important to keep

income tax permanent account number (PAN) helps to match the payment of income tax with the GST turnover and helps in the better compliance of the tax. When the GST turnover is reported, it is possible to establish a relationship with the declared incomes to identify the doubtful cases. As the probability of detecting increases, voluntary



compliance with both taxes increases.

### **Impact of Technology on Tax Compliance**

The most important factor in determining tax compliance is the application of reliable and robust technology in tax administration. Clear evidence of this in India is found in the administration of both income tax and GST. In the case of the former, the report of the Comptroller and Auditor General (CAG) in 2002 revealed that a large proportion of those who are required to deduct the tax at source did not pay the tax and file the return. It led to the introduction of a Tax Identification Number (TIN) to track the deduction and match it with the actual payment in the banks. The result was a huge improvement in compliance with both individual and corporate income taxes resulting in an increase in the tax from about 3

percent of GDP in 2003-04 to 6 percent of GDP in 2007-08.

An equally important instance of the importance of the application of technology in tax administration is seen in the implementation of GST. It is critical to scrutinise and settle the input tax credit claimed by the exporters expeditiously and correctly. Furthermore, as GST is a destination-based tax, technology is critical to track and ascertain the final destination of the goods and services when the tax is levied on inter-state transactions to allocate revenue to that State through a clearing house mechanism. Therefore, firming up the technology platform is critical to the compliance of GST.

In India, although the GST came into existence on July 1, 2017, the inability to settle the technology platform resulted in poor compliance with the tax in the first four years. Although the

GST was designed to be revenue-neutral, it was expected to generate a significant increase in revenue productivity over the medium and long term due to improved compliance with the tax. However, the experience in the first four years was not encouraging. The revenue productivity of the tax suffered greatly resulting in a significant deceleration in the growth of revenue from GST.

### **Striving for a Technology Enabled Tax System**

The compliance audit on the technology platform done by the CAG in 2019 pointed out some important shortcomings (India, 2019). It observed the postponement of the originally envisaged GST returns (GSTR-1,2,3) due to technical glitches and the inability to undertake the originally envisaged universal verification of invoices to match input tax credit (ITC) from the simplified returns (GSTR -3B) as principal reasons for evasion of the tax. The CAG's report concluded, "..... On the whole, the envisaged GST tax compliance system is non-functional" (India, 2019; p. 22). Further, the settlement of IGST to the States also could not be done properly. Furthermore, the system failed to generate the required modules such as appeals and refunds from the returns.

The failure of the technology platform to verify invoices for ITC has led to false claims and refunds using fake invoices. Similarly, the inability to validate the registrations has led to the creation of several shell

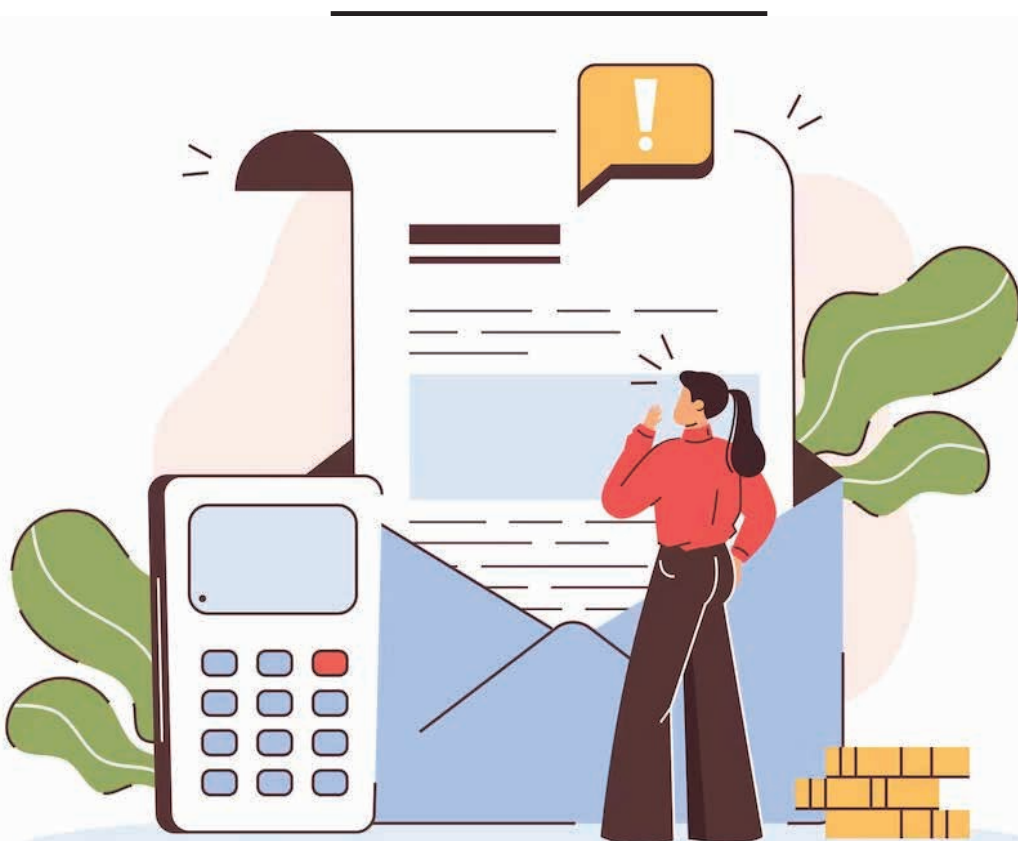
companies (some of them within the group) to issue fake invoices which eventually disappear leading to poor compliance with the tax. The fact that the annual return filing date was repeatedly postponed due to technical glitches for almost two and a half years, did not permit the detection of wrong ITC claims. In the absence of a clear paper trail, the assessment was based entirely on trust, and with the low probability

of detection of evasion, it provided opportunities for unscrupulous businessmen to evade the tax. In fact, the annual return filing for 2018-19 was repeatedly postponed till December 2020. Similarly, the inability to validate and debar the ineligible taxpayers from availing composition levies led to the misuse of the option. Based on the information made available from the All India Enforcement

Drive by the CBIC through the Directorate of Revenue Intelligence and other CBIC formations from November 2020, it was reported that more than 5700 cases involving an amount of Rs. 40000 Crore were detected in the fiscal year 2021. Indian GST with a complex structure with the simultaneous levy of Central and State level destination-based tax, wide-ranging exemptions, and multiple rates requires a robust technology platform, and the failure to erect that had adverse effects on the compliance of the tax. With the stabilisation of the technology platform, we have seen significant improvement in compliance and revenue productivity.

The value-added tax (VAT) on goods and services or the Goods and Services Tax (GST) is an important example of designing the tax system with self-policing principles. The taxpayer is forced to declare his turnover to avail of the input tax credit and in the process voluntarily comply with the tax

Tax compliance matters. Compliance by design is possible only when the tax structure is kept simple and reasonable. It is equally important to ensure ease of paying the tax, effective administration, use of technology in administration and enforcement, and friendly and effective taxpayer service. The objective of tax policy is to raise revenues and designing the tax to pursue too many objectives does not help them to achieve them while defeating the main objective of raising revenue. GST has self-enforcing features and if properly designed it could turn out to be a “Money Machine”. However, a strong and effective technology platform is an important prerequisite for the success of GST, particularly in countries levying subnational GST. The role of tax reform should be to design the tax system to promote voluntary compliance. 📌



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# TAXATION IN INDIA: ANCIENT WISDOM, MODERN REALITIES

Taxation in India has a rich history from ancient times to the present day. Manu and Kautilya's wisdom on fair taxation are part of India's tax heritage. Recent reforms aim to create a more compliant and equitable tax regime. This exploration delves into challenges faced by tax administration and the quest for a just tax system



**PRATAP SINGH**

Principal Commissioner  
of Income Tax

*"It was only for the good of his subjects that he collected taxes from them, just as the Sun draws moisture from the Earth to give it back a thousand-fold"*

*Kalidas in Raghuvansh*

**T**AXATION has a very rich legacy and heritage in India. According to Manu Smriti, the king should arrange the collection of taxes in such a manner that the taxpayer did not feel the pinch in paying taxes. Manu says *"As the leech, the calf and bee take their food little by little even so must the king draw from his realm moderate annual taxes."* Manu, the ancient sage and law-giver stated that the king could levy taxes, according to *Sastras*. The great Indian thinker and political strategist, Kautilya in Arthashastra has described in great detail the system of tax administration in the Mauryan Empire. Kautilya's concept of taxation emphasised equity and justice in taxation. The affluent had to pay higher taxes as compared to the poor. He says that *'just as a fruit must be plucked as soon as it is ripe, tax should be collected as soon as it is due.'* He states – *"From the treasury, comes the power of the government."* It is remarkable that the present-day tax system derives its inspiration from that and is in many ways similar to the system of taxation in vogue about 2300 years ago. The modern taxation system in India was however introduced by James Wilson, in the year 1860 under British rule. Presently Income Tax Act 1961, is the legal framework to collect taxes in the country. The authority of the government to levy taxes in India is enshrined in Article 246 of the Constitution, allocating the powers to levy taxes

to the Union Government and State governments, more particularly schedule-VII of the Constitution. The residual taxation powers however lies with the Centre.

### **The Quest for an Ideal Tax System**

Attempts towards setting up a fair tax system have always been a big challenge for developing countries like India. An ideal tax system is expected to raise necessary and timely revenue for the government without adversely affecting investment decisions or economic activity. However, it is not an easy task to establish an efficient tax system in a developing country like India where a large number of people are still engaged in the unorganised sector being dominated by cash transactions and where it is difficult to calculate the tax base with any objectivity. This leads the State to limited options

available, distanced from establishing an efficient and ideal tax system. Therefore, after many attempts to reform, we are yet to arrive at a flawless ideal system of Tax. The principal objective of tax policy in a developing market economy should be to raise revenues in an equitable manner and with minimum unintended changes in relative prices and allocation of resources, as enshrined in the famous canons of taxation; equity, certainty, economy and convenience (Adam Smith, 1776).

### **Challenges in Developing Tax System**

Tax administrations across the globe face similar kinds of challenges, which are broadening the tax base, promoting voluntary tax compliance, reducing compliance costs, shifting from tax evasion to tax avoidance, and

## **SNAPSHOTS**

1. Kautilya in Arthashastra has described in great detail the system of tax administration in the Mauryan Empire. Kautilya's concept of taxation emphasised equity and justice in taxation.

2. The modern taxation system in India was however introduced by James Wilson, during the year 1860 under British rule. Presently Income Tax Act 1961, is the legal framework to collect taxes.

3. Total tax collection or tax-GDP ratio is an important yardstick to gauge the effectiveness of the tax administration. Both CBDT and CBIC collected over 31 lakh crores in taxes in 2022-23.



globalisation and entry of multinationals. Globalisation, cross-border transactions and international trade throw various complicated tax issues, which include Base Erosion and Profit Shifting (BEPS), transfer pricing and arm’s length value of transactions, shifting profits to low-tax or no-tax jurisdictions etc. Thus many countries do not get legitimate taxes on value additions made in their respective jurisdictions. This is one of the most burning tax issues globally. The United Nations and G-20 are dealing with this problem and the proposed Pillar 1 and Pillar 2 solution, which includes a global minimum tax rate of 15% and giving some taxation rights to market jurisdictions are part of the proposed solutions, on which the consensus is yet to be developed.

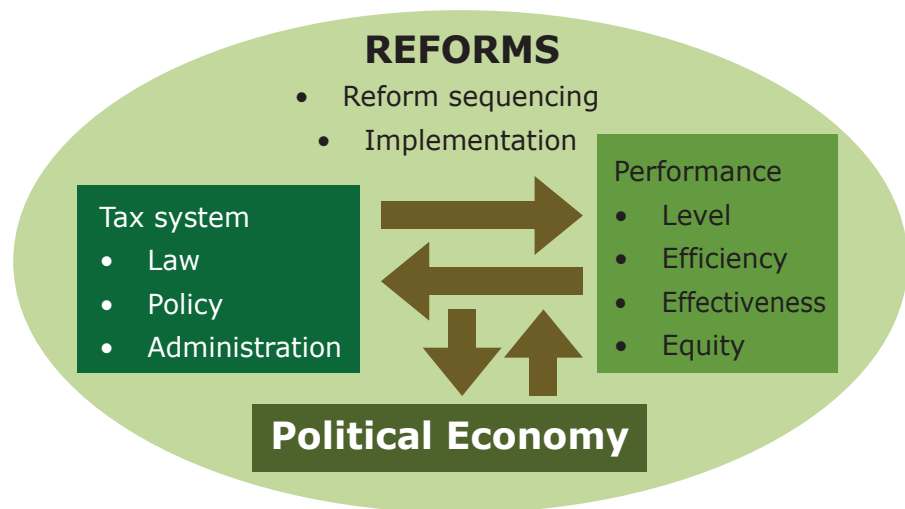
**Functions of Tax Administration**

The performance of any tax administration can be judged on four parameters of level, efficiency, effectiveness and equity as envisaged in the model given by the African Development Bank and shown in Fig 1. The tax system consists of law, policy and administration components. The performance of each component is to be measured on four parameters namely; level, efficiency, effectiveness and equity. Level means total tax collection or tax-GDP ratio i.e. share of GDP collected as tax. Total tax collection or tax-GDP ratio is an important yardstick to gauge the effectiveness of the tax administration. Both CBDT and CBIC collected over 31 lakh

crores in taxes in 2022-23. However, the Indian tax-GDP ratio at about 17.8% is one of the lowest among similarly placed economies. As per a study carried out by Govind Rao (2016), this ratio should have been at least 22%. It is seen that countries like Japan, Sweden, UK have a tax-GDP ratio at about 32%, while the USA is at about 28%. Even BRICS countries have higher ratio

have improved to over 90 million in 2022-23 and appears to be a decent figure. The only issue is taxpayers in higher income brackets which are still low. For which we need to promote voluntary tax compliance. By voluntary compliance, we mean that all eligible taxpayers are filing their tax returns and are reporting correct incomes. As per a study carried out by Dasgupta

**Figure 1: Framework for measuring performance of tax system**



Source: African Development Bank (AfDB), 2013.

than India. Number of taxpayers is another important yardstick to measure the effectiveness of tax administration. Whether all eligible people are registering and paying their taxes and whether growth in taxpayers is commensurate with the growth of the economy are important issues.

It is seen that during 2011-23, 77.8 million persons filed their tax returns, while in over 16 million cases TDS was done. Therefore the total figure worked out to over 93 million in 2011-23, which may

(2002), the level of return compliance in India is 58% and the level of reporting correct income compliance is 62%, indicating a lot of scope for improvement. It is however believed that compliance may have certainly gone up since the above study was carried out in 2002, and since then a lot of changes have taken place, and ICT has been employed to detect non compliant.

**Tax Administration Reforms in India**



## Globalisation, cross-border transactions and international trade throw various complicated tax issues, which include Base Erosion and Profit Shifting (BEPS), transfer pricing and arm's length value of transactions, shifting profits to low-tax or no-tax jurisdictions etc. Thus many countries do not get legitimate taxes on value additions made in their respective jurisdictions

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It is believed that the major reasons for tax evasion globally are (1) tax rates being high (2) tax laws being complicated (3) procedure to pay taxes and filing return being complicated (4) compliance costs to maintain account books, audit fees and other costs being high (5) and finally probability of detection by tax authority being lesser and even if it is detected the penalty being low and chances of prosecution are still lower. Therefore these issues are needed to be tackled at policy level as also on the administrative front. Even though in India the tax rates are now moderate and are comparable to all other economies of similar size and compliance costs are reasonable, yet the enforcement mechanism, especially, detection of tax evasion, penalising the tax evaders and prosecuting them is not robust, which probably may be the single biggest reason for low level of compliance (Rao, 2005). CBDT Statistics (2023) states that the people showing income above Rs.1 crore is only about 2,64,500 and that showing

income above Rs.10 lakhs are only about 58 lakhs, which experts feel is very low and say that in a city like Mumbai alone, the number of taxpayers in such income brackets should be more than the above mentioned national figures. The research shows that two principal tools of enforcement, namely raids and intrusive inspection and prosecution of tax offenders, have not been sufficiently effective so far and failed to create sufficient deterrence. From the experience of many developing countries (Mexico, Brazil, South Africa, etc.), it is evident that the process of economic development is usually associated with growth in the relative contribution of personal income taxes to the revenue. This is the result of a variety of factors such as widening of the tax paying population, increasing personal incomes and improvement in tax administration and enforcement. But the contribution of personal income-tax in overall revenue of the Government is only about 24%, which is among the lowest.

Even though the revenue from income-tax has been rising over a period of time, however, actual growth in revenue probably would have been much higher had there been proper compliance. The evidence suggests that marginal tax rates exercise a significant negative impact on both compliance and revenue. Higher the tax rate, lesser the compliance, and vice-versa. Therefore, India appears to be operating on the negatively inclined part of the laffer curve.

### **Tax Performance in Major Areas**

Performance of Indian tax administration on various parameters, which includes no of taxpayers, tax collections, tax arrears, refunds position, scrutiny cases, appeals and dispute resolution and cost of collection as presented in Table 1.

### **Tackling Tax Evasion Challenges**

From the experience of many developing countries (Mexico, Brazil, South Africa, etc.), it is evident that the process of economic development is usually associated with growth in the relative contribution of personal income taxes to the revenue. This is the result of a variety of factors such as widening of tax paying population, increasing of personal incomes and improvement in tax administration and enforcement. But the contribution of personal income-tax in overall revenue of India is only about 24%, which is among the lowest. It is said that the three important variables for effective compliance are tax structure (marginal tax rates and

**Table 1: Statistical information about Tax Administration**

S.no	Item	2006-07	2007-08	2008-09		2009-10	2010-11	2011-12	2012-13	2013-14
1.	Gross Collection, in crores	2,67,416	3,53,498	3,72,915		4,35,164	5,22,103	5,87,801	6,42,755	7,23,000
2.	Refunds, in crore	37,235	41,285	39,097		57,101	75,169	93,814	83,766	85,000
3.	Net Collection, in crores	2,30,181	3,12,213	3,33,818		3,78,063	4,46,934	4,93,987	5,58,989	6,38,000
9.	No. of Scrutiny assessments due for disposal	5,27,005	9,97,983	9,53,767		8,70,620	8,47,196	7,80,000	5,90,000	3,90,000
10.	No. of scrutiny assessments completed	2,41,983	4,07,239	5,38,505		4,29,585	4,55,212	3,69,320	3,08,398	2,80,400
11.	No. of officers deployed for assessment duty	3,954	3,218	3,106		3,605	3,687	3,584	3,469	3,512
12.	Direct refund claims pending (No. in lakh)	4.4	8.3	15.5		19.4	19.5	12.50	11.20	10.40
13.	Interest on refunds in crores	3,693	4,444	5,778		6,876 <sup>7</sup>	10,499	6,486	6,646	6,800
14.	Demand pending, in crores	1,17,370	1,24,274	2,01,276		2,29,032	2,91,629	4,08,418	4,86,180	4,90,000
15.	No. of appeals pending with CIT (A)	1,07,841	1,30,358	1,58,031		1,80,991	1,87,182	2,30,000	1,99,000	2,19,000
16.	Certified demand recovered, in crores	8,521.4	8,612.6	4,035.8		3,322.3	4,074.6	5,087.40	6,234.60	7,659.32
17.	Certified demand pending, in crores	26,703.9	27,444.9	27,461.0		95,122.4	106,990.8	1,27,390	1,54,876	1,69,374
18.	Cost of collection, in	1,343	1,713	2,286		2,774	2,698	3,800	3,900	*4,100

exemption limit), enforcement efforts of the income-tax department, which includes search and seizure action, quantity and quality of tax audits or assessments and penalties and prosecutions. The evidence however suggests that marginal tax rates exercise a significant

negative impact on both compliance and revenue. Higher the tax rate, lesser the compliance, and vice versa and, therefore, India appears to be operating on the negatively sloped part of the Laffer curve. Tax scrutiny or audit has been the only tax enforcement effort which

exercises a significant positive effect on compliance, but its share has been declining, as presently only about 1% tax returns are scrutinised.

Recent measures taken by the Government like GST, Black Money Act, Benami Property Act, Demonetization 2016 and IDS

Scheme 1 & 2, besides 360 degree profiling and risk assessment will go a long way in curbing tax evasion.

### Recent Tax Reforms

The Income Tax Department has taken several steps to streamline the Tax system, to promote growth and to reduce the compliance burden with a view to promote ease of doing business. This includes faceless assessment and appeal system, facility of pre-filled tax returns, creation of 100 posts of Joint Commissioner (appeals) to reduce litigation, improved 26 AS and AIS (Annual Information System), facility of filing updated returns and e-verification as also demand facilitation and management to reduce infructuous tax arrears. These are path breaking initiatives to simplify the tax system and to promote voluntary compliance.

### Faceless Assessment and Appeal System

The system of “Faceless Assessment and Appeal” was set into motion by the Income Tax Department in August 2020, with a view to create transparency, accountability and fairness in the Tax system. In fact, the Faceless Assessment and Appeal system

From the experience of many developing countries (Mexico, Brazil, South Africa, etc.), it is evident that the process of economic development is usually associated with growth in the relative contribution of personal income taxes to the revenue

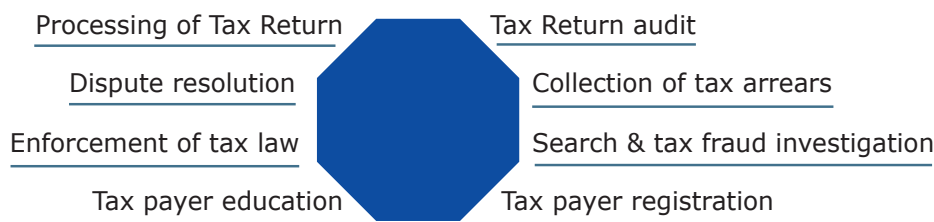
has been hailed as one of the major reforms in the Direct Tax system in the last few decades. Under the faceless assessment scheme, the old territorial jurisdiction system has given way to a new dynamic country wide jurisdiction, as per which, an Officer is assigned cases for assessment or appeal from anywhere in the country, out of the total pool of the cases selected for scrutiny/investigation during the year. There is absolutely no interference between the taxpayer and the assessing officer. So far, the satisfaction level of the taxpayers has been fairly high, of the order of over 70%. as majority of the cases are assessed on returned income. Though in a few cases the taxpayers have reported difficulties, like lack of proper opportunity and lack of physical representation before the AO, however, in due course, these things will be sorted out.

### Digitalization of Tax

**System:** As of now, the tax functions both in Income Taxes and Indirect taxes like GST and Customs are fully automated and online. Be it the process of tax filing, tax payment, assessment, refund are all systems and technology driven, where AI and ML is being used in a big way to detect tax evasion. Today, a taxpayer can pay the taxes online 24x7, can file his tax return at any time 24x7, can register and obtain his PAN again online. This promotes growth, ease of doing business and trust .

These initiatives have changed the entire landscape of the tax system in the country. This has also improved the tax compliance which is reflected in the number of tax returns filed and the overall taxes paid in the country. It may be pertinent to mention here that over 78 million tax returns were filed in the country electronically during the financial year 2022-23 and taxes of 16.62 Lakh Crores were collected, which is a remarkable milestone. The CBDT and CBIC have done a tremendous job in modernization of tax administration and streamlining the tax system in the service of the nation. 🇮🇳

**Figure 2: Functions of Tax Administration**



Source: Constructed by the author

# TAXATION LANDSCAPE IN INDIA

The idea of paying taxes voluntarily and willingly still requires nurturing. The key question is whether the country's tax system has the features that can encourage self-regulation among taxpayers, rather than relying on the tax authority's supervision. The advent of 'Amrit Kaal' is an apt time to evaluate the two major tax laws in our country based on their ability to promote compliance by design



**UPENDER GUPTA**

IRS (C & IT), Chief  
Commissioner, CGST & CE  
Panchkula Zone



**RAVNEET SINGH  
KHURANA**

IRS (C & IT), Special Secretary  
(Excise & Taxation)  
Cum Additional Commissioner  
(GST Audit), State of Punjab)

INDIA is a land of diversity and the taxation system with a variety of taxpayers, diversity of trade and professions and divergent technological and institutional practices is a true reflection of the same. Discharging of tax liability willingly and on account of own volition is an idea that still requires nurturing. The question that begets the answer is whether the taxation regime of the country has the broad contours that can shape the compliance mechanism in such a manner that it works towards self-regulation rather than oversight by the tax authority. The advent of the 'Amrit Kaal' in the country is an appropriate time to examine the two important taxation laws in our country on the touchstone of self-regulation with dedicated attention towards compliance by design.

## **Transformative Potential of GST**

GST has been one of the revolutionary changes in the indirect tax regime and has brought a tectonic shift in the manner in which the multiple taxes in our country have been administered. A transactional tax with transformative potential, it has unleashed a wave of transparency, simplification and harmonisation in the taxation regime and has thereby provided a big boost to the ease of doing business in the country. The GST regime is based on constructive cooperative federalism between the Union and the States and is premised on the principle of destination based consumption tax that accrues to the concerned State or Union Territory in which the goods or services are being consumed. Taking cue from the fact that the erstwhile taxation regime was marked by complexity and diversity which was further compounded by the fact that the States were enjoying different levels of



technological and institutional competence, the GST regime has consciously worked towards uniformity and harmonisation.

The primary role in this has been played by the GST Council which has emerged as a shining example of how the principles of federalism and pooled sovereignty can co-exist within the framework of diversity. The GST Council has not only shaped the broad contours of the

GST architecture but has provided impetus to the organic growth of the GST over the past six years. The constant attention of the GST Council towards simplification of the GST law, rationalisation of the tax rates, technological improvements in the GST system underlines the commitment of the governments, both Centre and States, towards enhanced compliance through design.

## SNAPSHOTS

1. A transactional tax with transformative potential, GST has unleashed a wave of transparency, simplification and harmonisation in the taxation regime and has thereby provided a big boost to the ease of doing business in the country.

2. The primary role in this has been played by the GST Council, which has emerged as a shining example of how the principles of federalism and pooled sovereignty can co-exist within the framework of diversity.

3. The direct tax regime of the country has seen landmark changes over the past few years primarily with the objective of ensuring certainty, simplicity and assurance of fair play for the taxpayer.

### Trust-Based Compliance

The GST law is based on trust between the tax authority and the taxpayer which is symbolised by the theme of self-assessment that defines the new taxation regime. The said belief is further fortified by the requirement for the supplier and recipient to have a strong bonding based on trust and mutual confidence as the declaration by the supplier becomes the fulcrum of the availment of Input Tax Credit (for brevity, "ITC") by the recipient. Thereafter, the electronic furnishing of returns, declaration of movement of goods through the generation of e-way bills and providing of information regarding supply made through e-invoicing are the added features of the trust based system. The crucial aspect that requires consideration here is that the GST being value added tax necessitates a deep and engaging model of self-policing where the trade and industry brings it upon itself to establish a model relationship which is fulfilling and enriching for all stakeholders. The interplay between the information being provided by the supplier and the recipient, the auto-population of details being furnished by the supplier in the FORM GSTR-1 in the FORM GSTR-2B of the recipient and thereafter in FORM GSTR-3B demonstrates the design of system which is based on mutual compliance. Any break in the supply chain that creates wrinkles in the availment of the ITC has the potential ripple off effect for all the participants in the entire supply thereby making KYS

(Know Your Supplier) an essential element of the business practice.

### Collaboration Between Trade And Tax Authorities

Another interesting aspect that is worth exploring is the manner in which the tax authorities are engaging with the trade and industry and among themselves. The flow of information between the trade and tax authority is so smooth that trade facilitation and interaction have become the new favourites of the taxation regime. The amendment(s) carried out in law, the constant changes in the rules, the issuance of nearly two hundred circulars, the rationalisation of tax rates are all

federalism which hitherto has been unheard of in the country.

### Embracing Technology

The charm of GST lies not only in the uniformity and harmonisation of laws across the country but is primarily enamoured by the manner in which the practices and procedures across tax administrations are being synchronised on a common platform. The maturing of the GST network and the coming of age of GSTN as the service provider are harbinger of the new era of taxation where the IT platform and the system based interventions with minimal human interface are going to be

**The constant attention of the GST Council towards simplification of the GST law, rationalisation of the tax rates, technological improvements in the GST system underlines the commitment of the governments, both Centre and States, towards enhanced compliance through design**

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outstanding specimens of how responsive the tax administration has been to the needs of the trade and industry and how the said partnership is being nurtured in the new taxation regime. Similarly, the constant sharing of ideas and best practices among the various tax administrations, the essential requirement of cooperation and coordination between the State and Central tax authorities have opened up new vistas of tax-tax cooperative

the order of the day. The simplification and enhancement of transparency in the refund process with automatic credit of refund amount to the bank account of the taxpayer has transformed the manner in which the trade and industry used to see the tax administration and has given a big boost to the positive perception about tax administrators as facilitators rather than regulators.

The growing digitization of the



economy, the phenomenal growth in the service sector and the opening of trade across borders has enhanced the attention of the tax administrators towards cross-border supply of digital services. The simplified taxation regime with minimal requirement of registration coupled with well-defined rules and regulations has provided a big thrust to the collection of tax from the suppliers of services located abroad. With reverse charge mechanism being the preferred mode of taxing B2B (business to

business) cross border supply of services, the element of trust and self-regulation has been taken to a new level under GST. Similarly, in the quest for taxation of B2C (business to consumer) cross-border supply of services, the GST regime, drawing inspiration from the OECD model, has adopted OIDAR (Online Information Data Access and Retrieval services) taxation framework where trust, self-regulation and self assessment are the key ingredients. The system is entirely based on the

self compliance by the service providers located outside the country and is designed in such a manner that the taxpayer finds more comfort in securing tax to the country rather than evading it and resultantly earning a bad name across the world.

### **Income Tax - Evolution of Direct Tax Regime**

The direct tax regime of the country has seen landmark changes over the past few years primarily with the objective of ensuring certainty, simplicity and



## The maturing of the GST network and the coming of age of GSTN as the service provider are harbinger of the new era of taxation where the IT platform and the system based interventions with minimal human interface are going to be the order of the day

assurance of fair play for the taxpayer. The quintessential electronic furnishing of returns, rapid processing of refunds, lean time period for assessment of returns, enhanced risk based scrutiny model, sharing of data across multiple streams has brought a paradigm shift in the direct taxation regime. The fact that the collections from both personal and corporate tax have shown steady increase underline the manner in which the government has moved ahead with the task of bringing simplification and transparency in

the system. The lowering of tax rates for certain key emerging stakeholders, the movement towards exemption free regime for corporates, the quest for deduction free matrix for the personal taxes highlight the importance that is being given to self-compliance based on system intervention in direct taxation.

### **Growth and Taxation**

The realisation that growth in economy and taxation go hand in hand and the reaching of understanding that simplification and self-compliance promotes

harmony and growth in revenue has shaped the manner in which the tax administration of the country is responding to the challenges of the volatile future. The GST regime has really given a transformational perspective to the Indian economy and has emerged as a key driver of formalisation of the economy. Similarly, the direct tax regime has been looking at exemption/ deduction free taxation marked by enhanced dependence on data sharing both within and outside the country.

The vagaries of the country's taxation can be positively harnessed if the system based interventions become the order of the day and trust based mutual beneficial relationship defines the manner in which various stakeholders interact with each other. The developments in artificial intelligence and machine learning are the opportunities that the taxation regime can ignore at its own peril. 🚫





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# REIMAGINING TAX SYSTEM: PUBLIC- PRIVATE BALANCE

In taxation, the balance between sovereign authority and private sector collaboration is crucial. Understanding the evolving nature of tax compliance, the factors influencing taxpayer behaviour, and the importance of a holistic approach to taxation are essential for achieving sustainable development and economic growth



**ARIJIT PRASAD**

Senior Advocate

**I**N the contemporary world, taxes are considered an indispensable function of a sovereign or government. Taxes are primarily used to fund public goods and services such as healthcare, education, law enforcement, and national security etc., primarily Taxes are collected either via direct taxation or indirect taxation. Every revenue authority empowered to collect taxes is required to attain as good a compliance outcome as possible. Revenue authorities in India under the current administration have gone through significant changes in order to make the compliance of large corporations, individual taxpayers and micro, small and medium enterprises simple. From our independence until the period of Liberalisation, Privatization, and Globalization, policymakers held the belief that the ultimate authority for taxation rested with the Sovereign power. Any taxation-related order or desire from the sovereign was seen as absolute. This perspective was influenced by the socialist ideal enshrined in our constitution and shaped the decisions of the ruling regimes of the past. However, since the reforms of the 1990s, there has been a shift towards recognizing the role of the private sector in the economy. This shift has led to a more balanced approach to taxation, with greater consideration for the needs and desires of the private sector. While the sovereign still holds significant power in matters of taxation, there is now greater recognition of the importance of collaboration between the public and private sectors to achieve economic growth and development.

## **Five Pillars of Taxpayer Behaviour**

Additionally, to ensure citizens' adherence to tax payment, the



most effective approach was believed to be deterrence and strict penalties for any tax evasion. In developed nations, there has been a significant transformation in the prevailing attitude and understanding towards taxation, where policymakers and scholars have begun to gather and substantiate empirical data to evaluate the efficacy of the deterrence theory. Over time, it has become apparent that the factors that influence a taxpayer's decision to either comply or evade taxes can be broadly classified into five main categories:

- i. Economy
- ii. Norms
- iii. Deterrence
- iv. Opportunity
- v. Fairness

It is worth noting that the topic of tax compliance is multifaceted and complex, requiring a nuanced and comprehensive understanding of the subject matter by all stakeholders, including industry leaders and investors from diverse backgrounds. While it is beyond the scope of this article to delve into each aspect in detail, it is important to emphasise the importance of taking a holistic approach to the

issue. As litigators, we can only state our humble view on the legislative aspects that can play a pivotal role in promoting tax compliance among the wider population. By focusing on creating effective policies, implementing streamlined procedures, and leveraging technology like Artificial Intelligence (AI), we can ensure a higher level of tax compliance, which is vital for the sustainable development of any nation.

### **A Holistic Approach**

Revenue authorities have moved away from a simplistic punitive approach towards a more nuanced strategy that addresses the external factors that influence taxpayer behaviour. In this new approach, compliance is assumed to be influenced by various factors, including tax rates, liquidity constraints, and socio-psychological factors such as tax morale and honesty. Studies have demonstrated that deceptive practices in tax compliance can manifest in two ways: extensive and intensive. Extensive deception pertains to whether an individual should report fraudulent income or not, while intensive deception

## **SNAPSHOTS**

1. From our independence until the period of Liberalisation, Privatization, and Globalization, policymakers held the belief that the ultimate authority for taxation rested with the Sovereign power.

2. Since the reforms of the 1990s, there has been a shift towards recognizing the role of the private sector in the economy. This shift has led to a more balanced approach to taxation, with greater consideration for the needs and desires of the private sector.

3. By focusing on creating effective policies, implementing streamlined procedures, and leveraging technology like Artificial Intelligence, we can ensure a higher level of tax compliance, which is vital for the sustainable development of any nation.

involves the degree to which income is underreported in tax returns. These two forms of deception can be influenced by several factors, including disclosure mechanisms, whether voluntary or mandatory.

As tax authorities seek to improve compliance rates, they are recognizing that punitive measures alone may not be sufficient to achieve the desired outcomes. Behavioural interventions based on social norms can play as much of a crucial role in influencing taxpayers' behaviour as deterrence and punishment do. By emphasising the benefits of tax compliance, such as enabling the government to fund essential infrastructure projects, providing universal health care and ensuring education is accessible to every child in the country, we can foster a sense of social responsibility and encourage individuals to comply with tax laws. Additionally, funding research and development for university students can advance the nation's intellectual capital and boost innovation. This approach can help shift social norms and discourage those who may be tempted to evade taxes, ultimately leading to a more equitable and prosperous society for all.

It is worth noting that the ruling government has made significant efforts to promote tax compliance by appealing to the masses through various means, such as highlighting the importance of paying taxes as a duty towards the nation. These efforts have helped to increase

awareness of tax compliance and foster a sense of civic responsibility among the citizens. Furthermore, it is essential to have a thorough understanding of the factors that drive deceptive tax practices to design effective interventions that can curb behaviour that can push people to not be compliant. By adopting a multi-pronged approach that addresses both external factors and individual motivations, tax authorities can foster a culture of compliance that benefits society as a whole.

India since independence has had a low direct tax to GDP ratio. The attention and efforts under the Modi government have been

included who do not have taxpayer identity. The contribution of direct tax is 6.1% and the remaining 5.6% is through indirect taxes. If we look at the tax-to-GDP ratio for Britain, Italy and France, they stand at 24.9%, 24.6% and 24.6% respectively. This is precisely the challenge that policy designers have been working to tackle. There is a lot of span that is left before India increases this ratio, even when the exemption for agricultural income is left unchanged.

### **Informal Sector and Tax Compliance**

The Unorganized also known as

**By emphasising the benefits of tax compliance, such as enabling the government to fund essential infrastructure projects, providing universal health care and ensuring education is accessible to every child in the country, we can foster a sense of social responsibility and encourage individuals to comply with tax laws**

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geared towards transparency in data given by taxpayers in their tax returns and also towards an aggressive push for “clean money” and capturing more people in the tax net. A recent report published by the Central Board of Direct Taxes in 2017 has specified that the current rate of compliance towards payment of taxes hovers around 11.7%, in which those individuals are not

the Informal sector employs around 75% of the population of India and compliance when it comes to taxation is, unfortunately, people are relatively lower compared to salaried, business and professional classes. This sector also contributes up to 30% of the total GDP of the country.

This sector has also remained outside the ambit of the tax net



because no law requires this sector to be registered and therefore it is very cumbersome to enforce compliance since most people are self-employed and run small businesses to earn their income. In a report “Options for Low-Income Countries – Effective and Efficient Use of Tax Incentives for Investment” published by the International Monetary Fund (IMF), OECD, United Nations and World Bank submitted to the G-20 working group it was stated that there exists a lot of room for effective and efficient use of investment, tax incentives in low- and middle-income countries. Further, the report also states that incentive in developing nations is often redundant, or in simple words it can be said that the same amount of investment can come into the economy even when no tax incentive is provided, which really challenges the validity of incentives that are provided to investors both domestic and international. While on the flipside it is also a fact that

developing countries such as India do not have sufficient infrastructure and tax incentives will continue to play an important role on the road to development.

### **The Missing Millions: Exploring the Low Number of GST-Registered Enterprises**

The introduction of Goods and Services Tax (GST) in India was driven by three overarching goals. Firstly, it aimed to create a unified market that would benefit the entire population of the country. Secondly, it sought to extend and widen the tax net by encouraging informal businesses to transition to the formal sector. These two objectives, in turn, were expected to increase the country’s tax-to-GDP ratio, which had remained stagnant at around 11% for an extended period. Although the GST was introduced to streamline taxation and improve compliance, the implementation of multiple rates and extensive filing and reporting requirements have adversely

affected small businesses and first-time entrepreneurs. This is reflected in the low number of enterprises that have joined the GST network, which stands at just 1.30 crore out of the 6 crore enterprises in India. It is very possible that quite a number of firms may not be expanding their output and increasing their turnover but prefer to stay small business below the limit of Rs. 20 lakhs for servicing firms or entities and Rs. 40 lakhs for entities that are engaged in manufacturing industries. Once a business surpasses this threshold, it is obligated to register for GST. However, the apparent absence of any other plausible explanations and limited data availability make it difficult to determine the reasons for the stagnancy in the number of firms that are obligated by law to register as they grow their profits. As a result, we can only speculate about the underlying factors.

The structure of the GST, with its many tax slabs ranging from 0% to 28%, only adds to the complexity of the system. Despite the significant increase in tax collections that India has experienced since the introduction of the GST, it is still criticised for its use of tax slabs. Many experts in the field argue that the complex tax regime, with its numerous tax slabs and varying rates, has been a source of confusion and frustration for taxpayers. This lack of simplicity can lead to compliance issues, with taxpayers struggling to understand the tax system. To address this issue, it is essential

to eventually merge different tax rates into fewer ones, creating a more streamlined and efficient system.

It is important to note that the GST is still a relatively new tax system and has room for improvement. While it has its drawbacks, it has also brought about many positive changes in the tax structure of the country. The government must take steps to address the issues with the current system and work towards simplifying the tax regime to make it more efficient and less burdensome for taxpayers. By doing so, the GST can become a more effective tool in promoting economic growth and development in India.

### **Equality's Cry: Bringing MSMEs and Government at Par with Corporations**

Another problem that existed before this year's budget was that large companies which had been doing business with small suppliers and vendors engaged in the MSME sector often made delayed payments to the latter. For an industry that is modestly sized, such an additional levy could be nothing short of a death sentence, as it could spell the end of their access to vital working capital, causing their enterprise to wither and perish. Therefore, to ensure timely payments to MSMEs and boost the growth this year the Government's Budget has brought in some significant changes in the regulatory regime that governs the transaction of the MSME sector. An amendment was introduced in Section 43B of the



Income Tax Act, which will take effect from April 1st, 2024. The amendment mandates that payments due to MSMEs must be made within a specified time frame, failing which the buyer would be unable to claim a tax deduction for that expenditure. However, we believe that this provision should have been extended to government departments to have a more significant and positive impact. Currently, departments falling under the Union of India or the National Treasury are exempt from claiming tax deductions. Though the defence forces, police, and railways are not required to claim any deductions, they often cause delays in payments to the MSME sector. Given that business transactions between the government and MSME sector are worth over Rs. 6 Lakh Crores, it is imperative that government departments are brought under

the same umbrella as large corporations.

### **Breaking the Chains of Uncertainty: Reducing Tax Litigation in India**

As legal professionals, we believe that it is our duty to highlight the pressing issue of the high level of litigation that plagues the Indian tax system. The statistics published by the Central Board of Direct Taxes paint a stark picture of the situation in the country. As of April 2021, an astonishing 500,000 appeals were pending before the Commissioner of Income Tax (Appeals), with an additional 53,000 appeals pending before 60 tribunals located across the nation. The prolonged nature of litigation breeds uncertainty, which is detrimental to the functioning of a well-crafted, competent tax system.

It is no secret that the litigation process is a protracted one, leading to a significant loss of time and resources. To address this issue, schemes such as “Vivad se Vishwas” have been introduced to curb the quantum of tax litigation in courts. However, more needs to be done to tackle the issue at its core. A well-functioning tax system should have provisions in place to minimise litigation and ensure that taxpayers can easily navigate the complex tax landscape. The government must take action to

field officers to withdraw/not press pending appeals before Income Tax Appellate Tribunals, High Courts, and the Supreme Court with tax effect below specified limits. The focus will instead be shifted towards high-demand litigations, and appeals will not be filed purely based on exceeding prescribed monetary limits, but rather on the merits of the case.

However, despite these commendable efforts, the practical implementation of these legislative changes and circulars presents its own set of challenges.

reducing litigation is realised in a tangible manner.

## Conclusion

In conclusion, ensuring high compliance among citizens to pay taxes is essential for the proper functioning of any government. The key to achieving this lies in creating a tax system that is simple, transparent, and fair. Furthermore, the government should take measures to streamline tax collection procedures, reduce the tax burden on the common man, and encourage voluntary compliance. This can be achieved through the use of technology, providing easy access to tax-related information, and simplifying tax forms. In addition to the measures mentioned above, the government can also take steps to curb tax evasion and improve enforcement. This can include increased scrutiny of high-risk sectors, such as the informal sector as we have seen above, and the use of data analytics and artificial intelligence to identify potential tax evaders. Moreover, creating a culture of compliance and a sense of civic responsibility among citizens can go a long way in improving tax compliance. This can be achieved through awareness campaigns and community-based programs that promote tax compliance as a social responsibility. Ultimately, a collaborative effort from all stakeholders, including taxpayers, tax authorities, and policymakers, is required to build a tax system that is efficient, equitable, and capable of meeting the needs of a growing economy. 📌

## Revenue authorities have moved away from a simplistic punitive approach towards a more nuanced strategy that addresses the external factors that influence taxpayer behaviour. In this new approach, compliance is assumed to be influenced by various factors, including tax rates, liquidity constraints, and socio-psychological factors such as tax morale and honesty

reduce the number of pending appeals and streamline the tax dispute resolution process, thereby paving the way for a more efficient and effective tax system.

The Lok Sabha recently addressed the pressing issue of government litigation in courts through its response to unstarred question no. 2855 in the Budget session of 2023. The government has taken several measures to combat the rising tide of litigation, including issuing circulars through the Central Board of Direct Taxes (CBDT) directing

It is crucial to allocate additional administrative resources and create a specialised unit to ensure proper training and effective monitoring of the CBDT’s initiatives. The sheer magnitude of pending appeals, with approximately 5 lacs before the Commissioner of Income Tax (Appeals) alone as of April 2021, highlights the urgency of this issue. The creation of a specialised unit will not only streamline the monitoring of CBDT’s efforts but also ensure that the government’s focus on

# STRATEGIC DESIGN FOR TAX AND CUSTOMS EFFICIENCY IN INDIA

Traditional taxation and customs systems were once complex and burdened both taxpayers and authorities. However, with the advent of technology and the concept of “Compliance by Design” India has embarked on a journey to simplify and streamline tax and customs compliance



**RAMA MATHEW**

Member, CBIC

**T**RADITIONAL taxation systems were structured in a way where the law was laid down, prescribing what the parameters of the tax would be, what the responsibilities of the taxpayer were in so far as tax payment was concerned and what the powers and responsibilities of the tax authorities were insofar as ensuring the compliance of the taxpayer was and correct payment of tax was determined. It cast the onus on both the taxpayer and the recipient and involved a complex set of activities to be performed by both parties for effective administration and collection. In the new universe where accounting systems underwent computerisation at both ends and powerful tools for analytics and big data processing became available, it was felt that much more efficiency could be achieved by harnessing these tools for effective delivery. This led to a conceptually different system of managing tax compliance with the designing of systems, which could integrate information flows with much more efficiency.

### **Principles of Compliance by Design**

Compliance by design in taxation refers to the concept of designing systems and processes in a way that encourages or facilitates compliance with tax laws and regulations. It recognizes that the majority of taxpayers want to be compliant but may make



unintentional errors or be uncertain about their obligations.

The key principles of compliance by design in taxation are Simplicity, automation and prefilling, education and assistance, providing timely and relevant information, proactive compliance checks, and being responsive by enabling feedback on pain points, and acting upon them to improve functioning and compliance.

The fundamental approach focuses on how tax authorities can make it easier for taxpayers to meet their obligations and foster a culture of voluntary compliance. This reduces the burden on both taxpayers and tax authorities and can lead to higher overall compliance rates.

The original concept of compliance by design (with reference to SMEs Tax Compliance by adopting a systems perspective) was the subject of an OECD study in 2015.

In this study, it was felt that Revenue Bodies needed to look for ways to improve their relationship with small and mid-sized enterprises (SMEs) and to achieve higher levels of voluntary compliance at lower costs to SMEs and themselves by exploiting developments in technology and how modern SMEs organise themselves and to incorporate tax compliance into the systems businesses use to manage their financial affairs, thus embedding tax compliance into normal

## SNAPSHOTS

1. “Compliance by Design” in taxation refers to the concept of designing systems and processes in a way that encourages or facilitates compliance with tax laws and regulations.

2. The original concept of compliance by design (with reference to SMEs Tax Compliance by adopting a systems perspective) was the subject of an OECD study in 2015.

3. Direct tax departments used the centralised data approach where a secured flow of information from the capture of business transactions to the final determination of the correct amount of tax to be paid.



business processes, making it easier for them to comply.

This is not to say that the principles laid down in the study were not applied earlier, there are examples galore in the Indian Tax Administration itself; as well as tax administrations across the world, but this systematised the approach coherently and comprehensively.

### Compliance by Design in Taxation

The important thing to note in compliance by design is there is a need to have a holistic perspective on the combined processes of both the taxpayer and the revenue authorities, making the revenue authority an active facilitator of compliance in tandem with other key players – accountants, tax intermediaries, banks, industry organisations and software developers.

In India, different departments adopt different approaches to achieve this objective with variations to suit local tax practices.

Direct tax departments used the centralised data approach where a secured flow of information from the capture of business transactions to the final determination of the correct amount of tax to be paid. Monitoring the flow of information from the taxpayer securely by design of processes is the need for post-audit and handling of the data itself.

Indirect taxes use the data flow approach where revenue captures as many transactions from the source as possible in order to determine the right amount of tax

to be paid with minimum input from the taxpayer. However, variations on the theme in the form of self-declarations of classification, role of duty and notifications have emerged; and a capture of data flow in terms of the transfer of revenue credits downstream has driven the design model.

In GST, compliance by design

ensures it is completed in a timely and accurate manner and also ensures that businesses have their best practices in place to achieve both objectives.

From the revenue perspective, the design process includes the integration of technology into processes and systems; the use of data analytics and automation to streamline GST-related



is a concept that strives to ensure that businesses comply with the GST regulations by designing their business processes in such a way that GST compliance is automated and seamless; the onus of compliance rests on the business itself. This reduces the burden of compliance and improves ease of doing business; streamlines the GST process and

processes, the reconciliation of credit and debit notes and the maintenance of records.

It also includes the use of APIs to enable easy access to information and updates to cross-link databases for verification and the use of digital signatures to validate GST documents. Additionally, businesses must adhere to the GST compliance

guidelines issued by the government, such as the registration of businesses, filing of returns, and payment of taxes. All of these measures have been put in place to ensure that businesses are compliant with GST regulations and to facilitate a smoother GST compliance process.

Several specific design processes in Goods and Services Tax (GST) have been put in place to ease compliance for businesses. These include:

## The key principles of compliance by design in taxation are Simplicity, automation and prefilling, education and assistance, providing timely and relevant information, proactive compliance checks, and being responsive by enabling feedback on pain points, and acting upon them to improve functioning and compliance

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**Unified Tax System:** GST replaces multiple indirect taxes with a single tax, making it easier for businesses to comply with tax regulations. This eliminates the need to keep track of separate tax rates, forms, and procedures.

**Online Tax Portal:** GST has a (Goods and Services Tax Network), which serves as a common portal for filing tax returns, making payments, and accessing various GST-related services. This simplifies the compliance process and reduces paperwork.

**Simplified invoicing:** GST introduces a standardised format for invoices, making it easier for businesses to generate and maintain their invoices. This reduces the chances of errors and enables efficient tracking of transactions.

### **Input Tax Credit**

**Mechanism:** Under GST, businesses can claim input tax credit for taxes paid on purchases. This mechanism allows businesses to offset their tax liability by deducting the tax

already paid on inputs, thus reducing the overall tax burden.

**Simplified Returns:** GST has simplified the return filing process by replacing multiple returns with a single monthly/quarterly return. This reduces the compliance burden on businesses and facilitates easier reconciliation of tax credits.

**Comprehensive Compliance Framework:** GST has a robust compliance framework, which includes stringent measures such as e-way bills, tax audits, and

anti-profiteering provisions. These measures ensure that businesses comply with the tax laws and discourage tax evasion.

### **Increased Transparency:**

GST introduces transparency in the tax system through its invoice matching mechanism. This requires businesses to reconcile their sales and purchase invoices with those of their suppliers and buyers, ensuring accuracy and reducing the chances of tax evasion.

Overall, these specific design processes in GST aim to simplify compliance for businesses by providing a unified tax system, online platforms, simplified invoicing, input tax credit mechanism, simplified returns, comprehensive compliance framework, and increased transparency.

Several workflow processes in GST (Goods and Services Tax) ensure compliance by design. These processes are aimed at ensuring that businesses accurately report and pay their taxes and that they follow the rules and regulations set forth by the tax authority. Here are some of the key processes:

### **Registration Process:**

Businesses are required to register under GST if their annual turnover exceeds a certain threshold. The registration process involves providing various details and documents, such as business name, address, PAN (Permanent Account Number), and bank account details. This process helps ensure that businesses are identified and

can be held accountable for their tax obligations.

### Invoice and Reporting

**Process:** Under GST, businesses are required to maintain detailed records of their sales and purchases and issue proper tax invoices. These invoices must adhere to specific formatting requirements and include specific information such as GSTIN (Goods and Services Tax Identification Number), HSN/SAC codes, and tax amounts. This process ensures transparency and accuracy in reporting sales and purchases.

### Input Tax Credit Process:

The Input Tax Credit (ITC) process allows businesses to claim credits for the GST paid on their purchases and use those credits to offset their tax liabilities. However, businesses can claim ITC only if their vendors have reported these transactions accurately and paid their GST. This process ensures that businesses can only claim credits for transactions that are compliant with GST regulations.

### e-Way Bill Process:

The E-Way Bill is a document required for the movement of goods worth

a certain threshold value. It contains details about the goods being transported, the consignor, the consignee, and the GSTINs of both parties. Generating an E-Way Bill helps track the movement of goods and ensures that businesses are complying with their tax obligations.

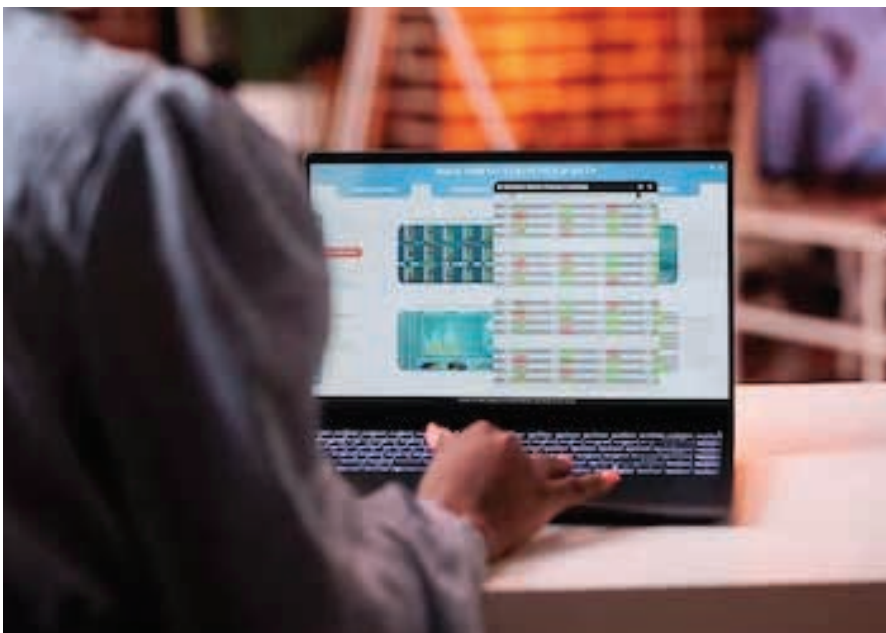
### Audit and Assessment

**Process:** The GST law empowers tax authorities to audit and assess the records and accounts of taxpayers to ensure compliance. This process involves verifying the accuracy of the reported data, reconciling the information, and identifying any discrepancies or non-compliance. Audits and assessments act as a deterrent for non-compliance and help maintain the integrity of the GST system.

Overall, these processes in GST ensure compliance by design by establishing strict reporting and recording requirements, enabling verification and cross-checks, and creating a framework for audits and assessments to identify and address non-compliance effectively.

In simple terms for people who are familiar with the GST ecosystem in India, let us follow the linkage between GSTR 1, GSTR3B, GSTR2A, GSTR7 and GSTR9 where each one feeds the other and the matching of GSTR2A and 2B tells you precisely how much ITC credit you are eligible for and what your dues are at any point in time. This can be directly linked to the structural framework delineated above and what would be the

From the revenue perspective, the design process includes the integration of technology into processes and systems; the use of data analytics and automation to streamline GST-related processes, the reconciliation of credit and debit notes and the maintenance of records



steps moving forward. Simplification of the process comes from the auto-population mechanisms introduced, which in turn takes away the tedium and cost of the filing process. The sheer responsiveness of the ecosystem to the pain points flagged at different points in time is a story to be told separately.

### **Compliance by Design in Customs Processes**

In India, automated processes have been put in place by law to facilitate and ease compliance with Customs regulations, as well as to integrate the flow of information through the logistics chain as a part of the PM's Gatishakti project. These processes include automation of data flow, electronic filing of documents, electronic payment of customs duties, and electronic clearance of imported and exported goods.

This enables a reduction of processing time, reduces paperwork and improves transparency. Automated processes also reduce the risk of errors, providing a more efficient and accurate system for customs clearance, this being an important part of the government's efforts to make India a more attractive business destination. This has led to an improvement in India's ranking in the Ease of Doing Business Index from 152 to 63 over ten years.

Some key aspects of compliance by design in customs processes in India include:

#### **Automated Systems:**

Developing and implementing

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automated systems that are compliant with customs regulations. These systems facilitate the electronic submission of documents, automated verification processes, and real-time monitoring of goods movement.

#### **Risk Management:**

Integrating risk management methodologies into the design of customs processes, involving identifying potential risks, implementing preventive measures, and incorporating data analytics and intelligence systems into customs processes to identify trends, patterns, and anomalies that may indicate non-compliance.

This enables customs authorities to proactively address the risks and enhance compliance and reduce the likelihood of non-compliance.

#### **Electronic data**

**interchange:** Promoting the electronic exchange of information between customs authorities, importers, exporters,


and other stakeholders. This helps ensure accurate and timely data submission, reducing the risk of errors and non-compliance.

#### **Transparency and**

**Accountability:** Issuing clear guidelines on import/export procedures, public disclosure of applicable customs rules and regulations, and mechanisms for reporting and addressing non-compliance.

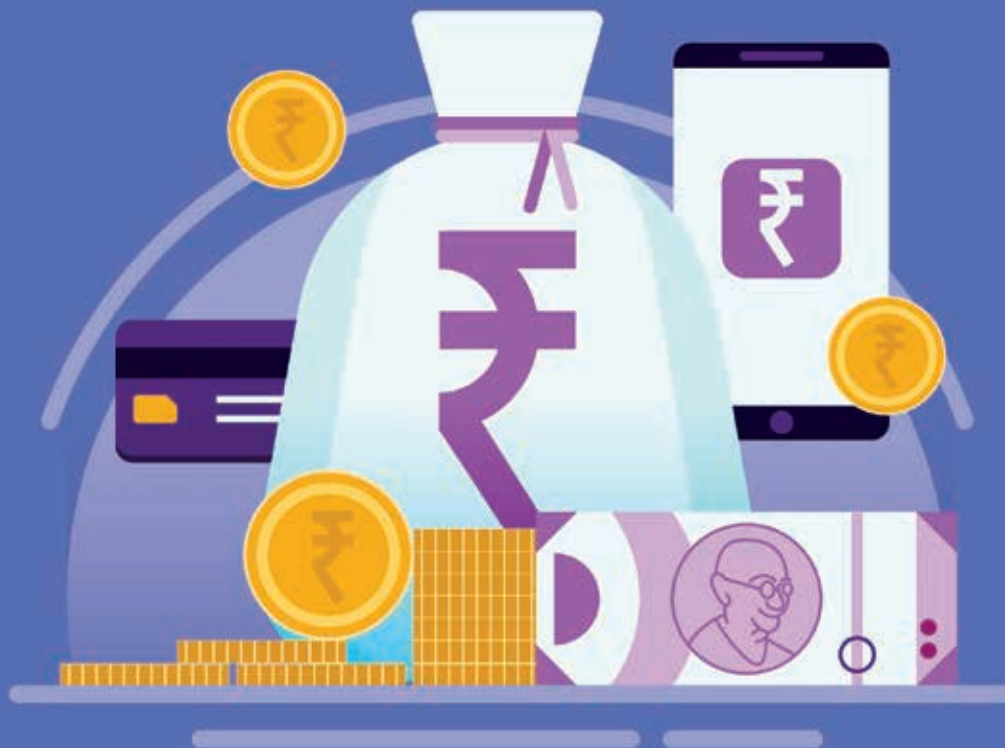
#### **Training and capacity**

**building:** Providing training and capacity-building programs to customs officials, importers, and exporters to enhance their understanding of customs regulations and procedures, enabling awareness and effective implementation of compliance requirements.

Overall, compliance by design in Indirect tax processes in India aims to streamline and optimise the compliance process, reduce the risk of non-compliance, and enhance efficiency and transparency in operations. 

# COMPLIANCE CHALLENGES AND DESIGN FAULTS IN INDIA'S TAXATION SYSTEM

As we delve into the subtleties of Indian tax compliance, we go on a quest to unravel the multifaceted tapestry of regulations and requirements for taxpayers. Behind the surface, there are design flaws that cast shadows on this structure, adding layers of complexity and ambiguity





**ARUN GOYAL**  
ABS News Service

**T**AXATION in India is a complex subject that involves various laws, regulations, and compliance requirements. The Indian tax system is governed by the Income Tax Act, 1961. Besides the laws on GST and Customs and a host of other areas from banking to finance transactions, which lays down the provisions related to the levy, assessment, and collection of income tax.

To ensure compliance the design and implementation of business processes and systems is right from the beginning or start of the interface. It aims to embed tax compliance said to make it easier for taxpayers' obligations.

**Some key aspects of Compliance by Design in the context of Taxation in India:**

**Electronic Filing and Reporting:** The government has introduced electronic filing and reporting. Taxpayers are required to file their returns online various reporting requirements.

**Taxpayer Identification:** Each taxpayer is assigned a unique Permanent Account Number (PAN)

by the Income Tax Department. This is the base on which other identifiers in GST and DGFT are derived. The ubiquitous UIDAI AADHAR is another layer linked to PAN. Other data on face recognition, CCTV, QR Code and what have you are linked, the eyes and ears of the State now watching what the taxpayer is doing. Soon it may make you do what you are not doing! PAN is used for various transactions and is an essential requirement for tax compliance.

**Compliance Verification:** The tax authorities have implemented robust systems for compliance verification. They use data analytics, artificial intelligence, and other technologies to analyse taxpayer data and identify discrepancies. All grey areas will be coloured in black! The taxpayer may be free under one law but another may not allow the otherwise free action. But the computer will implement the stricter of the two laws!

**Digital Payments Drive and Real-time Reporting**

The government has been actively promoting digital payments to curb the use of cash and enhance transparency. Various incentives, such as reduced tax rates for digital transactions, have been introduced to encourage taxpayers to adopt digital payment methods. Yet cash reigns supreme in the field. No digital system can beat its ease and negotiability.

Under the GST regime, businesses are required to submit regular returns, including sales and purchase data, on a real-time or near real-time basis. This enables

**SNAPSHOTS**

1. It is no wonder that India has the most complex tax laws in the world and these are becoming more and more complicated with time with interpretations and court rulings.
2. These software solutions are designed to ensure accurate tax compliance and minimise errors. Yet taxpayers must use experts to understand what the software front ends actually mean in the complex formats.
3. The government-imposed Fringe Benefits Tax, which is fundamentally a tax that an employer has to pay instead of the benefits that are given to his/her employees. It was an attempt to comprehensively levy a tax on those benefits, which evaded the tax.

the tax authorities to monitor transactions and identify potential non-compliance promptly. However, a battery of tax experts manage to beat the system by clever and creative reporting, there is little verification. (See the performance of credit rating agencies, the big ones escape after defrauding investors while the small users are black listed for life on the basis of one time non compliance!

### Simplifying Compliance with Tax Software Solutions

The government has encouraged the development of tax compliance software and tools that help businesses automate tax calculations, return filing, and reconciliation processes. These software solutions are designed to ensure accurate tax compliance and minimise errors. Yet taxpayers must use experts to understand what the software front ends actually mean in the complex formats. GSTR is an example!

The tax authorities conduct regular awareness programs and workshops to educate taxpayers about their tax obligations and the importance of compliance. These initiatives aim to improve taxpayers' understanding of the tax laws and promote voluntary compliance. The education is only to collect more and more taxes, not to educate the users on their rights to vexatious persecutions by the taxman or remove difficulties. It is left to the public representatives in Parliament to get relief for the common man.



### Design Flaws in Taxation Structure

The taxation system in India is such that the taxes are levied by the Central Government and the State Governments. Some minor taxes are also levied by the local authorities such as the Municipality and the Local Governments.

To run the government and

manage the affairs of a state, money is required. So the government imposes taxes in many forms on the incomes of individuals and companies.

Some of the important Direct taxes which have turned the compliance system in a mess at the very design stage.

### Fringe Benefit Tax:



The tax authorities conduct regular awareness programs and workshops to educate taxpayers about their tax obligations and the importance of compliance. These initiatives aim to improve taxpayers' understanding of the tax laws and promote voluntary compliance. The education is only to collect more and more taxes, not to educate the users on their rights to vexatious persecutions by the taxman or remove difficulties

### **A Struggle for Comprehensive Taxation**

To reduce the profit on booked entry, many companies started providing various benefits to their employees and maintaining them under their input cost. Thus reducing the profit which in turn leads to less taxation by the government.

Therefore government-imposed Fringe Benefits Tax (FBT) which is fundamentally a tax that an employer has to pay instead of the benefits that are given to his/her employees. It was an attempt to comprehensively levy a tax on those benefits, which evaded the tax. The fringe benefits tax was abolished in the 2009 Union budget of India but after causing havoc for four long years.

### **Explanation of MAT and AMT and their implications**

The concept of Minimum Alternate Tax (MAT) was introduced in the direct tax system to make sure that companies having large profits

and declaring substantial dividends to shareholders but who were not contributing to the Government by way of corporate tax, by taking advantage of the various incentives and exemptions provided in the Income-tax Act, pay a fixed percentage of book profit as minimum alternate tax.

The current rate of MAT is 18.5%.

There is also Minimum Alternate Tax (MAT) and Alternate Minimum Tax (AMT) levied on companies and limited liability partnerships (LLPs) respectively.

That means what is MAT to the companies, AMT is to the LLPs. However, no such tax is levied on the other forms of business organisations such as partnership firms, sole proprietorship, an association of persons, etc.

### **Complexities and Analysis Excise Duties**

Excise duty (Central VAT) is a tax on the manufacture of goods

within the country. Excise duties are levied under the Central Excise and Salt Act, 1944, the Excise Tariff Act, 1985, and the Modified Value Added Tax (MODVAT) scheme or CENVAT.

The rates of excise duty levied vary depending inter alia on the nature of the item manufactured, the nature of the manufacturing concern, and the place of ultimate sale. The Excise is not merged in the GST structure resulting in many complications at both design and compliance stages.

### **Sales Tax & Property Tax**

State sales taxes that apply to sales made within a State have rates that range from 4 to 15%. However, exports and services are exempt from sales tax. Another tax on transfer of property is collected by the State Government, apart from house tax.

### **Service Tax**

Service tax is a part of Central Excise in India. It is a tax levied on services provided in India, except the State of Jammu and Kashmir.

The responsibility of collecting the tax lies with the Central Board of Excise and Customs (CBEC).

It is no wonder that India has the most complex tax laws in the world and these are becoming more and more complicated with time with interpretations and court rulings. The computer may ease the compliance burden but in practice, it is making the system even more cumbersome since the intention of the State is only to collect more tax without being just and fair to the taxpayer. 🚫

# TREATMENT OF TAXES: NAVIGATING COMPLIANCE CHALLENGES & INNOVATIONS

The intricate relationship between taxation and compliance forms the backbone of any effective revenue collection system. Whenever taxes are imposed, the issue of compliance becomes inseparable from the process.

The extent to which taxation measures are adhered to depends on various critical factors, including the structure of taxation, administrative implementation, and enforcement mechanisms



**BALESH KUMAR**

Member, Appellate  
Tribunal (SAFEMA, NDPS,  
PMLA, FEMA & PBPT)

**C**OMPLIANCE is shadow to Taxation. Wherever and whenever taxation has been imposed the issue of compliance thereto cannot be segregated from it. Of course, the length of the shadow depends upon certain factors which impact the taxation scheme. The question as to what extent the measures of taxation shall be complied with depends upon three important factors. These factors are the structure of taxation, the administrative set-up for implementation of taxation and the enforcement mechanisms to combat evasion of taxation.

### **Structural Simplicity**

The structure of taxation, broadly speaking, would comprise of direct tax and indirect tax and the ratio in which the two kinds of taxes contribute to the Government Revenue. Structure of taxation is also critically dependent upon the devolution of the responsibility to levy and collect tax among the Central Government, the State Governments and the Local Bodies. In our country Constitutional provisions by and large, provide the broad framework for the structure of taxation. However, it is the Parliament and the State Legislatures which through statutory provisions give precise structures to taxation laws. Structure of



taxation would also encompass the rates, the slabs and the exemptions. These are largely consequences of the policy initiatives of the Government. Such policy initiatives are often subject to more frequent changes, than the framework provided under the Constitution and the statutes. Compliance to taxation may not only vary between direct taxation and indirect taxation but also with the level of the Government which has been made responsible to levy and collect the tax. The policy initiatives in designing such a tax structure in terms of its rates, slabs and exemptions will also have bearing on its compliance. Even in the 4th Century BC Kautilya enunciated in his Arthashastra that the design of taxation should be such that the compliance burden is the least for the taxpayer so that the government can stinglessly derive tax like a bee deriving nectar from a flower. There is a school of thought which has

believed that lowering the rate of tax results in higher collection of revenue. This may not always be true! The moot point is that the standards of compliance are better for a tax structure which entails minimum burden on the taxpayer in meeting the compliance. Besides the obvious burden arising out of monetary liability from paying tax, there are those which are non-economic in nature such as time and stress costs. Meeting the requirements of too many complex procedures adds to the compliance burden.

#### **Administrative Adroitness**

The second factor that impacts the extent of compliance is the administrative set-up for the implementation of tax structure, more commonly known as taxation bureaucracy. The taxmen must be skilled and efficient to be professional. The administrative cost of collection of revenue has to

### **SNAPSHOTS**

1. Structure of taxation is also critically dependent upon the devolution of the responsibility to levy and collect tax among the Central Government, the State Governments and the Local Bodies.
2. The switch-over to the modern methodology of system based intelligence to prevent and detect tax evasion has vastly improved the accuracy and objectivity in targeting.
3. Remarkable efforts have been made to reorient and re-train the personnel whose deployment has undergone marked transformation so as to be geared-up for objective processing of taxation.

be minimised. To be adequately skilled the bureaucracy at all levels of the organisational hierarchy must undergo professional training not only at the inception but also at various mid-career stages. It is important that such capacity building should encompass the inculcation of a value system with high emphasis on integrity and honesty. Compromise in execution of responsibility bestowed upon them will inevitably result in non-compliances and leakages of revenue. Necessary caution needs to be exercised as taxation bureaucracy like any other tends to expand which is often erroneously attributed to the widening of the tax base. In fact, the objectives of minimising administrative cost and of improvement in compliance may necessitate complete overhauls of administrative set-up. It may be of interest to note that the Central Board of Excise and Customs had to undergo a metamorphosis to become Central Board of Indirect Taxes and Customs when in 2017 they were bestowed with the responsibility to collect Central Goods and Service Tax. The organisational set-up should promote compliance rather than cause hindrance to it. It cannot be forgotten that any compliance cost is deadweight loss! The designing of the taxation organisation determines the standards of compliance to the taxation regime in an economy. Discretion can obfuscate objective decision making. Rule based decision making has led to adoption of automated eco-system

as an intrinsic part of taxation organisation. The challenge of covering ever increasing transactions has been met by development of state of the art technology that have had salutary impact on the compliance levels. The organisational set-ups have become faceless with minimal human interface. A couple of years back, introduction of a faceless scheme of assessment and of appeal by the Central Board of Direct Taxes aims at ushering in new standards of compliance.

#### **Enforcement Efficiency**

Compliance is commonly associated with the effectiveness of enforcement mechanisms. It may be well to remember that the

was largely based on physical controls and manual checks. However, such controls and checks were often bred corruption and became increasingly ineffective with widening of the tax base. Moreover, the objective to attain compliance in itself could not be at the cost of militating against the ease of doing business. The use of taxation structure as a fiscal tool to drive economic growth was often throttled by the urge to meet compliance goals, through such means.

To avoid the conflict between the enforcement and the facilitation a way out was evolved through introduction of risk management techniques. Assessment of risk of evasion in

**Even in the 4th Century BC Kautilya enunciated in his Arthashastra that the design of taxation should be such that the compliance burden is the least for the taxpayer so that the government can stinglessly derive tax like a bee deriving nectar from a flower**

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enforcement measures are of help of last resort to prevent the leakage that arise due to structural gaps and administrative lapses. Efficacy of the enforcement machinery to prevent hundred percent tax evasion merely by itself is questionable. In the past, to prevent the evasion arising in the era of limited tax-network, the design of enforcement machinery

the scheme of taxation led to deployment of enhanced resources in the areas identified as of high risk. Collection of data relating to the taxation structure and to the administrative processes enabled data analytics which aided to unearth latest patterns and latent risks. Over a period of time such techniques became more precise both for direct as well as for indirect



taxation. A significant point of inflexion happened when there occurred synthesis of data at granular level on the two sides of taxation as well as with the big data mined from outside the taxation area. The advent of technology and the up-gradation of skills have led to accurate risk assessment and consequent improvement in standards of compliance not only at macro sectoral levels but also at micro transactional levels.

The deterrence impact of the enforcement measures gets significantly reduced if the dispute resolution machinery does not result in quick, transparent and fair solutions. The attendant dispute resolution machineries have been created by the tax statutes. However, their time consuming, delayed and often revenue bias rendering of justice leaves much to be desired.

The economic sanctions arising out of civil departmental proceedings commonly known as quasi-judicial adjudication proceedings have thus become less and less stringent with every appellate stage.

### **Innovations Transforming Compliance**

Over last few years certain laudable steps have been taken by the two Boards viz the Central Board of Direct Taxes and the Central Board of Indirect Taxes and Customs to not only meet the challenge of pressing demand of the economy to enhance collection of revenue but also to improve compliance levels to make the system fair and equitable. The structure of taxation has been rationalised and simplified. A large number of prescriptive subordinate legislations have been weeded

out.

Formation and functioning of the GST Council have demonstrated the speed with which policy initiatives can be taken as response to taxpayers needs. Setting-up of Centralised Processing Centers at Bengaluru and at Vaishali, Ghaziabad significantly reduced the compliance burden for direct taxation. Aayakar Seva Kendras and GST Facilitation Centers have helped the taxpayers to pay taxes on time and with ease. Introduction of SWIFT (Single Window Interface for Facilitation of Trade) and e-SANCHIT have allowed importers and exporters to meet procedural requirements of filing Customs and other agencies clearance documents online at a single point of time on a 24 by 7 basis thus promoting Trading Across Borders. The policy initiatives of the



Policy initiatives by the Government to emphasise digitization and formalisation may sooner or later bring this sector into the taxation fold. Persistent efforts are therefore required to be continued to in-build compliance parameters in the tax regime so that compliance gets inculcated as a behavioural pattern in the economy

Government at having enabled end-to-end e-delivery of services have significantly streamlined the structure of taxation. E-filing of income tax returns, of import and export declarations and of GST returns have not only brought down transaction costs but also improved standards of compliance. Launching of TRACES for direct taxation, Direct Port Delivery for imports and GSTN for GST have accelerated the momentum for improved compliance. Remarkable efforts have been made to reorient

and re-train the personnel whose deployment has undergone marked transformation so as to be geared-up for objective processing of taxation transactions based upon secure access to big data.

#### Challenges and Solutions

Intelligence to combat tax evasion in the past has traditionally been informant based. The switch-over to the modern methodology of system based intelligence to prevent and detect tax evasion has vastly improved the accuracy and objectivity in targeting. With

the expansion of the economy, billions of economic transactions are happening online at least in the formal organised sector which are increasingly undergoing computerization. In such circumstances the efficacy of informant based intelligence suffers and there is no choice but to introduce risk assessment of such transactions which generate system based intelligence. Use of three hundred and sixty degree profiling to capture taxpayers financial data, personal information and business networks attempt to close the gaps and unearth the entire evasion loop.


While major strides have taken place to improve compliance to taxation in India at diminishing cost, it should not cause complacency. There are still areas of concern in our attempt to have transition from control based checks to trust based system. Large unorganised sector in the economy throws-up its own challenges. Policy initiatives by the Government to emphasise digitization and formalisation may sooner or later bring this sector into the taxation fold. Persistent efforts are therefore required to be continued to in-build compliance parameters in the tax regime so that compliance gets inculcated as a behavioural pattern in the economy.

Robert Frost in his poem 'Stopping by Woods on a Snowy Evening' wrote:

*"The woods are lovely, dark and deep.*

*But I have promises to keep.*

*And miles to go before I sleep.*

*And miles to go before I ...."* 

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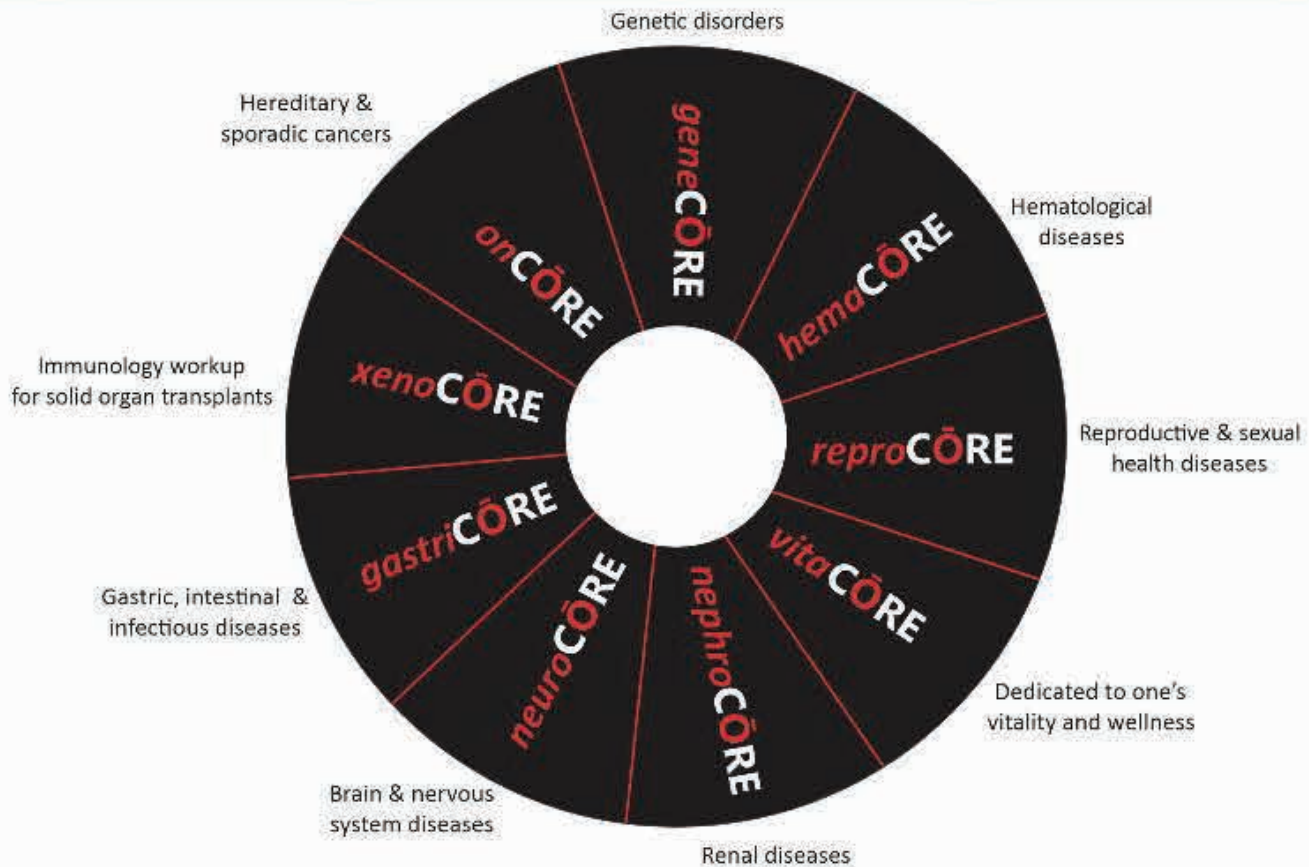
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# NECESSITY OF TECH-DRIVEN APPROACH

Comprising technology for regulatory compliance was a pioneering concept that met with mixed reactions during its inception. Nevertheless, compliance by design has evolved into an industry norm over time and is currently regarded as indispensable for organisations worldwide



**INDRA ANAND**

Group Tax Head, Tata Sons

**C**OMPLIANCE at its very core is to conform to a rule or regulation. Due to the increasing complexity and volume of tax regulations, it is becoming progressively more difficult and impractical to keep manual track of compliance to all such regulations affecting the business of an organisation. Therefore, as a necessity of the business, compliance via automation emerged in the early 21st century.

## **In The Global Context**

Using software and programmes to comply with regulations was a revolutionary idea, which received diverse opinions at its inception. Despite the varied opinions, compliance by design has become a standard in many industries over the years and is now seen as a necessity for organisations across the globe.

Although not expressly defined, according to ChatGPT (the go-to wiki of current times), “*Compliance by Design is an approach to designing and developing products, services, and systems with regulatory compliance in mind from the very beginning.*” In simple words it is how an entity complies with its regulatory requirements via technology. Moreover it is a concept that emphasises incorporating compliance requirements into the design and architecture of systems and processes from the beginning. In the context of Indian tax administration, implementing compliance by design means integrating compliance measures and controls into the tax administration framework, policies, and processes to ensure effective and efficient tax compliance. Compliance by design was perhaps the answer to accomplish the herculean task





of compliance.

### Advantages And Possibilities

Adopting the approach of Compliance by Design (COD) has shown to result in multiple advantages, primarily being reduction in regulatory fines. It has helped companies to streamline their business processes and keep up with the dynamic changes of the industry. Not only companies, but even the government has started to take an automated approach to taxation in the past decade. The focal objective being to decentralise the tax paying processes and ease of filing of tax returns. Furthermore, not just the administrative procedures but even the litigation aspect of taxation underwent a change from manual to online. This helped taxpayers to cut the red tape and other bureaucratic problems of the tax departments considerably.

There are various ways to adapt Compliance by Design. It is not

necessary to directly acquire a customised integrated tax software to follow compliance by design. Configuring GST master data in Tally to automatically calculate GST amounts on vouchers or using basic software for filing tax returns are also examples of compliance by design.

### Technological Leap

Indian Tax administration had been changing according to the changing business and economic environment. The technology revolution in the last decade has been better utilised by the Income Tax Department (ITD) to meet the interests of various stakeholders. The Indirect Tax administration has equally focused to deliver better service in the changing environment particularly after GST has been introduced. Successful implementation of GST is an example for this.

In the effort to focus more on

## SNAPSHOTS

1. Indian Tax administration had been changing according to the changing business and economic environment. The technology revolution in the last decade has been better utilised by the Income Tax Department to meet the interests of various stakeholders.

2. In the effort to focus more on shaping the compliance environment, revenue bodies and other government agencies and business parties are utilising technological developments and are promoting further developments to become more effective.

3. It is possible to discern two principal strategies for realising the “tax compliance by design” concept. For the purpose of this study, these strategies are described as “the secured chain approach” and the second as “the centralised data approach”.

shaping the compliance environment, revenue bodies and other government agencies and business parties are utilising technological developments and are promoting further developments to become more effective. Examples of initiatives that build on these developments are certified cash registers, online bookkeeping and filing and e-invoicing arrangements.

“Tax compliance by design” is about how this can be taken one step further by integrating these different initiatives so that tax compliance becomes a natural part of the day-to-day transactions as they take place. Revenue bodies are already embarking down this road but there could be benefits in doing this more systematically with a clear strategic vision.

Designing compliance (and service) into the business processes may take many forms. Yet, based on the description so far it is possible to identify a few characteristics.

**Tax compliance by design is:**

- More about getting it right than fixing what has gone wrong.
- About influencing the environment through co-operation with taxpayers and other participants.
- About building compliance into existing business processes.
- More about gaining and handling information rather than handling tax returns.
- Potentially achieved in many different ways; there is no

single best solution.

The “tax compliance by design” approach does not imply that there is only one design possible. The idea is that tax compliance can be designed into normal business processes but that this can take different forms and shapes depending on the context and the solutions.

**Two Distinctive Approaches**

It is possible to discern two principal strategies for realising the “tax compliance by design” concept. For the purpose of this study, these strategies are described as “the secured chain approach” and the second as “the centralised data approach”.

collection involves third parties directly supplying information to the revenue body and the revenue body will transform this into information about tax liabilities and payment that is fed back to the business.

**Practical implementation of compliance by design by the Indian Tax Authorities**

Introduction of Form 26AS, Annual Information System Report (AIS) and Transaction Information System Report (TIS) enabling taxpayers to file return of income with ease.

Annual Information Statement (AIS) is a comprehensive view of information for a taxpayer displayed in Form 26AS.

**Adopting the approach of Compliance by Design has shown to result in multiple advantages, primarily being reduction in regulatory fines. It has helped companies to streamline their business processes and keep up with the dynamic changes of the industry**

In the first, much of the focus is on the internal processes of the business and how these are supported by trusted intermediaries. Most of the collection of data and processing that into information about tax liabilities and their payment takes place within the business and the service providers that support it.

In the centralised data approach much of the data

Taxpayers can provide feedback on information displayed in AIS. AIS shows both reported value and modified value (i.e. value after considering taxpayer feedback) under each section (i.e. TDS, SFT, Other information). It has been designed to display complete information to the taxpayer with a facility to capture online feedback hence increases transparency. It mainly enables a)

**Table 3.1: Main Characteristics of “Secured Chain” and “Centralised Data” approach**

Characteristics	Secured Chain of Information	Centralised Data
Main source for information on taxpayers’ income.	Taxpayer	Third parties
Level of data/information used by revenue body	Aggregated data (=information)	Transaction or aggregated data
Scope regarding number of taxpayers involved	Ideally all but sub-segments possible	Preferably all taxpayers
Scope regarding type of transaction data	All transactions for involved taxpayers	Preferably all but limited scope possible
Preferred environment for the taxpayers	Extensive use of accounting software	Extensive use of third party reporting and VAT e-invoicing
Main focus of revenue body	Deleting evasion outside secured chain	Structure and analyse data
Demand for third party data	Limited but still a necessity	Extensive
Pre-filing of tax returns	None or limited	Complete or almost complete

Source: OECD

voluntary compliance and enables seamless prefilling of return b) Detects non-compliance.

AIS and TIS (Taxpayer Information Summary) has been designed in a way that it reflects complete information about the taxpayer in a concise report mainly covering a) basic information like PAN, Masked Aadhar Number, Name of the Taxpayer, Date of Birth/ Incorporation/ Formation, mobile number, e-mail address and address of Taxpayer b) Tax deducted and collected at source commonly known as TDS and TCS c) SFT information reported by specified third parties namely

banks, listed companies d) details of payment of taxes ie wither advance tax, self-assessment tax or tax paid on demand e) Other Information: - Details of the information received from the other sources, such as data pertaining salary, Interest on refund, Outward Foreign Remittance/Purchase of Foreign Currency etc.

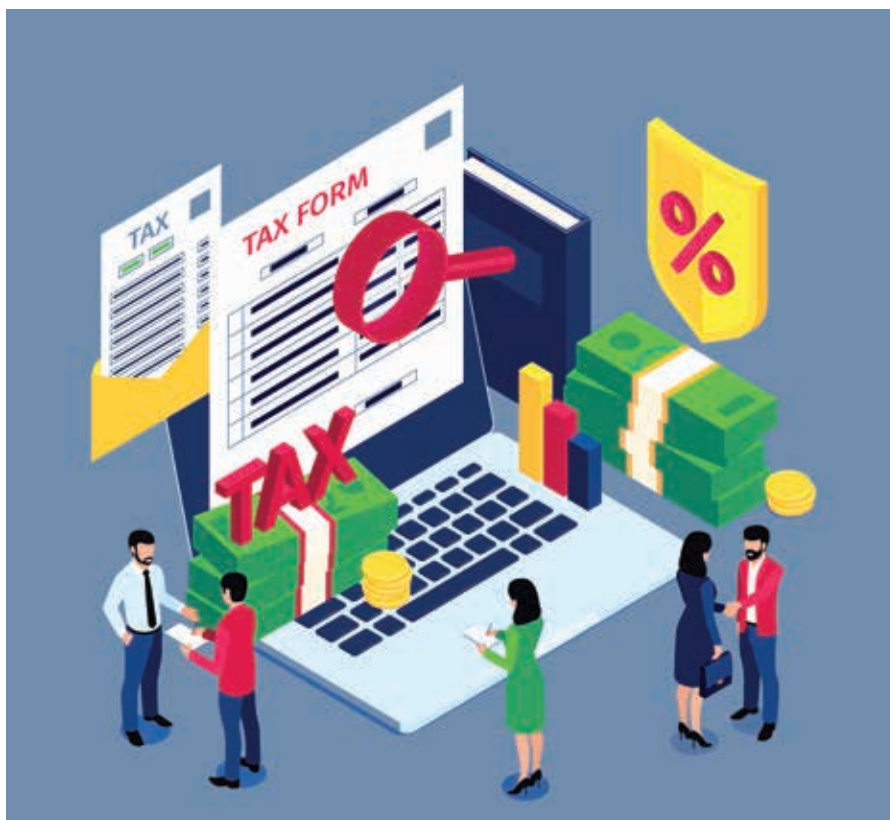
**Pre-filed income tax return for certain taxpayers**

Due to the implementation of secured chain and central data approach, for taxpayers declaring certain head of incomes (like salary, interest dividend etc), a

mechanism and design is implemented whereby their income tax return is pre filled and upon verification the same can be filed upon a click.

**Some Recent Statistics**

More than 5.04 crore tax payers have viewed/downloaded the Annual Information Statement (AIS) and Taxpayer Information Summary (TIS). During the year 2022-23, a large number of data for ITR-1 were already prefilled with salary, interest and dividend income of the taxpayer. For ITRs 2, 3 and 4, apart from regular data, property details for rental income, brought forward losses



The “tax compliance by design” approach does not imply that there is only one design possible. The idea is that tax compliance can be designed into normal business processes but that this can take different forms and shapes depending on the context and the solutions

and MAT credit were also prefilled.

Ease of compliance and increase in volume and complexity is attempted to be managed by the tax administration by adopting a compliance by Design approach.

#### Remittances to Non-Residents

In terms of other compliances ie filing form 15CA / CB for any

remittance to a non-resident is also enabled through an online form on the income tax portal where certain data is prefilled and entering details of the transaction and the remittee, a form is uploaded which is then visible on the portal of the tax department. Hence all payments going to non-residents as well as outside are collected and monitored.

#### Charitable Institutions

Charitable institutions have always been under the lens of the income tax department due to the exemption on income eligible to them. With the design and technology all donations to charitable institutions with section 80G registration have to now record and intimate all donations details (Form 10BD) and only post that corresponding donation is allowed as a deduction to the donor while filing return of income.

#### For Litigation and Advisory

Design implemented not only in compliances but also in areas of litigation, advisory, by using online portals and platform for e-filing of appeals (saving time, cost and enabling representation from anywhere). Further by systematic maintenance and designing of a knowledge portal by the tax departments and professionals, ease to advisory and decision making has evolved and become responsive and efficient.

#### Transformative Technology in GST

The Indirect Tax system has equally approached the complexity with similar focus and has created a significant milestone during the successful implementation of the GST. Nationwide Goods and Services Tax – GST regime rollout during 2017 was one of the biggest Change Management projects launched by any Tax Regulator or Authority. It subsumed and replaced 17 local levies like Excise duty, Service Tax and VAT and Cesses.

Design and Technology in the GST Administration- Digitization and use of Technology has been the backbone of GST Implementation. Continuous Improvement, monitoring and regular system changes are the reasons for success of the GST Administration. Some of the technology initiatives in GST implementation include : (1) Introduction of E-waybill, (2) E-Invoicing, (3) Automated Input Tax Credit Reconciliation, (4) Auto population of returns, (5) Automated Refund Work flow enabling, (6) Dynamic QR for B2C invoices and (7) Mandatory

matching with 2B for availing credits.

GST's IT Infrastructure provides a common platform for registration, return filing and e payment. E Invoices are generated through authorised invoice registration portals (IRPs). GSTN provides a shared IT Platform to all GST Stakeholders and integrates the Tax Administrations systems of the Centre and States.

### **Information Exchange**

Technology use has made the exchange of information between jurisdictions – various states and

central Government for better tax administration of interstate trade and uniformity of tax positions. Information exchange between Income Tax and GST through database integration helps in better tax administration.

These proactive initiatives have ensured: (a) less human intervention, (b) maximum use of technology, (c) efficient handling of large volume of data, (d) improved accuracy of data, (e) enhanced the speed in which the Department has responded to tax compliance/assessment, (f) end-to-end linking of data for effective tax administration and (g) reduced the reconciliation effort required for linking the payment records with tax return records.

Digitisation of tax information, increase in digital payments, digital currency and e-commerce (and digital business transactions) provide direct or indirect information to the Tax Administration. Data availability to the Tax Administration has increased manifold. Detecting tax evasion and tax frauds using technology tools is the new order. Data Analytics, Forensic best practices and Real Time Knowledge sharing are used to detect Tax evasion and improve tax collection and compliance. These steps may help the Tax Department leadership to spend quality time on making policy making, system-design, implementation and monitoring to face emerging challenges.

### **Conclusion**

Indian direct and indirect Tax laws keep changing regularly according to the demands of the

Technology use has made the exchange of information between jurisdictions – various states and central Government for better tax administration of interstate trade and uniformity of tax positions



social, economic, and business needs. Considering the size of the population, number of transactions and Tax collected by both the Direct and Indirect Tax Authorities in India and the complexity involved, “Compliance by Design” is the best model for Tax Administration. Improving Taxpayer’s confidence for the department and providing better experience to the Taxpayer during the Tax compliance process has been possible due to these initiatives. India has set an example for better use of Technology for facilitation of economic activities and efficient and effective Tax Administration.

### Pioneering a New Era

With technology and change, teething issues and glitches are bound to happen and are a part and parcel of such initiatives. Some key proposals to successfully implement and maintain Indian tax administration compliance by design:

- **Simplified Tax Laws and Regulations:** The tax laws and regulations should be clear, concise, and easily understandable by taxpayers.
- **Transparent Tax Compliance Processes:** Transparency is essential to promote compliance. The tax administration should establish transparent processes for registration, filing returns, making payments, and other compliance-related activities.
- **User-Friendly IT Systems:** Implementing user-friendly information technology (IT)

systems is crucial for effective compliance by design. The tax administration should develop and maintain robust IT systems that are easy to use, secure, and capable of handling the complexities of tax compliance.

- **Risk-Based Compliance Approaches:** The tax administration should adopt risk-based compliance approaches to identify and target high-risk areas or non-compliant taxpayers.
- **Education and Awareness**

associations, and taxpayers’ representatives, are essential for effective compliance by design.

- **Robust Compliance Monitoring and Enforcement:** To ensure compliance, the tax administration should establish robust monitoring mechanisms and enforcement measures. Regular audits, data analytics, and risk-based examinations can help identify potential non-compliance and take necessary actions. Timely

## Implementing compliance by design in Indian tax administration requires a comprehensive approach that combines clear regulations, user-friendly systems, stakeholder engagement, and strong enforcement measures

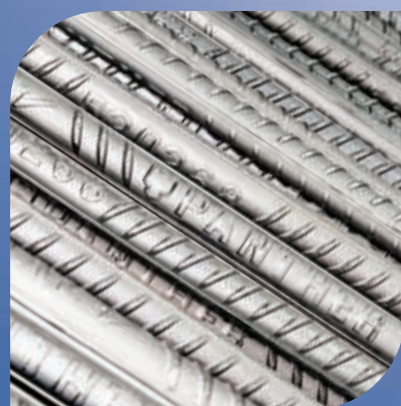
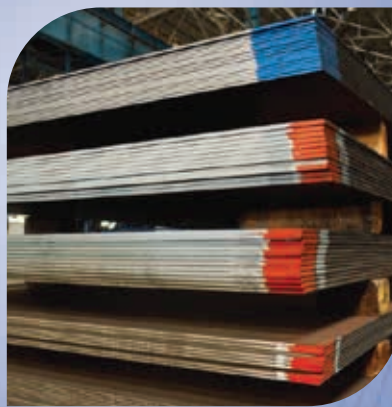
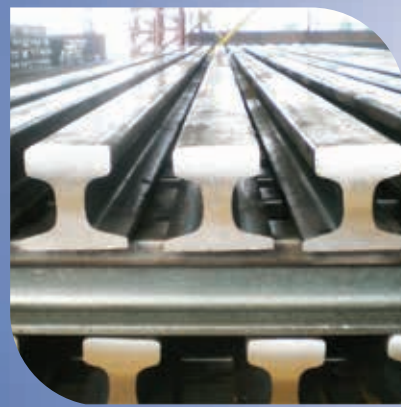
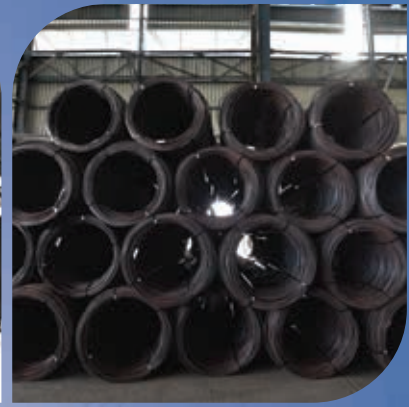
**Programs:** Conducting education and awareness programs plays a vital role in compliance by design. The tax administration should regularly educate taxpayers about their rights, responsibilities, and the benefits of compliance. Awareness programs can help taxpayers understand the importance of tax compliance and reduce unintentional non-compliance.

- **Collaboration and Stakeholder Engagement:** Collaboration and engagement with stakeholders, such as tax professionals, industry

and effective enforcement actions against non-compliant taxpayers serve as a deterrent and promote voluntary compliance.

Implementing compliance by design in Indian tax administration requires a comprehensive approach that combines clear regulations, user-friendly systems, stakeholder engagement, and strong enforcement measures. By integrating compliance into the design of tax administration processes and systems, the aim is to foster a culture of voluntary compliance and reduce the burden on both taxpayers and tax authorities. 📌

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# TAX CERTAINTY: PILLAR FOR INDIA'S ECONOMIC PROGRESS

In the pursuit of ascending the global economic success and securing its position among the top developed nations, India stands poised for remarkable growth. Tax certainty emerges as a pivotal catalyst in this journey, wielding a profound influence on capital inflows, technological advancements, and overall economic prosperity



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**A**S India is one of the fastest growing economies and aiming to be in the top 3 nations with the “developed country” tag, tax certainty is a key contributor. Whether it is capital inflows from the global community or technology transfer and utilisation, tax plays a critical role. The return on capital employed should be clear and straight year on year, for investors’ confidence to grow manifold and contribute.

Indian legislation has all the right to frame the laws. Can the same be water tight without any non-obstante clause, going forth and back with follow-up of illustrative guidelines. Can the government follow the “rule of law” once adjudged by a court, without any reversal or retro-correction of the language. The expanded opportunities for the business community to deliver goods and services without physical presence should be kept in mind while the tax laws are framed. Fair tax across all jurisdictions shall be the thumb rule to tax entity’s cross border transactions. Taxpayer’s rights shall be fully protected with transparency and equity.

## **A Maturing Step**

The Indian government should mature to look through major anti-abusive and evasive tax practices by large corporates in business restructuring or sale rather than going all over. It shall leave the tag of a “main litigator” in minor tax interpretative adjustments which is voluminous. The tax return form including annexures should be full-proof to capture all the eligible incomes and expenses including scanning the bank statements and digital payments. The penal provisions shall be auto-triggered for any



mis-representation through use of AI & ML techniques and reasoned out within a timeframe under “principles of natural justice” and resolved by the tax officer concerned with closure report.

India having borne out of the colonial era under the United Kingdom, which is known for aggressive tax positions and litigations globally extending extra-territorial, continued the legacy. It peaked out when transfer pricing was first introduced in 2001 and a retrospective amendment going back to 1962 for “shares transfer” tax collection in Vodafone and Cairn Energy against the favourable ruling by the Supreme Court.

In today’s time, tax certainty is something which most businesses look for as it helps them to spend lesser time and resources on litigation. Before making any investment into a new jurisdiction, tax certainty is a crucial parameter

that is looked upon by investors. From a law maker’s point of view as well, certainty is integral to the rule of law. Certainty and stability generally are the founding stones for any sound fiscal system.

Economist Adam Smith in his 1776 work titled ‘The Wealth of Nations’ laid out four principles as the maxims of taxation – (i) Equity and fairness (ii) Certainty (iii) Convenience of payment (iv) Effective tax administration.

### What is ‘Tax Certainty’?

The tax rules should clearly specify how the amount of payment is determined, when payment of the tax should occur, and how payment is made. Certainty, rather than ambiguity, of a person’s tax liability is vital. The tax rules should specify the amount of the payment, when the tax is due, and how payment is made. A tax system’s rules must enable taxpayers to determine what

## SNAPSHOTS

1. The Indian government should mature to look through major anti-abusive and evasive tax practices by large corporates in business restructuring or sale rather than going all over.

2. India having borne out of the colonial era under the UK, which is known for aggressive tax positions and litigations globally extending extra-territorial, continued the legacy.

3. Tax certainty is something that most firms seek nowadays because it allows them to spend less time and resources on litigation. It is an important factor that investors consider.



is subject to tax (the tax base) and at what tax rate(s).

Taxpayers should have the ability to determine their tax liabilities with reasonable certainty based on the nature of their transactions. If the transactions subject to tax are easy to identify and value, the principle of certainty is more likely attained. On the other hand, if the tax base is dependent on subjective valuations or transactions that are difficult to

categorise, attaining the principle of certainty might not happen. In addition, spelling out how the taxes are paid and when the taxes are due under the applicable laws, as well as in the tax forms and instructions, is essential. Certainty is important to a tax system because it helps to improve compliance with the rules and to increase respect for the system. Certainty generally comes from clear statutes as well as timely and understandable

administrative guidance that is readily available to taxpayers. The principle of certainty is closely related to the principle of simplicity. The more complex the tax rules and system, the greater likelihood that the certainty principle is compromised.

**Views taken by Supreme Court in the context of Tax Certainty**

Principal Commissioner of Income Tax v. Maruti Suzuki

**PREROGATIVE OF FRAMING TAX LAWS**

*Income-tax being a direct tax, cash outflow on it is borne by the business. The following pose a threat to the certainty in Income-tax laws in India*



WHEN the settled tax positions are proposed to be unsettled through amendments/ clarifications and that too with retrospective effect (which are not many, but creep through the back door), the integrity and honesty of the law-making process comes under question. For example, meaning of the term “royalty” was amended retrospectively w.e.f. 1 June 1976 vide Finance Act, 2012, when technologies such as computer software, satellite transmission, under-sea cables, etc, were perhaps only in pre-ideation stage, leave alone existence stage. This was also noticed by the Indian Supreme court in its 2021 landmark judgement in the case of *Engineering Analysis Vs CIT (2021) 432 ITR 471* when it held that payments towards purchase of computer software licences for simpliciter use cannot be held to be ‘royalty’ under the IT Act. While one thought this is curtains-down on the two-decade old controversy, to the surprise of the industry at large, the

Government has filed a Review petition against the judgement, posing a challenge at lower levels as tax officers continue to propose additions in spite of the favourable ruling from the Apex Court. This is exactly what the industry dreads.

Likewise, Significant Economic Presence (SEP) provisions are another example of ambiguous provisions wherein, it is unclear if every non-resident who has sales above the threshold is subject to SEP or not.

Tax refund issues in the IT tech systems - Long time to process and issue refunds, funds blocked unnecessarily, matters handled by CPC and refund bankers with no point of contact – These pose great challenges to taxpayers to get back their own money.

Taxation of intangibles in India is a vexed issue. Currently, the only guidance available is a Delhi High Court ruling in Foster’s case (which is also pending before the Supreme Court). There is no clarity if the situs of the owner is to be considered as the situs of intangibles or if one has to consider the commercial aspects like exploitation of such intangibles/ country of registration etc. 📌

## The expanded opportunities for the business community to deliver goods and services without physical presence should be kept in mind while the tax laws are framed. Fair tax across all jurisdictions shall be the thumb rule to tax entity's cross border transactions

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India Limited (2019 SCC Online SC 928): “There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.”

### **Principal Commissioner of Income Tax -I, Chandigarh Vs ABC Papers Limited (141 taxmann.com 332):**

“The binding nature of decisions of an appellate court established under a statute on subordinate courts and tribunals within the territorial jurisdiction of the State, is a larger principle involving consistency, certainty and judicial discipline, and it has a direct bearing on the rule of law. This ‘need for order’ and consistency in decision making must inform our interpretation of judicial remedies.”

### **International Frameworks**

The concept of tax certainty came into light in the G20 Summit held in September 2016, wherein Organisation for Economic Co-operation and Development (OECD) and International

Monetary Fund (IMF) were asked to work on the issue of tax certainty to aid policy makers in understanding the key drivers of tax certainty, its impact on business operations and possible solutions for achieving the same.

Thereafter, OECD and IMF published a report on Tax Certainty issues and shows clearly that this remains a priority issue for taxpayers and tax administrations. In a nutshell, the report sets out the main sources of tax uncertainty and the key tools to reduce it, namely: better design of tax policy and legislation, less frequent changes in tax legislation and reduced bureaucracy to comply with tax legislation.

### **The observations are Summarised below:**

Effects of tax uncertainty:

- Likely to have negative effects on investment and therefore on growth.
- Increasing tax uncertainty leads to a more complex tax planning structure, which in turn contributes to more tax uncertainty.

Causes of tax uncertainty:

- It mostly arises from tax policy design and legislation,

dispute resolution, as well as taxpayer behaviour in particular, related to aggressive tax planning.

Eliminating tax uncertainty:

- Tax arrangement in place such as Bilateral Tax Treaties and Mutual Agreement Procedures.
- Advance pricing arrangements, tax rulings and co-operative compliance

Promoting tax certainty at domestic level:

- Proper planning of tax reforms.
- Proper stakeholder consultation.
- Clear and simple communication of provisions.
- Structured approach to reforms.

Promoting tax certainty at international level:

- Inter-country cooperation.
- Common approach to fight aggressive planning.
- Proper division of cross border tax revenues.
- Avoiding tax competitions.

### **Global Unilateralism Versus Common Ground**

As there is no final decision arrived at, each country has devised its own digital tax levy. This unilateral approach of the countries where digital transactions happen in large volumes, leave the developing countries to gasp for tax revenues and align to developed nations, setting aside the fairness approach. BEPS – Pillar 1 and Pillar 2 brought 140 countries



The concept of tax certainty came into light in the G20 Summit held in September 2016, wherein Organisation for Economic Co-operation and Development (OECD) and International Monetary Fund (IMF) were asked to work on the issue of tax certainty to aid policy makers in understanding the key drivers of tax certainty

together under a common platform for base erosive tax practices and double non-taxation.

Multilateral instruments of the same order, International dispute resolution and arbitration practices have been introduced to resolve any cross border tax disputes. Further, the automatic exchange of information among

countries has enabled “fair tax” and “equitable distribution” principles. Still this is all work-in-progress only with disagreements among nations from myopic lenses.

The OECD – BEPS action plan of 2015 to fairly distribute taxes among developing nations and the global minimum tax at 15% with no tax heavens - “zero tax”

nation is in itself a very progressive consensual approach.

**Seamless Business Ecosystem**

Business is carried out faceless and borderless across the globe with the advancement of technology and practices with global customers to its kitty. Identification of income, economic presence and application of tax is too complex. Unless the business community comes together with transparency in disclosure of activities performed, financial results geography-wise, it is very difficult to corroborate and levy tax which is “true and fair”. From the tax administration side also, once a fair tax ratio is applied and paid, business should not be put to additional tax burden and penalties. A robust dispute resolution panel should be in place with a third party peer review of the outcomes to instil confidence in the business community and a reaffirmed tax certainty.

If the Government were to adopt a simple taxation policy which has following aspects engrained in it, then this will go a long way in achieving tax certainty – (i) efficient tax administration (ii) efficient dispute resolution process (iii) avoiding divergence in views of judicial bodies. No doubt, legislation is tough, especially with the changing face of global businesses. However, policymakers should attempt a fine balance between introduction of new policies for bringing about transparency with the need to maintain tax certainty. 📌



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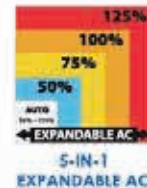


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# COMPLIANCE BY DESIGN: REVOLUTIONISING REGULATORY COMPLIANCE

As compliance by design gains momentum, it offers enforcement agencies access to vast real-time data sources while alleviating the compliance burden on businesses. The synergy of automation and regulatory integration is reshaping the compliance landscape, empowering organisations to navigate complex regulatory terrains with greater ease and efficiency



**O.P. DADHICH**

Former Member, CBIC

**A**S globalisation intensifies and the financial system the world over gets increasingly integrated and more complex, legal compliance by business entities is becoming more daunting. Increasing financial crimes, tax evasion, and terrorist financing have alerted the governments to tighten the regulatory requirements, thus making compliance more demanding, creating a vicious cycle. We come across hundreds of cases of huge penalties, in millions of dollars, being imposed by the regulators, particularly in the banking and financial sectors. The enforcement authorities and regulators desire every transaction to be instantly accessible and available to them in real time.

## **The Emergence of Compliance by Design**

Under such a scenario the business enterprises function under tremendous pressure to ensure compliance with the legal and regulatory requirements of not one but many regulatory agencies. For MSMEs which spend disproportionately higher resources on compliance, it becomes a real pain point. Therefore business enterprises want to put in place a system which automatically ensures compliance or at least alerts them in real time at any instance of non-compliance. On the other hand, the governments and the regulatory authorities also want to design a system, which

not only forces but also enables the enterprises to meet the compliance requirements. This has led to the concept which has come to be known as Compliance by Design. Integration of regulatory requirements into the normal business processes of the enterprises can be said to be the defining feature of Compliance by Design (CbD). Automation is another essential feature of CbD which eliminates or minimises manual intervention to reduce scope for human error or manipulation. Under the CoD system, the compliance is continuous and not end-of-period type. Its scope is not confined to compliance with law and regulations only but can extend to compliance with the enterprise's internal policies. It definitely adds to the efficiency and effectiveness of the organisation and also helps the enforcement agencies in effective and resource-effective monitoring, thus making it a win-win situation for both the regulators and the regulated.

In the present era of digitalization when almost every activity is enabled by IT, designing such a system not only becomes easy but cannot be imagined without the use of IT. The increasing availability of digital tools and multiple sources of data has made it easy and effective but at the same time risky as data manipulations are also possible.

### **Advancement in Taxation CbD**

In India, Compliance by Design (CbD), particularly on the taxation side, has already reached a fairly advanced stage and is still progressing. While filing an Income



Tax Return one strains one's mind to compile all his incomes for the year viz salary, bonus, dividend income, bank interest etc. but after logging in to the IT site it is seen that every receipt is already in the record of the IT department. The tax is auto-calculated and the Return appears almost ready to be filed. On the GST side also the Input Tax Credit automatically becomes available on all the GST-paid inputs and is auto-populated in the GSTR-2A. Mostly the interest payable on the delayed payment of tax is also auto-calculated. If an assessee doesn't file the monthly GST return he promptly gets notices and emails from the tax authorities which are automated. Prima facie such interventions may appear to be enforcement measures but essentially these are components of compliance by design as they help the taxpayers in complying with the law. These are examples of compliance by design as they assist the taxpayers in complying with the law.

### **Tech-Driven Compliance System**

The strong IT infrastructure is the bedrock for designing a sound

### **SNAPSHOTS**

1. Under the CoD system, the compliance is continuous and not end-of-period type. Its scope is not confined to compliance with law and regulations only but can extend to compliance with the enterprise's internal policies.

2. The strong IT infrastructure is the bedrock for designing a sound compliance system. Because of grave consequences of non-compliance, the business enterprises are also fast developing in-house IT systems.

3. Under the 3.0 version, the taxation processes would be built into the natural systems of business entities with potential to build in compliance. It would be characterised by automated event-based detailed and real-time data.

compliance system. Because of grave consequences of non-compliance, the business enterprises are also fast developing in-house IT systems and tools which ensure automated compliance with the regulatory requirements. The ERP solutions which are very popular software have an inbuilt tax compliance component.

Eventually, we are reaching a stage where based on each transaction captured instantly by the system, the entire return would appear as pre-filled and tax paid automatically from the

the GST Portal, auto-generating of E-way bill, pushing the details to the recipient and finally auto-populating the GST Return. It is a fine example of compliance by design and meets an important objective of compliance by design which is bringing the taxation closer to the taxable event. On the customs side most of the transactions, once triggered by filing a document are automated as the whole processing of the documents is done under the IT ecosystem.

Not only the tax administrations and the

2019 titled “Tax Administration 3.0: The Digital Transformation of Tax” laying down a futuristic view of the use of digitalization in tax administration which would lead to compliance by design. As per this paper, while Tax Administration 1.0 was mainly paper-based and manually driven, Tax Administration 2.0 was characterised by the use of E-administration with increased use of IT but under the 3.0 version the taxation processes would be built into the natural systems of business entities with potential to build in compliance. It would be characterised by event-based detailed and real-time data, automated validation, interoperable ecosystem and international co-operation enabled.

The guiding principles for developing an effective system of compliance by design would include (i) Simple and unambiguous law (ii) Smooth flow and integrity of data (iii) Reliable IT infrastructure (iv) Effective integration with third parties such as banks, government departments, auditors etc (v) Cost-effectiveness (vi) In-built flexibility for incorporating changes in the regulatory requirements in future.

The compliance by design is gaining ground and is likely to see unprecedented progress in the near future. It has made accessible to the enforcement agencies huge data, including third-party data on a real-time basis and eased the compliance burden of the business entities, leading to more effective utilisation of their resources. 

## The governments and the regulatory authorities both want to design a system, which not only forces but also enables the business enterprises to meet the compliance requirements. This has led to the concept which has come to be known as Compliance by Design

linked bank account upon validation by the taxpayer. On the GST side, the GSTN provides a unique common platform to act as an interface between the taxpayer and the tax authorities and in an advanced IT-enabled ecosystem, allows every action in an automated manner. Registration, assessment, refund, tax payment, Input tax credit flow etc. are all system-driven without human intervention. The B2B suppliers with a turnover of over Rs. 5 cores per annum have to issue e-invoices in standard formats which leads to auto-reporting to

taxpayers but the advisory and consulting firms are also gearing up fast to play an important role in compliance by designing and developing tools and software for this purpose dovetailing regulatory requirements into organisations’ business processes. Many such firms have set up separate tax technology verticals in their firms.

### Future of Compliance by Design

The Forum on Tax Administrations of the OECD brought out a discussion paper in



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# TAX COMPLIANCES: DOWN THE MEMORY LANE

Just like taxes are forever, so are the tax compliances. And just as the basis of levies keep changing, so do the processes of compliances, as can be noted from the last five decades of indirect tax machinery provisions in India



**SOMESH ARORA**

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**I**F matchboxes used to be affixed with the excise stamps, till the year 2003, just to show that the specific matchboxes being sold had discharged duty. It was not an unfamiliar sight to see the last metre of a 'Kapde ka thaana' (belt of cloth) moving out from a textile mill bearing all particulars like batch number, date of manufacture, length and width, in running metres. It was another matter that shopkeepers were compelled to sell that last metre at a lesser price as the imprint on the fabric was hard to get rid of even after several washes. The person wearing apparel of such printed fabric used to be the butt of jokes for that unique 'chhappe wali kameez', which today would have won a retro fashion award. Compliances, therefore, also brought some discounts and some fun for the consumer.

## Olden Days of Sales Tax Compliance

The old process of compliance in Sales Tax till mid around 2003, included challans to be filled in four parts while depositing duty every quarter along with the return form. The return had components of sales to the registered dealers, sales to the unregistered dealers, interstates Sales and Export Sales, apart from purchase tax sales, wherever applicable. The returns had to be accompanied by extracts of ST-XXII-forms and claims for exports and Inter States Turnover in 'D' & 'C' forms. The most difficult quarter for compliances used to be the June end, for which in a hot summer month one had to queue up first to deposit cheques with challan forms and then a second time to deposit returns. By the end of the day, no Pond's or Nycil telcum powder could allow the body odour to subside.

The assessment procedure consisted of bringing relevant books

of account and forms and underlying vouchers as above, for the Assessing Officer to indicate, which all the forms were liable to be rejected, or were fake. And whether books of accounts were properly maintained or had any discrepancy which could lead to demand of duty, as well as interest and penalty. The corporate assessments used to be the big events with their managements hiring trucks or tempos to bring records on the assessment days. Loading and unloading of records made many young employees burn more calories than the youth in the gyms nowadays. Close to Diwali the frequency of FIRs reporting burnt records used to go up. The assessing officer in his order could only manage to mention the random pages checked by him in the assessment order.

### Central Excise Compliance

On the Excise side, till physical control existed, factories had to accommodate inspectors with housing facilities as well as a small

office close to the gate. The things could move in and out only with the permission on gate pass of all mighty inspector of Central Excise, who was the remnant of Imperial India in its functioning and a subject of literature as in 'Namak ka Daroga' of Munshi Prem Chand. The system served the purpose of British Imperialism quite well and allowed only limited production in India. With stringent enforcement regime disallowing any leakage of revenue or placing of any trust on the tax-paying assessee. The British on the other hand, were all generous to direct taxpayers by offering Chairs in office to them as well as limited franchise.

Central Excise was perhaps the only department that had no stationery directorate of its own, unlike state sales tax or income tax, which at least provided tax forms and challan forms for advocates of assesses to fill up. The compliance system started to change from 1975 onwards, with the introduction of Tariff Item 68 with the omnibus

## SNAPSHOTS

1. Corporate assessments were grand affairs, with truckloads of records transported to assessment venues. The assessment officer's order often mentioned only randomly checked pages.
2. Central Excise was perhaps the only department that had no stationery directorate of its own, unlike state sales tax or income tax which at least provided tax forms and challan forms for advocates of assesses to fill up.
3. The year 1986 brought in MODVAT on a few commodities, which eventually led to the introduction of Cenvat on most commodities in the year 2002 and eventually seamless credit in GST in 2017.





entry of 'All other items not elsewhere specified' and the introduction of an exemption for SSI, cottage and rural industries, on furnishing of relevant certificates for exemption and on showing turnover. This was a byproduct of the financial emergency declared at that time, intending to broaden the tax base by extending the scope of the Central Excise levy to almost all goods produced and manufactured, from earlier enumerated and covered 67 items. The diluted Physical Control System led to the introduction of Self Removal Procedure (SRP) and Production Based Control, where

greater trust for clearances came to be placed on the assessee, but so was also the liberal sprinkling of a 'willful suppression' clause to routinely invoke extended period demands in the Show Cause Notices. It also brought in the ubiquitous 'naakas' on the road, for checking gate passes with parties of excise officials creating traffic snarls in cities like Delhi and attracting protests from traffic cops.

#### **Introduction of MODVAT and Cenvat**

The year 1986 brought in MODVAT on a few commodities, which eventually led to the

introduction of Cenvat on most commodities in the year 2002 and eventually of seamless credit in GST in 2017. Again till 2003, the budget day exercises provided quite an exercise to central tax officials by rushing to each factory to note stock position, so that stock that till then was within the factory gate could alone be subjected to changed duty in the budget.

In between, the period from the year 2003-2005 also saw the introduction of VAT by most states based on model law framed by the Centre which came to be adopted with minor changes by most states.

## The old process of compliance in Sales Tax till mid around 2003, included challans to be filled in four parts while depositing duty every quarter along with the return form. The return had components of sales to the registered dealers, sales to the unregistered dealers, interstates Sales and Export Sales, apart from purchase tax sales, wherever applicable

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### **Transition to VAT and Digital Filing**

With the introduction of Service Tax in the year 1994 gradually the filing of returns through digital media started getting furnished. Such returns were required to be filed on monthly/quarterly frequency depending upon the turnover. The dilution of various controls on the introduction of self-assessment in various tax regimes also saw the emphasis on audit, which on introduction was based on a Risk Management System, allowing the risk of each unit to be assessed, based on certain undisclosed parameters and the frequency of audit to be fixed accordingly. The self-assessment procedures in Customs was the last to come on board and was introduced only in the year 2011. Here also the customs audit was simultaneously introduced.

### **The Advent of GST and Digital Transformation**

The introduction of GST in the year 2017, however, revolutionised compliances in favour of digital

return filing, maintaining of basic accounts relating to input credits, transport documents, filing of various returns and even registration etc. online in GSTN. This also reduced the requirement of any statutory records being separately maintained by the assessee, which exercise had started in the Central Excise in right earnest, with doing away of RG-1 and RG-23 registers etc. and also of voluminous classification lists and price lists, from 2000 onwards.

In the 1990s, it was not an unusual sight to see the Inspectors/ Superintendents as well as the Assistant Collectors signing classification lists and prices with a mechanical repetition, scanning and traversing rims of papers. The Office of Superintendent (Technical) was the largest room in the division, but he still remained invisible, as he was constantly playing hide and seek with the insurmountable piles of files, strewn all over. The old record rooms were full of dust

mites and were opened only when some braveheart officer wanted sick leave by risking a visit to doctors. Some of the old files were 'Angrez ke Zamane ki files.'

Came to year 2017 and the whole process of self-assessments through networked computers, which was initiated with the Customs, culminated into GSTN. All this made the offices efficient and provided a clean environment to work. Not only did the GST network provide a tech-driven compliance set-up for the assessee, but it also gradually dispensed the need for maintaining detailed accounts, vouchers and now even filing of returns by self-polating of networked data, at the flick of (through their action of frauds) a few buttons. The detection of forged invoices or underlying vouchers which was a known phenomenon for decades, has now also come to be detected by the system itself, in a big way. This is compelling old habits of the tax evaders to die fast. Incidents of losing accounts in the fire have become a matter of the past. Ease of compliance provided by the system is being experienced by small taxpayers, allaying their initial apprehensions about working in a digital environment.

Sure, the digital compliance designs are making tax systems worthy of reliance and difficult in defiance. The emerging winners are - the treasury of the Centre and States and the losers are evaders who were always doing treachery with the honest taxpayers by enriching themselves *ex dolo malo*. 🚫

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WE ARE **RISING**  
TO THE **POWER**  
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# TAXATION IN INDIA: COMPLIANCE-BY-DESIGN



## SECTION B

**GST - DOING FINE BUT IT'S  
TIME TO EXORCISE  
THE 'GHOST'!**

# GST: A GAME CHANGER FOR INDIA'S ECONOMY

While GST transformed the complex compliance framework for trade and industry by subsuming 17 taxes and 13 cesses under one umbrella, it also altered how businesses were run. The impact of GST has been profound - the tax base has more than doubled, GST collection figures have touched record levels since its introduction in 2017



**SANJAY KUMAR  
AGARWAL**

Chairman, CBIC  
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**T**HE introduction of Goods and Services Tax (GST) in 2017 is a symbol of the determined leadership of the new and emerging India with the ratification of five laws made in 16 languages involving 200 pieces of delegated legislation utilising the synergy of the Centre and 29 States – a worldwide federal spectacle.

While GST transformed the complex compliance framework for trade and industry by subsuming 17 taxes and 13 cesses under one umbrella, it also altered how businesses were run. The impact of GST has been profound - the tax base has more than doubled, GST collection figures have touched record levels, the return filing percentage has improved significantly to more than 90% and 325 crore e-Way bills have been generated upto June, 2023 since its introduction in 2017. Ease of doing business was introduced with unique initiatives such as the simplified registration scheme, a common portal for taxpayers, e-Way bills to integrate the supply chain and special provisions for e-commerce. The digitalization of the GST ecosystem has been a massive triumph.

## **Profound Impact on Tax Base**

Under the GST regime, the taxpayers had to align themselves to the intricacies of filing multiple returns each month and capturing transactions of inward supplies to claim Input Tax Credit (ITC) for offsetting the tax payable against the outward supplies. In the initial stages of implementation, it was felt that many businesses, especially small and medium-sized enterprises (SMEs), would require an overhaul of their processes disproportionate to their capacities. Therefore, a simplified version of the GST return i.e., GSTR-3B was envisaged. The return of outward supplies (GSTR1),





the return of inward supplies (GSTR-2A/2B) and GSTR-3B returns have been linked so that the filing of GSTR 1 by supplier enables the auto generation of GSTR-2A/2B of the recipient and ultimately GSTR-3B. Similarly, the comprehensive invoice matching provisions, though instrumental in establishing seamless flow of ITC, could not be implemented due to the complexities involved. In the initial phases, the lack of appropriate linkages in the GST returns led to an unintended outcome – the menace of fake invoicing.

### **Use of Big Data Analytics**

In the era of self-assessment of tax, the law casts responsibility on taxpayers to ensure discipline. The Government was quick to understand the potential of big data analytics in comprehending the compliance behaviour of taxpayers. State-of-the-art Machine Learning

and Artificial Intelligence techniques were deployed to identify gaps and possible leakages in revenue. The resulting analysis highlighted disruptive patterns in return filing and mismatches in inward and outward supplies, indicative of organised seeding of fake Input Tax Credit (ITC) through bogus entities or shell companies in the supply chain. Fake invoicing emerged as a challenge in the administration of GST, which, to this day, remains to be fully addressed. In a typical fake invoicing racket, masterminds create and remotely operate dummy entities to raise invoices of goods/ services without concomitant supplies to pass ITC to end beneficiaries fraudulently. These bogus firms are deeply concerning as they are the conduits for tax evasion, money laundering, illicit business practices, and hawala transfers. The GST intelligence

### **SNAPSHOTS**

1. GST transformed the complex compliance framework for trade and industry by subsuming 17 taxes and 13 cesses under one umbrella, it also altered how businesses were run.

2. State-of-the-art Machine Learning and Artificial Intelligence techniques were deployed to identify gaps and possible leakages in revenue.

3. e-Invoicing was introduced for taxpayers in a staggered manner, initially with large taxpayers and recently with taxpayers having annual turnover of more than Rs. 5 crores.



Ease of doing business was introduced with unique initiatives such as the simplified registration scheme, a common portal for taxpayers, e-way bills to integrate the supply chain and special provisions for e-commerce. The digitalization of the GST ecosystem has been a massive triumph

agencies and preventive formations sprung into action and launched a coordinated enforcement drive against fake invoicing in 2020, which led to the detection of tax evasion accumulating to thousands of crores. Novel modus operandi have been identified in recent times with the fraudsters using highly sophisticated software and hardware, cloud servers, and stolen credentials from the dark

web to operationalize their sinister motives. This use of technology by tax offenders has created significant challenges for law enforcement agencies to trace them and gather evidence.

#### **Preventive Measures**

There will always be unscrupulous elements who will try to take advantage of the system and circumvent the law for pecuniary benefits.

Countering their actions requires strong and determined deterrence coupled with legal and procedural modifications. Mindful of the potential misuse of the GST framework, corrective policy measures were undertaken in the registration process by introducing geo-coding for declaring correct addresses, Aadhar Authentication, and e-KYC based registration, as well as in the process of returns filing by auto-population of ITC in GSTR-3B and restriction in the filing of returns/ e-way bills if taxes have not been paid. Further, preventive mechanisms were also built in, such as blocking suspicious ITC and centralised suspension of the registration of taxpayers who default in payment of taxes or where a mismatch is identified in the returns. Additionally, e-Invoicing was introduced for taxpayers in a

staggered manner, initially with large taxpayers and recently with taxpayers having annual turnover of more than Rs. 5 crores. The introduction of e-invoices since October 2020 has made the return filing process much smoother. The rampant misuse of bank accounts to channelize the gains of GST evasion would also be curbed to a large extent with the newly introduced bank validation facility by the Goods and Services Tax Network (GSTN). The sequential filing of GSTR-1 and GSTR3B is also a step in this direction, which restricts the filing of GSTR-1 for subsequent

months if previous month GSTR-3B is not filed.

While ensuring compliance by design in GST, to reduce compliance burden on MSME sector, Government has introduced 'Quarterly Return Monthly Payment' scheme, in place of monthly GSTR-3B. For small taxpayers 'Composition Scheme' was introduced, which requires payment of tax on quarterly basis with annual return filing.

### Role of GST Council

While talking of reforms, it is relevant to mention that the GST

Council played a pivotal role in sailing the ship ashore during the transitional phase of GST implementation by ironing out issues relating to the GST rate structure, working out details for compensation to States, threshold limits, and administrative mechanisms for GST.

Despite comprehensive transitional provisions meant for a smooth changeover to GST and the proactiveness of the Government in clarifying contentious issues, it took almost two years for the teething issues to subside and for the GST regime to stabilise. During recent meetings, various landmark decisions have been taken by the GST Council, which are expected to automate return filings on one hand and restrict the misuse of ITC on the other. Devising a system-based intimation to the registered person in cases (i) where the output tax liability in the return in GSTR-1 exceeds the outward liability as disclosed in

Under the GST regime, the taxpayers had to align themselves to the intricacies of filing multiple returns each month and capturing transactions of inward supplies to claim Input Tax Credit (ITC) for offsetting the tax payable against the outward supplies





## The GST intelligence agencies and preventive formations sprung into action and launched a coordinated enforcement drive against fake invoicing in 2020, which led to the detection of tax evasion accumulating to thousands of crores

the return in GSTR-3B for the month by a specified threshold and (ii) where there is excess availment of ITC in GSTR-3B vis-à-vis that made available in GSTR-2B above a certain threshold, along with the procedure of auto-compliance on the part of the taxpayers are some notable outcomes.

In the realm of indirect taxation, the learnings of the GST model in India through 6 years of its implementation have been unequivocal – there needs to be a system based control for effective revenue mobilisation and purging

out the delinquent. The GSTN is to be given credit for developing and managing an IT system that works on an unimaginable scale. The checks and balances within this IT system are crucial to bring down instances of misuse of large scale wilful tax evasion.

### Future Prospects

One slightly different yet related aspect is the exponential rise of the digital economy which has surfaced new and exciting areas of revenue such as online gaming, crypto assets, and overseas

service providers (referred to as “Online Information Database Access and Retrieval services” or OIDAR in GST parlance). In these areas, the scope and applicability of GST are still taking shape with significant cross-border ramifications. These sectors shall continue to attract the attention of the Government to have a sustainable taxation model which will enable a level playing field for the domestic players. It is amply clear that the Government is committed to the twin-fold objectives of facilitating genuine taxpayers and weeding out tax evaders through firm action. While much work has been done through innovation and technology up-gradation, there is still scope for adopting global best practices to reduce complexities in compliances, simplify taxation procedures and promote tax discipline. 📌

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# GST: A LEGISLATION WHERE ALL THE STAKEHOLDERS ARE HAPPY

As India's tax landscape evolves with the GST at its helm, the nation is poised for a transformative journey. The shift towards a formal economy, simplified taxation, and increased transparency are propelling growth and development



**N. VENKATARAMAN**

Additional Solicitor  
General of India

**T**HIS article should start with the presentation of two impressive pieces of data. The indirect tax collection prior to July 2017 (pre-GST Regime) was around Rs. 90,000 Crores, whereas the figures have doubled in these six years from April 2023. The GST collection per month is almost around Rs. 1.8 Lakh Crores. The second important data is the number of registered Assesseees, which is now around 1.5 Crores, while it was around 60 Lakhs in the pre-GST Regime. The number of income tax Assesseees and the direct tax collection had also undergone a huge flip in the last few years.

## **Drive Towards a Formal Economy**

What does this data signify? India is becoming increasingly a formal economy. Technology and transparency are slowly weeding out the undeserving players who deserved to be side-lined. The initial years indeed had an explosion of fake invoice transactions, a price for misplaced trust in issuing automatic registrations, which later got streamlined. The evil, though still not out and happens in identified sections of the industry, tracking the defaulters is now a clear possibility in view of the GST Network. The first takeaway therefore is an increase in the Assessee base leading to an increase in revenues, thus making both the Federal Partners, Union and the States, happy.

Tax rates being friendly was a distant dream in the past, at least in a range of goods. Plurality of taxes and plurality of rates



remained an inevitable part of the tax structure. Unlike income tax, which was always a Union levy with uniformity, indirect taxes could be levied both by the Centre and the States based on the fields earmarked to them respectively. This again led to huge inconsistency in the last mile taxation. The GST Regime has assured a single taxation, fewer rates and also uniformity in rates of taxation across India, though it continues to provide the mandate of imposing taxes by both the Federal Partners. Simple, uniform and fewer slabs of taxation is the second biggest takeaway. The industries, therefore, are extremely happy.

### Streamlining Taxation

GST is an indirect taxation and the burden ultimately has to be borne by the consumer of goods and services. Disparity in rates leads to distortions. A mobile phone in State A would have a preferential rate vis a vis State B, which found it pretty to tax at a high rate. With the

growth of e-commerce platforms, the distortions added more fury resulting in fake or bogus inter-State movement of goods, causing detriment to local levy by States. A uniform rate of taxation in the branch of indirect tax was just not doable. The advent of GST has paved the way to the Constitutional mandate of One Nation – One Harmonious Tax and therefore, consumers/buyers of goods and services are also happy, which is the third takeaway.

### Pooled Sovereignty and Taxation

GST is a unique levy done on the basis of Pooled Sovereignty, harmonising Sovereign Rights of taxation in a common pool for creating stable and uniform tax management. One of the recent triumphs of this Pooled Sovereignty Doctrine is achieving a strong and stable taxation regime for online gaming platforms which conduct games for stakes. The opposite poles of thought need to be pooled

## SNAPSHOTS

1. Indirect tax collections have doubled, reaching Rs. 1.8 Lakh Crores per month by April 2023, while registered assesses have grown from 60 Lakhs to 1.5 Crores.

2. GST is a unique levy done on the basis of Pooled Sovereignty, harmonising Sovereign Rights of taxation in a common pool for creating stable and uniform tax management.

3. Growth and development is now the central theme of Indian industries and businesses, and one of the index of measurement is the quantum of collection of direct and indirect taxes.

based on judicial wisdom spoken over six decades. Though there was a loud call by the industry, ably supported by professional bodies and professionals in attempting a distinction between a game of chance and a game of skill, both the Union and the States understood that this defies legal logic in terms of section 30 of the Contract Act, 1872 and lacks support in jurisprudence when several decisions of the Hon'ble Supreme Court have spelt the contrary view. No doubt there is a well-accepted universal distinction between a game of chance and a game of skill, but

chance. Outcome based stakes are benchmarked as one and the same and the underlying nature of the game pales into insignificance. The 50th and the 51st GST Council Meetings has ushered in clarificatory amendments as to how the law has always been understood. The decision making process through the Constitutional Spectrum called the GST Council involving the Pooled Sovereignty Doctrine is yet another takeaway for the Federal Partners to think ahead of its expansion to other terrains of conflict resolutions.

Of late, there appears to be

**Technology and transparency are slowly weeding out the undeserving players who deserved to be side-lined. The initial years indeed had an explosion of fake invoice transactions, a price for misplaced trust in issuing automatic registrations, which later got streamlined**

the distinction obliterates once they are played for stakes. Neither the Contract Act nor the decisions of the Hon'ble Supreme Court make any distinction between games of skill and chance, if the underlying game irrespective of its nature is played for stakes. The simple reason in law and in jurisprudence is the common factor in both these games when played for stakes is the uncertainty in the outcome. The uncertainty is of equal measure and magnitude, may it be a game of skill or a game of

one feature which is common between direct and indirect taxes, including international taxation. One is reminded of the age-old refrain "belligerent tax regime and aggressive tax pursuits" but now one has to understand and believe things are going in the reverse order i.e. "Aggressive tax planning and belligerent litigation pursuits". If the former was a reality, one should also understand that the latter is becoming reality. There is a huge churning going on how to cut down taxes. Artificial creations,

shallow structures, splitting of agreements, recycling of contracts and round-tripping of transactions are gaining space seeking footage and legitimate ordainment through Judicial process. The age-old doctrines' substance over form, doctrine of series of transactions, and colourable business objectives are slowly gaining prominence throwing challenges in examining the nature of these transactions under the lens of Anti-Avoidance Rules.

### **Growth and Development**

Globally Sovereign Rights of taxation are getting discussed under contractual rights and negotiating abilities, of course the good part of it is the role that is being played by India with its bargaining power in the comity of Nations. Tax Arbitration is in its early days, a subject matter which needs to be pursued with utmost caution and care.

Growth and development is now the central theme of Indian industries and businesses, and one of the index of measurement is the quantum of collection of direct and indirect taxes. Compared to domestic transactions, the cross-border transactions are passing through filters and phases. A fusion of a strong policy regime, and transparent and cooperative tax compliance, should it join hands, would indeed make the Nation raise its stature in the Geo-Economic space loud and clear, and let all of us endeavour our best to achieve the same through trust, discussion, and compliance. 🚫



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# THE CATNIP FACE OF TAX TECHNOLOGY

The transformational influence of the GSTN on India's digital tax technology landscape is monumental. By transposing indirect tax laws and rules into the digital realm, it has brought in operational efficiency, pioneering a path for businesses and taxpayers to navigate the tax system

Welcome to Goods and Services Tax Network  
(A Government Enterprise)

in



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MEDIA AND OUTREACH

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LEGAL & COMPLIANCE

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## Technology Backbone For GST In India

DISCOVER

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**MANISH  
KUMAR SINHA**  
CEO, GSTN

**W**ITHIN the sphere of digital public infrastructure, India has witnessed a ground-breaking innovation - the Goods and Services Tax Network (GSTN). This digital platform has been architected not just as a technological tool, but as a National Information Utility. It is designed to ensure the smooth implementation of the Goods and Services Tax (GST), a significant fiscal reform that amalgamates various indirect taxes into a unified tax structure.

The GSTN aims to provide a trusted, reliable, efficient, and robust IT backbone that caters to diverse stakeholders, ranging from businesses and taxpayers to governments. This platform offers a unified interface for taxpayers for an array of operations such as registration, return-filing, and payment. The GSTN's raison d'être is to enable economic agents to create a singular, unified market (i.e. One Nation One Tax One Market) with minimal indirect tax compliance costs.

The transformational influence of the GSTN on India's digital tax technology landscape is monumental. By transposing indirect tax laws and rules into the digital realm, it has brought in

operational efficiency, pioneering a path for businesses and taxpayers to navigate the tax system. The advent of GSTN has streamlined the tax administration process, curbing compliance costs for businesses, and thereby promoting transparency in the tax system. By offering an enabling environment for businesses to trade across state borders seamlessly, the GSTN has kindled economic growth.

As India prepares to host the G20 summit, the journey and vision of the GSTN emerge as a compelling narrative, demonstrating the transformative potential of digital infrastructure on a global scale. The GSTN stands as a beacon, epitomising how a well-envisioned and executed digital infrastructure can revolutionise a nation's economic landscape, and potentially serve as a blueprint for global reforms.

#### **Digital Public Infrastructure: Foundation for Public Good**

The emergence of digital public infrastructure can usher in ground breaking revolutions, impacting not just technology but entire economies and their associated landscapes. The Global Positioning System (GPS), maintained by the USA, is an exemplary model of such a digital public infrastructure. Provided at no cost, it has fuelled an unparalleled revolution and initiated a wave of economic opportunities.

The GPS technology has drastically transformed the delivery and transportation sectors, providing the bedrock upon which modern economies thrive. For example, Uber, Ola and other such platforms could not have come into existence without GPS. These platforms leverage GPS services for

#### **SNAPSHOTS**

1. GSTN has been architected not just as a technological tool, but as a National Information Utility. It is designed to ensure the smooth implementation of the GST, a significant fiscal reform that amalgamates various indirect taxes into a unified tax structure.

2. As India prepares to host the G20 summit, the journey and vision of the GSTN emerge as a compelling narrative, demonstrating the transformative potential of digital infrastructure on a global scale.

3. GSTN, akin to the GPS and India's satellite program, underscores the transformative potential of digital public infrastructure, highlighting a pathway to global innovation and shared prosperity.

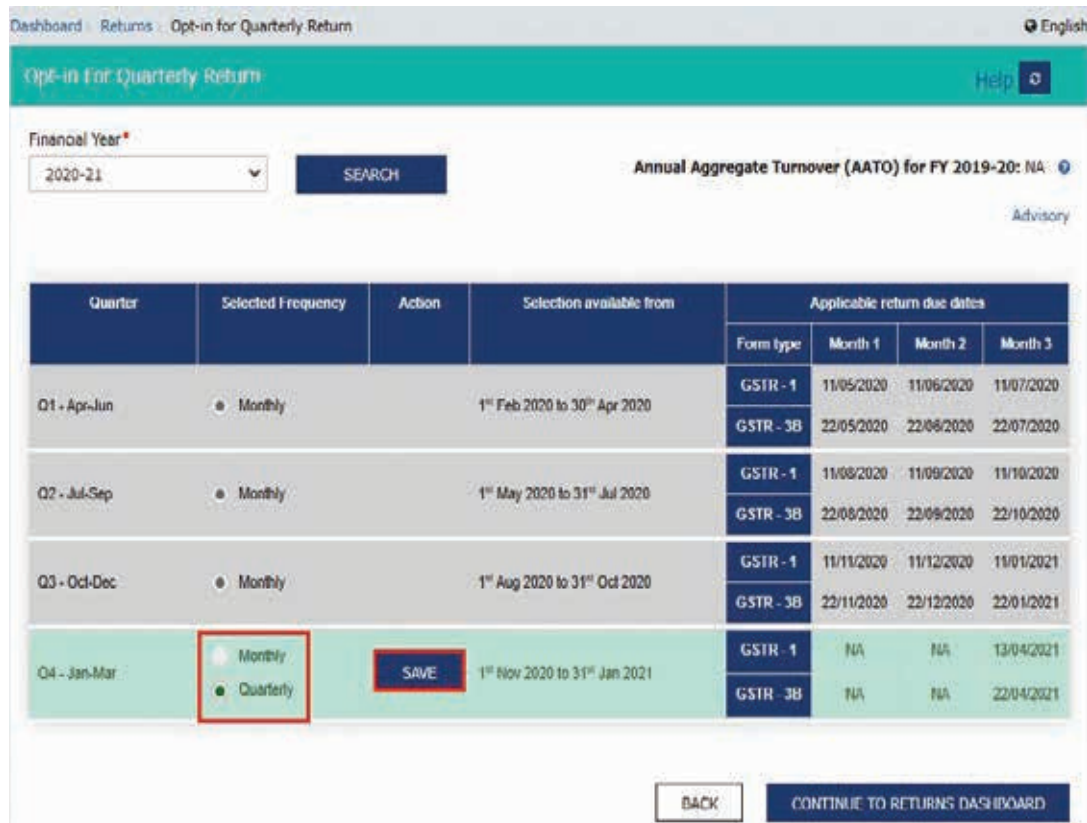
their core functionality, from tracking rides and deliveries to optimising routes. It's evident that the free availability of this digital public infrastructure has significantly spurred innovation and economic growth.

In a parallel vein, India's satellite program as digital public infrastructure has left an indelible mark on the nation's TV and communication landscape. The program has revolutionised the way content is disseminated, with thousands of high-quality TV channels reaching millions of households across India. This paradigm shift was inconceivable in the pre-satellite era. The satellite program's influence extends beyond TV broadcasting, unlocking a plethora of opportunities in sectors like weather forecasting, disaster management, telecommunication, and navigation.

GSTN, akin to the GPS and India's satellite program, underscores the transformative potential of digital public infrastructure, highlighting a pathway to global innovation and shared prosperity.

**GSTN: A Model for Public-Private Collaboration**

The journey of GSTN highlights a salient lesson that technological innovation is not purely a matter of machines and algorithms. At its heart, any successful innovation is driven by a motivated team of individuals who possess the requisite skills and a firm belief in the cause they are championing. The human factor, characterised by the grit, creativity, and dedication of the workforce plays



a paramount role in any project success.

Recognizing the importance of human resources in driving the ambitious mission of GSTN, the government conceived it as a special purpose vehicle (SPV). This was a strategic move aimed at ensuring that GSTN could draw upon the best and the brightest minds from both the government and private sectors. This innovative human resource management approach has played a pivotal role in enabling GSTN to successfully navigate the complexities of the digital tax technology landscape.

In GSTN's organisational structure, civil servants are drawn in on deputation to handle the services, or business, vertically. These civil servants bring their rich experience and nuanced understanding of India's diverse

tax law, which are indispensable in translating the rules into practical on screen UI action.

Simultaneously, the technology vertical of GSTN is manned by technocrats hired directly on GSTN's payroll. These professionals, drawn from the private sector, bring their technical expertise, and hands-on experience with cutting-edge technology. This unique blend of governmental acumen and private-sector dynamism has created a synergy that has significantly contributed to GSTN's transformative success.

Therefore, GSTN's journey is a testimony to the power of collaboration between the best of government and private sector. By harmonising the strengths of the public and private sectors, GSTN has been able to drive significant innovation and achieve its goals,

## To assist taxpayers, an Interest Calculator was integrated into the system to automatically calculate the interest amount and late fee for delayed filing of GSTR-3B. As a result of these measures, the filing rate for returns has been an impressive 90% by the end of each month

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reshaping India's digital tax landscape and setting a global example in the process.

Another dimension of partnership with the private sector has been through selection of MSP capable of delivering large IT services in taxation space. The main service provider for IT operations and application for GSTN has been Infosys and this collaboration (SPV of Govt & IT company from private sector) has provided a new model for implementing Digital Public Infrastructure harnessing the best of IT capacity of the industry for the Govt projects.

### **Nurturing a Robust Ecosystem**

GSTN from its inception had the vision of fostering a wide-ranging ecosystem built on partnerships. This inclusive approach was borne out of the understanding that India's indirect taxpayer base is incredibly diverse. At one end of the spectrum are large businesses engaged in high-volume transactions with numerous invoices. At the other end are taxpayers with minimal or no invoices. Catering to these disparate needs simultaneously was an immense challenge, but GSTN devised an innovative

solution that hinged on robust ecosystem development.

The GST Suvidha Providers (GSPs) initiative was a pillar of this strategy. GSPs were granted access to GSTN's G2B APIs, enabling them to customise applications according to the specific needs of taxpayers. This value-added service not only personalised the GST experience for each taxpayer but also facilitated direct integration of ERP software with the GST system. This integration vastly simplified the process of returns filings, especially for large taxpayers having a high number of invoices.

In keeping with the need of e-invoice expansion, GSTN increased its Invoice Registration Portal (IRP) network. Four new IRPs, all belonging to the private sector, were added through a competitive process. Significantly, GSTN was able to on board these new portals at zero cost to the government, thereby enhancing the ecosystem's capacity to handle e-invoice volume.

Moreover, when it came to map-related services, GSTN opted for a domestic solution over international options. By choosing MapMyIndia, GSTN not only supported the "Make in India"

initiative but also ensured that taxpayer data remained within the country, thus prioritising data privacy and security.

All these initiatives reflect GSTN's core ethos of creating value through collaboration and partnership. By leveraging the strengths of various stakeholders within its ecosystem - from GSPs, NIC, and IRPs to map service providers - GSTN has managed to cater effectively to a diverse range of taxpayers. Through this approach, GSTN continues to revolutionise the indirect digital tax technology landscape in India, demonstrating how strategic partnerships and a vibrant ecosystem can drive innovation and efficiency.

### **Innovations and Adaptations: The GSTN Mantra**

GSTN's journey can be described as a testament to continuous adaptation. There was no guidebook or roadmap when this journey began, but the GSTN adopted a 'learning by doing' approach, pushing the organisation to transform and adapt at every step. What began as a system to handle basic return and registration forms, has now evolved into a sophisticated system that processes roughly 80 lakh e-invoices per day and auto-populates them in GSTR-1 on hourly basis. In the quarterly month, the system handles on an average 2 crores returns per day and has a concurrency of 3 lakhs returns per hour.

Over the last few years, GSTN's digital ecosystem has expanded considerably. The launch of a mobile app for

e-invoice QR code verification and the establishment of an e-invoice master portal (<https://einvoice.gst.gov.in>) underline the commitment to constant improvement in taxpayer services[13]. The new portal includes facilities for IRN verification, e-invoice enablement status, e-invoice exemption declaration option, and access to all e-invoices masters, serving as valuable tools for taxpayers.

Further to ensure an environment of compliance in line with policy directions, a series of key enhancements and

compliance. GSTR-1 was blocked if the preceding GSTR-3B filings were missing, further improving the compliance percentage. To assist taxpayers, an Interest Calculator was integrated into the system to automatically calculate the interest amount and late fee for delayed filing of GSTR-3B. As a result of these measures, the filing rate for returns has been an impressive 90% by the end of each month.

Beyond facilitating the taxpayers, GSTN has also emphasised making the work of tax officers easier. It released a

its potential. The emergence of generative artificial intelligence and natural language processing tools like ChatGPT pose new opportunities for enhancing the services offered by government entities.

As it embraces these new digital challenges, GSTN is actively exploring these advanced technologies. The focus is on improving its chatbot services to enhance taxpayer engagement and service delivery, while also considering the development of its own generative AI model. This initiative is driven by the imperative to reach the last mile taxpayer with speed and ease.

The vision of the future is the creation of 'GSTN 2.0', an advanced version of the existing system that seamlessly integrates cutting-edge technologies while safeguarding the integrity and privacy of data. This pursuit epitomises GSTN's commitment to continuous improvement and adaptation in the face of an ever-evolving digital landscape.

The transformative tale of GSTN reiterates the transformative potential of digital public infrastructure. It underscores how well-conceived and implemented digital infrastructure can revolutionise administrative processes, foster economic growth, and ultimately serve as a catalyst for the common good. As India prepares to host the G20 summit, the insights gleaned from GSTN's experiences - its triumphs, hurdles, and future aspirations - offer valuable lessons for countries worldwide looking to optimise their digital public infrastructure. 📌

**The journey of GSTN highlights a salient lesson that technological innovation is not purely a matter of machines and algorithms. At its heart, any successful innovation is driven by a motivated team of individuals who possess the requisite skills and a firm belief in the cause they are championing**

validations were incorporated into the system. One significant improvement was the creation of GSTR-2B, serving as a guide for Input Tax Credit (ITC) claims, specifying both eligible and ineligible ITC.

The GSTN has also added functionalities such as spike rules (R1 – R3B and R2-R3B difference) and sequential filing of returns, a mechanism to validate bank accounts, and a centralised suspension system to deter fraudsters. Another rule, Rule 59, required sequential filing of GSTR-1 & GSTR-3B, was enabled on the system which boasted the

mobile app for tax officers to streamline the registration approval system. The Backbone for Intelligent Fiscal Analytics (BIFA) module, an integral part of the GSTN ecosystem, has been instrumental in empowering tax officers with data-driven insights, contributing to better decision-making and outcomes.

### Conclusion

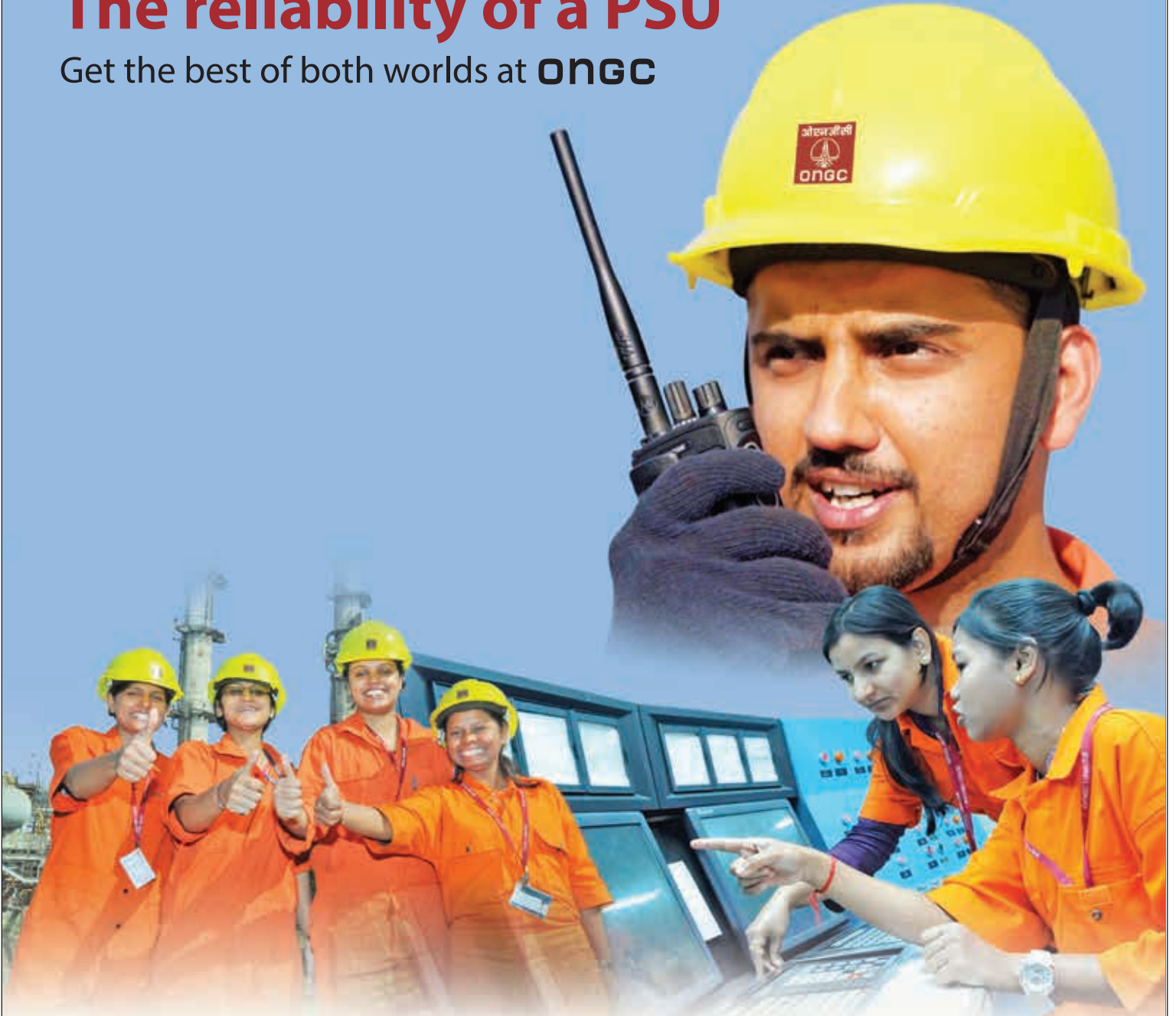
The path of the GSTN is still being carved, and its story is far from over. The challenge now is to keep up with the rapid advancement in technology and find innovative ways to harness

India's  
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# TAXATION EVOLVES: CELEBRATING ACHIEVEMENTS, EMBRACING CHANGE

India's journey towards achieving tax compliance by design is a testament to its commitment to transparency, efficiency, and fairness in its tax system. While substantial progress has been made, there are still challenges to address, such as automation adoption among SMEs and keeping tax laws aligned with emerging trends



**M.S. MANI**

Partner, Deloitte India



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**T**AXES are a vital source of income for governments to build economic growth and development. In times of pandemics, essential public services provide a lifeline to funding essential infrastructure, for education and for providing healthcare for everyone, especially the vulnerable sections. However, taxation is not just about collecting money from taxpayers; it is also about ensuring that taxpayers comply with the rules and regulations of the tax system.

## **Tax Compliance in a Global Context**

Compliance, in this context, means that taxpayers declare their income and expenses accurately, pay their taxes on time and file their returns correctly. Compliance also means that tax authorities administer the tax system efficiently, effectively and fairly. The deficiencies in tax compliance and audit mechanisms extend beyond tax issues, impacting vital areas like education and healthcare due to suboptimal tax collections. This global problem is exemplified in the European Union (EU), where even advanced VAT systems face challenges.

Poland, for instance, estimated a loss of 25% (Euro 8 billion) in Value Added Tax (VAT) revenue from 2010 to 2015 due to widespread VAT fraud, under-reporting, and evasion. To address this, Poland implemented a comprehensive approach, including the establishment of a National Revenue Administration (NRA). They recognized the need to address root causes like complex tax regulations, administrative burdens, and lack of taxpayer





education, not just enforcement and penalties. Strategies involved modernising tax administration, simplifying rules, and improving taxpayer services to create a transparent, user-friendly tax environment. By fostering cooperation between taxpayers and tax authorities, Poland built mutual trust, encouraged self-reporting, and achieved higher tax collections.

On the other side of the globe, the Indian tax system too is undergoing a major transformation in recent years, with the aim of improving compliance by design. Compliance by design refers to the idea that the tax system should be structured such that it encourages and

facilitates compliance, rather than relying on enforcement and penalties. Compliance by design can be achieved by simplifying the tax laws and procedures, leveraging technology and automation, enhancing transparency and accountability and fostering trust between taxpayers and the tax authorities.

### **GST: A Game Changer**

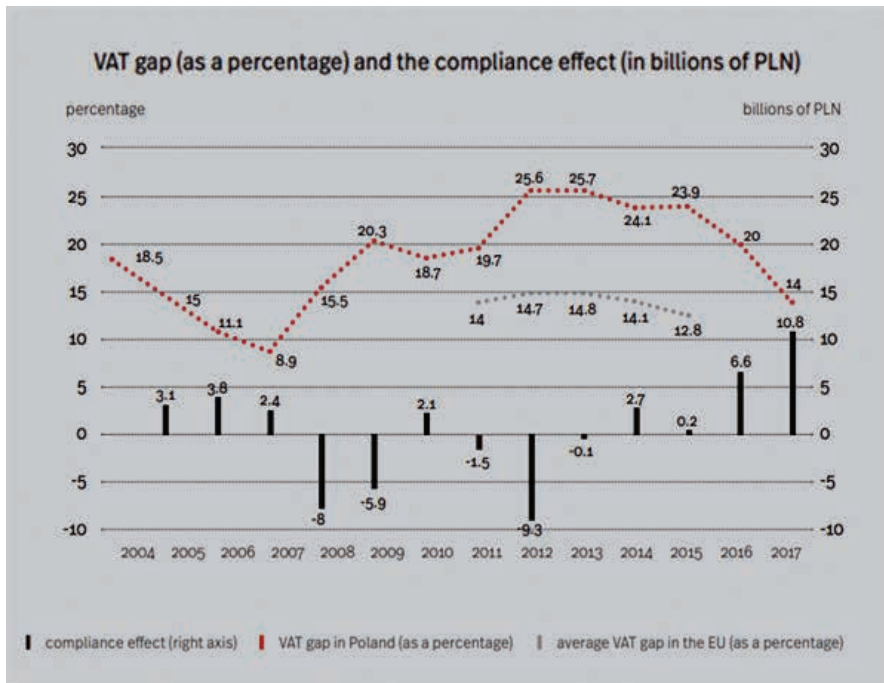
One of the most significant reforms in the Indian tax system was the introduction of the Goods and Services Tax (GST) in 2017, which replaced multiple indirect taxes levied by central and state governments. GST is a

## **SNAPSHOTS**

1. GST has brought a paradigm shift in the indirect tax system, as it has created a single national market, eliminated cascading of taxes, reduced tax evasion, widened the tax base and increased revenue collections.

2. The Income Tax Act, 1961 has been amended several times, resulting in a complex and cumbersome tax code. To address this issue, the government has taken various steps to simplify and rationalise it.

3. The World Bank's Doing Business Report 2020 places India at 115th out of 190 countries in the "paying taxes" category, a significant ascent from its 169th ranking in 2009.



from the earlier indirect tax regime to 1.40 crores as on June 2023. This signifies that by simplifying the tax filing process, providing clearer guidelines and leveraging automation, taxpayers are more likely to comply willingly.

### Simplifying Income Tax Laws

The Indian government has undertaken numerous initiatives to simplify Customs law compliance as well. These actions encompass process optimization, adopting a risk-centric approach to prioritise high-risk shipments,

comprehensive, destination-based, value-added tax that applies to most goods and services in India. GST has brought about a paradigm shift in the indirect tax system, as it has created a single national market, eliminated cascading of taxes, reduced tax evasion, widened the tax base and increased revenue collections. GST has also introduced several features that enhance compliance by design, such as:

- GST Council which decides on rates, rules and exemptions of GST among central and state governments
- Common portal for registration, filing, payment, and refund of GST
- Unique identification number (GSTIN) for each taxpayer
- Invoice matching mechanism that verifies transactions between buyers and sellers
- Electronic way bill (e-Way bill) system that tracks the movement of goods

The deficiencies in tax compliance and audit mechanisms extend beyond tax issues, impacting vital areas like education and healthcare due to suboptimal tax collections. This global problem is exemplified in the European Union (EU), where even advanced VAT systems face challenges

- Reverse charge mechanism that shifts the liability to pay tax from the supplier to the recipient in certain cases
- Anti-profiteering authority that ensures that the benefits of GST are passed on to the consumers

By virtue of the various measures taken by the government, the number of registered and active taxpayers in GST has increased from 44 lakhs in 2017 which migrated to GST

and instituting a unified clearance system for quicker processing. Trade facilitation endeavours aim to curtail transaction expenses, boost importer and exporter ease of operation, and stress Customs regulation clarity and consistency. Leveraging technology in Customs activities, such as electronic payment methods and document submissions, amplifies efficiency while reducing manual intervention. India's Customs Electronic Data Interchange (EDI) system has greatly aided

businesses by expediting trade procedures, digitizing documentation, and offering online tracking, resulting in heightened efficiency, transparency, and competitiveness in the global market.

Another important reform in the Indian tax system is the simplification of the Income Tax laws and procedures. The Income Tax Act, 1961 has been amended several times over the years, resulting in a complex and cumbersome tax code. To address this issue, the government has taken various steps to simplify and rationalise the income tax system, such as:

- Reducing the corporate tax rate from 30% to 22% for domestic companies and from 40% to 15%, for new manufacturing companies
- Introducing an optional new regime for individual taxpayers with lower tax rates but fewer deductions and exemptions
- Abolishing the dividend distribution tax and taxing dividends in the hands of shareholders
- Extending various incentives and reliefs for start-ups, small businesses, senior citizens, and salaried employees
- Launching a faceless assessment scheme that eliminates physical interface between taxpayers and tax officers
- Implementing e-assessment system that enables online filing, processing and verification of income tax returns

## Technological advancements, such as blockchain, cryptocurrencies, and digital payment systems, introduce fresh tax challenges and opportunities. To maintain tax compliance and equity in the digital realm, updated reporting and enforcement mechanisms are essential

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- Introducing a pre-filled return Form that auto-populates data from various sources such as banks, employers, mutual funds, etc.
- Providing a dispute resolution mechanism that allows taxpayers to settle pending cases through mediation or arbitration

These reforms have made the income tax system more simple, transparent, fair and taxpayer friendly. They have also increased compliance by reducing litigation, enhancing voluntary disclosure, improving taxpayer services and creating a trust-based relationship between taxpayers and tax authorities.

Compliance by design, as evidenced in the data, offers substantial benefits for GST and Income Tax adherence. By seamlessly integrating compliance considerations into core systems and processes, it boosts compliance rates for both businesses and individuals. This approach expands the tax base, reduces leaks, and lowers compliance costs for taxpayers and authorities, saving time, money, and resources. It enhances economic efficiency, reducing

distortions and fostering growth while promoting good governance, accountability, and reducing corruption. Additionally, it bolsters India's competitiveness, improving ease of doing business and global rankings.

### **India's Remarkable**

improvement in the Ease of Doing Business rankings, particularly regarding tax payments, underscores the positive impact of its tax compliance initiatives. The World Bank's Doing Business Report 2020 places India at 115th out of 190 countries in the "paying taxes" category, a significant ascent from its 169th ranking in 2009. This improvement reflects simplified tax processes and reduced compliance requirements, benefiting consumers, MSMEs, and new businesses. The government's focus on digitization and single-window clearance for GST aligns with its long-standing commitment to ease of doing business. From a Customs standpoint, India also strives to enhance its rankings through measures like risk management systems and post-clearance audits. This concerted effort has not only improved India's business environment but also

bolstered its global competitiveness.

However, compliance by design is not a panacea for all challenges faced by the Indian tax system. There are still some areas that need further improvement or reforms such as in the matters of automation, helping MSMEs and making sure that simplification does not lead to manipulation of the system.

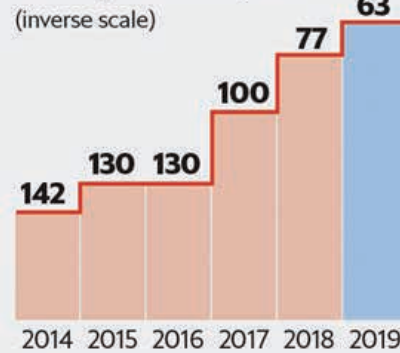
### Role of Automation and Its Limitations

Automation is essential for maintaining adherence to GST and Customs requirements since it reduces errors, saves time, and increases efficiency. It makes seamless data analysis, reporting, and exchange among stakeholders possible. Automation, by itself, is insufficient. To stop fraud, technology abuse, and non-compliance with changing regulations, human involvement and monitoring are still crucial. Human intervention assures data accuracy, deals with anomalies, and gives taxpayers and officials direction. Monitoring system performance, ensuring legal and ethical compliance, and allowing adjustments in response to shifting needs are all aspects of oversight. For instance, the Automated Return Scrutiny Module (ARSM) of the CBIC emphasises the synergy between automation and human input for the best compliance outcomes while still requiring manual verification and feedback.

Big businesses have more resources and capabilities to comply with the tax system than small and medium enterprises

### A steady climb

India's Doing Business ranking over the years (inverse scale)



### India ranking in categories

	2018	2019
<b>THE GOOD</b>		
Dealing with construction permits	52	27
Trading across borders	80	68
Resolving insolvency	108	52
<b>THE BAD</b>		
Protecting minority investors	7	13
Getting credit	22	25
Enforcing contracts	163	163

Source: World Bank

(SMEs) or micro, small and medium enterprises (MSMEs). SMEs/MSMEs face many challenges and difficulties in complying with their tax obligations, especially under the GST regime. Some of these challenges are:

- Lack of awareness and understanding of the GST rules and regulations which are often complex and dynamic.
- High compliance costs and time-consuming processes, such as registration, filing of returns, payment of taxes, claiming of refunds, etc.
- Limited access to credit, technology, and skilled manpower, which are essential for adopting digitalization and automation.
- Difficulty in availing the benefits and relief provided by the government, such as threshold exemptions, composition scheme, quarterly filing, etc.

There is also the need to provide more support and

assistance to SMEs/MSMEs to help them comply with their tax obligations. Some possible measures include:

- Simplifying GST rules and procedures and providing clear and timely guidance to taxpayers
- Enhancing capacity building and awareness programs for SMEs/MSMEs and providing them with online tools and resources
- Facilitating access to credit, technology and skilled manpower for SMEs/MSMEs and encouraging them to adopt digitalization and automation
- Streamlining benefits and relief provided by the government and ensuring their effective implementation and monitoring

It is crucial to ensure that process simplification doesn't enable tax defaulters to exploit the system. In the realms of GST and Customs, a delicate equilibrium must be struck between facilitating compliance and

detering non-compliance. The government has taken steps to simplify compliance procedures, like streamlining the IGST refund and credit claim process, reducing the taxpayer's burden. However, there's a risk of exploitation, exemplified by fraudulent input tax credit claims through fake invoices in GST. To counter this, measures like e-invoicing and e-way bills have been introduced. Similarly, Customs authorities have implemented risk management systems and post-clearance audits. Striking this balance between ease and

businesses operate and generate revenue. Traditional tax laws may struggle to capture income from multinational digital companies operating across borders, leading to potential tax avoidance. To address this, countries have been working on formulating digital taxation rules that account for cross-border digital services and intangible assets.

Industries undergoing rapid growth or transformation demand tax laws tailored to their unique characteristics. Consider the shift to renewable energy, which requires targeted tax incentives to

the 50th and 51st GST Council meetings proposed a 28% GST on online gaming activities involving contributions or participation fees, highlighting the distinction between scenarios with and without monetary transactions. As the online gaming industry evolves, the government must adapt swiftly to support its growth and sustainability while ensuring fair taxation.

This adaptation is crucial to strike a balance between tax fairness and the industry's objectives.

Ensuring an agile and forward-looking tax policy is vital to successfully navigate the complexities of the modern economic landscape. Governments must continuously update tax laws to align with global trends and evolving business environments, fostering economic growth, fair taxation, and a resilient tax framework for future challenges.

While India's tax system has made commendable progress in enhancing compliance through design-oriented approaches, there is still room for innovation to match dynamic economic realities. Compliance by design aims to create a tax system embodying fairness, efficiency, and responsiveness, instilling responsibility and trust in taxpayers while simplifying procedures and reducing non-compliance. This approach not only aids revenue collection but also fosters cooperation, ensuring a sustainable and prosperous economic future. Thus, policymakers must persist in their mission to establish a robust and adaptable tax ecosystem. **T**

## India's Customs Electronic Data Interchange (EDI) system has greatly aided businesses by expediting trade procedures, digitizing documentation, and offering online tracking, resulting in heightened efficiency, transparency, and competitiveness in the global market

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deterrence remains pivotal.

### Changing Economic Landscape

In the rapidly evolving global economy, tax laws must keep pace with dynamic changes in the economic profile, business practices and technology landscape. Failure to do so can quickly render tax regulations outdated and ineffective. It is essential to ensure that tax changes remain aligned with emerging global trends and the ever-evolving business environment, to maintain an efficient and fair tax system. For instance, the advent of the digital economy has transformed the way

encourage investments in sustainable technologies while phasing out subsidies for polluting industries. Technological advancements, such as blockchain, cryptocurrencies, and digital payment systems, introduce fresh tax challenges and opportunities. To maintain tax compliance and equity in the digital realm, updated reporting and enforcement mechanisms are essential.

The gig economy's rise has popularised freelancers and independent contractors, necessitating flexible tax rules that ensure compliance. Recently,

# DESIGN IMPACT ON GST COMPLIANCE

The unique design of GST revolves around promoting self-declaration of tax liability and tax credits, reducing the interface between taxpayers and tax administration, and emphasising online filing of various forms and returns. The period of six years since its implementation has provided an opportunity to conduct a preliminary examination of the law's design and assess its functional outcome on taxpayer compliance



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**P**OST-INDEPENDENT India has not witnessed a tax reform of the nature and scale as Goods and Services Tax (GST). Nature of the reform is so unique that for the first time, sovereign taxation powers albeit to a limited extent were ceded by States for the grand bargain. The political adventurism of GST is no less significant than the economic dimension placing Centre-State fiscal relations on the precipice as the debates in the Parliament preceding its introduction and the deliberations of GST Council in various meetings reveal. Scale is unprecedented for, the merger of myriad levies by multiple tiers of government entrenched in public finances is otherwise unimaginable. The period of six years of implementation of such a new tax system is reasonable to conduct a preliminary examination of the design – structural analysis of the law which forms the fulcrum of the system to draw certain conclusions on the functional outcome of compliance.

### **GST Law's Structure**

The emphasis on self-declaration of tax liability based on self-assessment, availment of tax credits by taxpayers without being subject to prior verification, maintenance of records and documents as mandated by business requirements and reduction of interface between the taxpayers and tax administration has been part of the campaign for tax reforms since the 1990s. GST law has been drafted to further such methods exemplified by the thrust on online

filing of every form, return, declaration, reply, appeal, etc, without corresponding requirement to submit physical copies subsequently to the tax administration. The trust sought to be placed on self-discipline of taxpayers is manifest when the statutory provisions ensure grant of registration without physical verification and deemed grant in case of absence of response from tax administration within prescribed period, availment of input tax credit on self-declaration basis in the periodical returns after excluding the ineligible items, adoption of value for tax payment after inclusions and exclusions as per own judgement and grant of refund in situations not covered for such benefit in the erstwhile tax regime like refund of accumulated tax credits due to inverted tax structure. Inducing compliance by placing confidence in taxpayer's

behaviour through liberalised statutory procedures has been one of the pillars of the design – the way in which the law has been structured.

The shift to the new tax regime being very major and such regime being administered electronically for routine matters, GST law has been designed to take care of certain specific issues. These include transition issues like transfer of balance tax credits of the previous tax regime to GST regime, relaxations in compliances like extension of due dates for filing returns, waiver or reduction of late fee for delay in filing returns, limited amnesty in cases like one time opportunity to seek revocation of cancelled registration and extension of time-limit for availing tax credit during the first year of implementation through statutory devices like removal of difficulties order.

## SNAPSHOTS

1. GST law addresses issues like transition issues, relaxation of compliance requirements, limited amnesty for revocation of cancelled registrations, and extension of tax credit filing deadlines.

2. Various players influence the design of the tax system which push the GST Council to eliminate exemptions, raise taxes on certain goods and services, and alter rates regularly.

3. GST law provides for advance ruling binding or applicable only to the taxpayer who seeks it and the issue on which ruling is delivered is not relevant to other similarly placed taxpayers.



The gulf between the system and the function is a fundamental lacuna. While the legal provisions may be grandiosely designed to convey the intention as stated in the para above, at the implementation level, divergence emerges. Refund claims or appeals are filed online but tax authorities may insist on sharing printed copies of documents simultaneously. Input tax credit may be professed as liberal but the restrictions as part of the law may have a frustrating effect on

the taxpayers leading to mistrust. More than restrictions on availing tax credits, interpretation of such limitations by tax administration admonishing taxpayers from taking benefits even when they are reasonably considered as eligible, creates the dichotomy in perception on compliance. The tax administration suspects the industry as taking undue benefits while the taxpayers harbour the notion of bureaucracy having revenue bias evidenced by denial of due tax credits and compelling

taxpayers to pay back the credits. This process leads to the natural outcome of litigation and contests often tending to be long-drawn impacting resources of both the taxpayers and the State. Litigation cost as an expense is sought to be recouped by tax credit and refund claims which may be aggressive further fuelling the adversarial climate and negatively influencing compliances.

Another area of divergence can be seen in measures of extreme





Electronic way bill or e-way bill system has been designed to ensure compliance with the requirement to issue document like tax invoice before movement of goods so that taxable transactions are not undertaken without generating the prescribed document and without reporting the same in the GST portal but on the ground lot of resentment prevails due to harassment and indiscriminate application of the provisions

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nature like cancellation of registration for certain lapses without following due process, provisionally attaching bank account and other properties of taxpayers even while initiating investigations, seeking to recover tax dues as adjudged in assessment orders before expiry of time-limit against such orders and invocation of provisions on higher penalties in cases where apparently no mala fide is involved. The code provides for such powers and the tax bureaucracy is never apologetic in large-scale use of draconian provisions compelling the judiciary to intervene to rein in the excesses. The genesis lies in deviation in compliance behaviour as perceived by the tax administration and the design of the law assists the State more in policing such deviant tendencies.

Electronic way bill or e-way bill system has been designed to ensure compliance with the requirement to issue document like tax invoice before movement of goods so that taxable

transactions are not undertaken without generating the prescribed document and without reporting the same in the GST portal but on the ground lot of resentment prevails due to harassment and indiscriminate application of the provisions. Availability of goods in time is key to sustenance of production chain and detention of goods en route to e-way bill related issues disrupts the entire chain. The presence of officers on the road to stop vehicles is widely reported while the GST system was designed to move from physical check posts, serpentine queues of trucks waiting to pass through and resultant drain on economy. The gap between design and implementation points to rectifiable flaws in the design to prevent misuse of powers and encourage a more nuanced approach by tax administration.

A study on the issue of cross-charge is imperative so that compliance cost v. collection cost can be examined. The deeming fiction in Central Goods and

Services Tax Act (CGST Act) mandates payment of tax on adoption of fictitious values when head office or corporate office provides support to units or branches in different States. Exceptions to this structure of deeming transactions without consideration as supply and thus liable to GST need tinkering of the design at least after six years of GST because at the end of the day no real revenue accrues to the government through such transactions.

### **System Influence on Design**

When the design of tax system is discussed, it includes not only the law but also the tax administration, tax knowledge of taxpayers, interpretation of tax law by the judiciary and the role played by political or constitutional institutions like the legislature both at the Union and in the States and the GST Council. The presence of multiple factors point to reverse effect as well – the impact of various players in the system on the design. This can be better understood by the compulsions on the revenue front faced by the Union and the States. Such compulsions push the GST Council to eliminate exemptions, increase tax rate on certain goods and services and non-acceptance of demands to cut tax rates (like the GST rate of 28% on cement) as part of rationalisation exercise, altering the rate structure periodically. Debate on dilution of canons of taxation like certainty apart, the larger economic demands incessantly impact the



The GST law has provision for compliance rating, but the provision is yet to be implemented. The absence of such a mechanism has resulted in mistrust over the scheme of tax credits, and litigation on such issues has been rising at an alarming rate

design of GST. Reverting to the agenda of this paper, such frequent changes cause temporary distortions in terms of compliances but the information overflow through social media and other platforms guarantee taxpayers comply with the modified structure within the shortest time.

#### **Thrust on Digital Design**

GST is digitally driven or the entire implementation is

governed through electronic / online means. Thrust being on e-governance which swears by minimal interface, the time available from multiple visits to a tax office and taking copies of various documents can be used for business. Availability of more time for business necessarily leads to improving or doing the business better leading to better margins thus swelling the coffers of the government. Such hypothesis needs to be

empirically tested in the GST regime which is outside the scope of this paper. However, reasonable conclusions can be drawn based on experience and interactions with the members of industry and it cannot be discarded. Another indirect consequence is greener tax administration which again may need independent analysis for definitive conclusions. Relationship between taxpayer and tax administration despite the endeavour to shift to facilitation remains adversarial. Reduction of such interactions dents adversity to a limited extent thus contributing marginally to better compliance behaviour.

#### **Quid Pro Quo of Compliance Behaviour**

When tax is paid, there is a legitimate expectation of the taxpayer that he will get something in return – in the form of improved public utilities like better roads, infrastructure, etc. It is this expectation that fuels compliance or such perception is directly proportional to compliance – higher the perception that the taxpayer does get benefits from the government in return for the taxes paid, higher will be the compliance. If the government is not able to demonstrate that public expenditure has benefitted taxpayers and such expenditure has been made possible due to tax payments, then the incentive to comply recedes. The penal nature of tax laws providing for hefty penalties for non-compliance deters non-compliance but fails to reverse

the perception of absence of quid pro quo. It becomes a matter of cost-benefit analysis – legal proceedings that may be undertaken at a distant date versus the benefits obtained currently due to dilution in compliances. Recognizing such a phenomenon, public outreach campaigns and awareness programmes are organised even while penal provisions under GST law are invoked frequently like arrest and prosecution of suspected tax evaders or imposing heavy penalties in normal assessment or adjudication proceedings.

Incarceration is the punishment for offences against the State (though the tax department is like a private complainant before courts) along with the undeclared objective of ensuring compliance by deterrence. The fence-sitters are effectively made to fall in line though hardcore evaders never cease innovating modus operandi to evade.

### **Incentivising Compliance**

GST law has provision for compliance rating. Based on certain metrics like timely filing and proper payment of taxes, such rating is to be given to enable the parties doing business an idea of trustworthiness in commercial dealings as well. The provision is yet to be implemented. When the law compels a taxpayer to avail tax credit only if the supplier is compliant i.e., he deposits the tax to government account, it is sine qua non to provide appropriate mechanism to ascertain compliance level of the suppliers.

Absence of such a facility has resulted in a lot of mistrust over the scheme of tax credits and litigation on such issues has been rising at an alarming rate.


Capacity issues of tax administration particularly at the State level have placed large taxpayers on the toes who are largely compliant considering the business reputation and standing in the market. The fault in the design is manifest when ill-informed bureaucracy unleashes powers meant for habitual evaders on such taxpayers. Law cannot be discriminatory and

issues, CBIC as a body at the apex level should be empowered to issue public rulings as the circulars issued presently for clarifying issues are meant for the tax administration and are not binding on taxpayers. Such a mechanism will ensure uniformity in implementation besides assuring a certain level of certainty. The effect of such measures on improving compliance cannot be understated. Compliance is a product of several factors and design of tax law is the starting point. Revisiting and making

**To clarify complex issues, CBIC as a body at the apex level should be empowered to issue public rulings as the circulars issued presently for clarifying issues are meant for the tax administration and are not binding on taxpayers. Such a mechanism will ensure uniformity in implementation besides assuring a certain level of certainty**

cannot be seen as extending preferential treatment to certain class of taxpayers but the misdirected application calls for statutory safeguards for taxpayers not based on size but based on compliance history.

Public ruling has been often cited in discussions on tax reforms as GST law provides for advance ruling binding or applicable only to the taxpayer who seeks it and the issue on which ruling is delivered is not relevant to other similarly placed taxpayers. To clarify complex

essential modifications to the design will guarantee that the law remains dynamic to orient itself to taxpayer facilitation without compromising the revenue objectives. Caution is required as to frequency as otherwise such processes will be counter-productive. This paper has attempted to provide a broad outline based on major issues encountered in the first six years of implementation of GST and granular analysis would be required to reduce the agenda to action points. 

# FROM INSPECTOR RAAJ TO IT-ENABLED COMPLIANCE

India's journey in the realm of taxation has seen remarkable transformations, from the days of Inspector Raaj, where control over industry was absolute, to the modern era of information technology-enabled compliance. Over the years, India has witnessed several changes and reforms in its indirect tax system, from the introduction of excise duty and customs duty in 1944 to the implementation of Goods and Services Tax in 2017



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**I**NDIA has come a long way from Inspector Raaj (rule) having complete control over industry in the indirect taxation field since the levy of taxes pre-independence era in 1947, to an information technology-enabled compliance regime. Let's first trace the history of the levy of indirect taxes in India.

## **Era of Inspector Raaj**

In the year 1944 various product-specific legislation levying excise duty on goods were brought under one single legislation called the Central Excises and Salt Act, 1944, which later became the Central Excise Act, 1944 (Excise Act). Initially, excise duty was levied on excisable goods based on classification and rate provided in the Schedule to the Excise Act, which was replaced by the Central Excise Tariff Act, 1985 (Excise Tariff) in 1986. The Excise Tariff like its first cousin the Customs Tariff Act, 1975 (Customs Tariff), provided for the classification and rate of customs duty on imported products and was aligned to the Harmonised System of Nomenclature (HSN) of the World Customs Organisation.

Between 1944 and 1969, the Excise Act primarily revolved around exerting physical control over manufacturers and producers of excisable goods. During this era, assesseees were obligated to extend an invitation to an Inspector to visit their factory, and the clearance of excisable goods hinged on the signing of a gate pass. Meanwhile, manufacturers and producers found themselves entirely



subject to the Inspector's discretion when it came to permitting the movement of excise goods from licensed premises to buyers.

### **Self-Removal Procedure (SRP) in 1969**

It wasn't until 1969 that a significant shift occurred with the introduction of the self-removal procedure (SRP) under the Excise Act, heralding much-needed administrative reforms in excise duty management. With SRP, manufacturers gained the authority to pay excise duty and release goods from the factory after securing the Inspector's counter-signed gate pass book. This innovation, however, sparked concerns within the tax administration, as there was apprehension that SRP might lead to tax evasion. This period was marked by a pervasive sense of mistrust between taxpayers and tax administrators, a sentiment that still

lingers today.

During this timeframe, the Central Board of Indirect Taxes and Customs (CBIC), previously known as the Central Board of Excise and Customs, the principal body overseeing indirect taxes under the Ministry of Finance, had to issue directives to departmental officers. They were instructed to authenticate complete booklets of 50 gate passes instead of verifying only a few at a time, considering the challenges faced by assesseees. Subsequently, a series of reforms were swiftly implemented in excise duty administration, including the adoption of self-assessment and the replacement of gate passes with manufacturer's invoices in 1994, among other changes.

### **Time of Modvat and Cenvat**

Initially, there was no concept of pass-through of excise duty paid on inputs of manufactured goods under the Excise Act. Proforma Credit was

## **SNAPSHOTS**

1. A comprehensive procedure called Modvat Credit was introduced in the Excise Act and rules thereof to provide for the grant of credit of excise duty paid on raw materials used in the manufacture of excisable goods.

2. It wasn't until 1969 that a significant shift occurred with the introduction of the self-removal procedure (SRP) under the Excise Act, heralding much-needed administrative reforms in excise duty management.

3. With the introduction of the levy of Service Tax in 1994, initially, there was no provision for a grant of credit of service tax paid on input services, which was introduced in 2002 with a grant of input credit within the same service and thereafter broad-banding inter-services.

introduced under which excise duty paid on specific raw materials for use in the manufacture of specific final products was allowed. In addition, a notification issued in 1979 provided for the set-off of excise duty paid on inputs falling under Tariff Item 68 of the Schedule to the Excise Act, used for the manufacture of excisable goods.

Thereafter, a comprehensive procedure called Modvat Credit was introduced in the Excise Act and rules thereof to provide for the grant of credit of excise duty paid on raw materials used in the manufacture of excisable goods. Though initially under Modvat credit, the Range Superintendent of excisable unit availing Modvat credit on gate passes, used to send the same for verification to his counterpart having jurisdiction of the unit issuing such gate passes.

With the introduction of the levy of Service Tax in 1994, initially, there was no provision for a grant of credit of service tax paid on input services, which was introduced in 2002 with a grant of input credit within the same service and thereafter broad-banding inter-services. In 2004 with the introduction of the Cenvat Credit Rules, 2004 (Credit Rules), complete fungibility of grant of credit of excise duty paid on inputs and capital goods and service tax paid on input taxable services, to be set off against excise duty payable on manufactured goods and service tax payable on taxable services, was achieved.

### **The Transition from Sales**

### **Tax to Value-Added Tax (VAT)**

Tax on the sale of goods being a State subject, each State had separate Sales Tax Acts with separate schedules of taxes leviable for each State, which was replaced with value-added tax (VAT) from 2003 onwards. Still, sales tax or VAT was being levied differentially in different States and only inter-state sales were covered by the Central Sales Tax Act, 1956, where tax was collected by the originating State and again on the sale of goods in the recipient State Tax was levied under such State Sales Tax Act. During the Sales Tax and VAT regime, the

have different legislation, both are tied with an umbilical cord to a mother called the GST Council, comprising the Federal and the State Finance Ministers. GST legislation brought in a true system of pass-through of taxes paid on inputs and capital goods on the supply of final products or services, covering the whole spectrum of the supply chain starting with producers/ importers, warehouse keepers, wholesales and other intermediaries up to retailers. In addition, GST also took full advantage of advanced technology and built-in compliance by design in administration thereof.

Between 1944 and 1969, the Excise Act primarily revolved around exerting physical control over manufacturers and producers of excisable goods. During this era, assesseees were obligated to extend an invitation to an Inspector to visit their factory, and the clearance of excisable goods hinged on the signing of a gate pass

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assesseees were at the mercy of State tax authorities for the issue of various statutory forms Form C or Form F, etc. to avail tax concessions or exemptions concerning specified transactions.

After much political and legal maneuvering, the whole country was unified by a common tax called Goods and Services Tax (GST) in 2017. While still under the GST regime Centre and State

### **Unification of Indirect Taxes under One Nation One Tax**

Since ancient times a duel has been going on between tax administration and taxpayers. While the tax administration wanted to collect maximum taxes without caring about the legitimacy of the tax demand, on the other hand, taxpayers wanted to pay minimum taxes. Of course, tax evaders were always looking

for loopholes in taxation laws to profit at the cost of the exchequer. Thus, tax administration and tax evaders were on a warpath and genuine taxpayers were caught in the crossfire.

GST legislation has been drafted around compliance by design by taxpayers – providing for filing a number of returns online on a Common Portal; matching of returns of suppliers and recipients to avoid getting illegal advantage in the form of input tax credit (ITC), etc. At the time of migration to GST, a huge volume of data being uploaded


overwhelmed the Common Portal, leading to routine technical glitches, which have largely stabilised over the years.

The unique design of GST legislation mandating uploading of all documents and filing multiple returns by taxpayers has empowered tax administrators to use technology and artificial intelligence to identify and pick up a needle in the haystack. Nowadays, on account of the compliance-oriented design of GST legislation, filing of various returns and uploading of large volumes of data on the Common

Portal, a large number of tax evaders are being caught and brought to justice.

Similarly, on the customs side, the CBIC has introduced various schemes in enforcing compliance and periodically aligned the Customs Act and rules and regulations with technological advancements and taken advantage of artificial intelligence, following best common international practices and exchange of information/ data among tax administrators of countries across the globe.

However, the Customs administration is still following the old dictum ‘in case of doubt assess at the highest rate’ or trying to classify imported goods under a tariff entry having a higher rate of Duty or denying concessional rate of duty under a notification on one pretext or the other or raking up same issues again after some time. etc. The list of disputes is long and points to only one direction – Customs authorities to change the colonial mindset and become a facilitator rather than a gatekeeper.

All these initiatives of making compliance a central theme of tax legislation have led to buoyancy in tax collection over the years, incentivizing tax administration to focus on unscrupulous tax evaders, and providing non-adversarial tax administration to honest taxpayers. While the war between tax administration and tax evaders will continue perpetually, compliance by design of taxation laws will go a long way in ushering in compliant taxpayers and fueling the economic growth of India. 



# ADDRESSING ADJUDICATION FALLOUT FOR EASE OF COMPLIANCE

Certainty in taxation is a non-derogable sine qua non for the ease of compliance. Its natural corollary is that taxation law should be simple and its wording unambiguous, leaving no room for varied interpretations, even by those prone to hairsplitting







## R.K. SINGH

Former Member, CESTAT

**C**ERTAINTY in taxation is a non-derogable sine qua non for the ease of compliance. Its natural corollary is that taxation law should be simple and its wording unambiguous, leaving no room for varied interpretations, even by those prone to hairsplitting.

Adjudication, both quasi judicial and judicial, of taxation disputes helps clarify and/or settle the interpretation of the provisions of taxation laws and thereby enhance certainty. Therefore, adjudicatory issues assume special importance in the context of the ease of compliance.

### Enhancing Certainty for Taxpayers

Unlike non-tax-related litigation between two parties, where the outcome essentially affects only the litigants, in taxation disputes, particularly those involving indirect taxes, a judgement in respect of an assessee, even by a single Member bench of CESTAT (Customs, Excise and Service Tax Appellate Tribunal) directly impacts the similarly situated assesseees all over India. Thus, conflicting decisions by CESTAT/ High Courts or their split

verdicts unsettle the law, sow confusion and increase uncertainty for assesseees nationwide. Such uncertainty and confusion are exacerbated when the Supreme Court sets aside its earlier judgments or renders split verdicts. Indeed, even the mere admission of a review petition by the Supreme Court creates uncertainty. Indeed, even a mere admission of a review petition by the Supreme Court causes uncertainty. Assesseees' travails caused by such uncertainty and confusion, are further aggravated because, pending the resolution of the situation created by the conflicting/ split verdicts, the department starts issuing periodical show cause notices selectively based on the interpretations favourable to it, which are then kept pending in the so-called call book awaiting the final resolution.

### Need for Clarity

In view of the fact that in the GST law the period within which the primary adjudication is to be completed has been prescribed, (unlike in the Central Excise or Service Tax laws where the time limit was prescribed for issuing the show cause notice and not for completing primary adjudication), a provision has been incorporated in the Goods and Services Tax Act to exclude the period for which the case had to be cold-stored in the call book because on the issue involved the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the

## SNAPSHOTS

1. The role of adjudication, both quasi-judicial and judicial, in resolving taxation disputes is pivotal in achieving this desired certainty. It serves as the lighthouse, guiding the interpretation of tax provisions.

2. Judicial indiscipline is another adjudicatory issue which adds to the woes of the assesseees with regard to compliance. Settled principles of law are routinely ignored with impunity.

3. It goes without saying that given the dynamic nature of law, diverse and changing nature of economy and such a vast country like ours necessitating several benches of CESTAT and several High Courts.

Appellate Authority or the Appellate Tribunal or the High Court is pending. The net result is that the Damocles sword in form of periodical show cause notices keeps hanging on the assesseees which are faced with the Hobson's choice of either pay tax under protest thereby reserving the right to seek refund (which, if granted, will be without interest) or wait for the final resolution of the conflict which entails the risk of the interest burden (in addition to the unlikelihood of being able to recover the tax from the customers) in case the decision goes in favour of the department. In short, in either scenario, it is the hapless assessee which is condemned to bear the brunt.

The most helpless situation for an assessee arises when the apex court reverses its earlier decision, often after several years, as that results either in unexpected liability for the past 'normal' period which can hardly be passed on the customers, or, worse, in loss of the amount paid as tax in the interregnum years in the wake of the earlier (subsequently reversed) decision because the refund, and that too without interest, can be claimed only for one year. As it can, and indeed normally does, take several years for resolution of the conflicting / split judgments, the uncertainty and the associated adverse financial implications faced by the assesseees can at times be so grave as to prove fatal (or nearly so) for the small / fledgling businesses.

### Woes of Judicial Indiscipline

Judicial indiscipline is yet another adjudicatory issue which adds to the woes of the assesseees with regard to compliance. Settled principles of law are routinely ignored with impunity. For example, the allegations of suppression or wilful misstatement of facts are callously made in the show cause notices, at times to cover the indolence of the officers, raising demands for the extended period of limitation which also invite heavier penalties and are routinely sustained by the departmental adjudicating officers upto to the level of Commissioner/ Commissioner(A) (save exceptions) ignoring the binding judicial precedents or contrivedly distinguishing them. Sadly, not seldomly, the said exceptions (amongst the

adjudicating officers), instead of being felicitated for being judicious, have to potentially face vigilance enquiry for 'dropping' the demand. The net result is that the assesseees have come to resign to their fate and accept as a given that the adjudication process at the level of departmental officers has reduced to near farce. Indeed, a Finance Minister, on being asked (by me) why there was a continuous downward slide in the respect for the indirect tax department, remarked that the most important reason for that was the 'near absence' of judicious adjudication upto to the level of the Commissioner.

### Impacts on Tax Compliance

It goes without saying that given the dynamic nature of law,



diverse and changing nature of economy and such a vast country like ours necessitating several benches of CESTAT and several High Courts, it is only to be expected that sometimes there shall be divergence in the interpretation of law by CESTAT benches/ High Courts, there shall be split judgements, and even the Supreme Court will fall into error and as a remedial measure, set aside its own (earlier) orders. Therefore a certain amount of compliance complications due to the adjudicatory process is inevitable. What are unacceptable though are (i) the prevalent revenue bias leading to injudicious primary adjudication orders, and (ii) the prolonged travails caused to the assesseees by the undue delay in the disposal of appeals and in the resolution of the uncertainties engendered by conflicting/split verdicts.

As regards the possible argument that such delays and adjudicatory issues are not unique to the taxation cases, it has to be appreciated that, as already stated, unlike other types of cases, the delays in relation to

taxation cases do not add to the woes of the litigating assesseees alone; they add to the woes of all the similarly situated assesseees across the country and thereby cause irreversible harm to the economy at large. Therefore there exists a compelling case for giving top priority to the quick resolution of the taxation disputes and the uncertainties caused by the conflicting / split verdicts.

Narration of the adjudicatory issues, the resultant travails of the assesseees and the inimical impact on the economy is all very well. But is there a, or what is the, way out? Not rocket science though even if it was, India is capable of handling that too; Chandrayaan being only the latest proof of that. Given below are the suggestions which, though not entirely eliminate the said travails of the assesseees, will significantly reduce them, thereby resulting in improving compliance and reducing the cost thereof.

(I) For the reasons mentioned earlier, it is of utmost importance and in public interest that (a) appeals in the taxation matters

are heard and disposed of expeditiously at all levels, (b) more importantly, cases involving interpretational differences and split verdicts are disposed of nearly forthwith and (c) review petitions admitted by Supreme Court are accorded an urgency like no other.

(II) Judicious approach and judicial discipline in the departmental officers need to be inculcated, encouraged and felicitated and cases of blatant injudiciousness and judicial indiscipline, even if those result in demand- confirmation/ refund-rejection, must invite conspicuous consequences. Thoughtless decisions by the committee of (Chief) Commissioners to file appeals against orders essentially because those were in favour of the assesseees should be visited by more than a slap on the wrist; at present even that does not happen. This will, as a corollary, encourage the departmental officers to pass judicious orders.

All this will have five fold positive spin effect:  
(a) By and large it will bring justice to the assessee right at the first stage of adjudication, (b) Save similarly situated assesseees from the periodical show cause notices, (c) Reduce the number of appeals to and pendency in the higher quasi judicial/ judicial fora, (d) Expedite disposal of appeals and thereby reduce the period of uncertainty and its deleterious effects, and (e) Considerably reduce the none-too-insignificant cost of litigation for both, the assesseees and the government. 🇮🇳

**The most helpless situation for an assessee arises when the apex court reverses its earlier decision, often after several years, as that results either in unexpected liability for the past 'normal' period which can hardly be passed on the customers, or, worse, in loss of the amount paid as tax in the interregnum years in the wake of the earlier decision**

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# GST JOURNEY TOWARDS ADMINISTRATIVE SIMPLICITY

The introduction of the Goods and Services Tax in India was underpinned by the ambitious theory of 'One Nation One Tax,' with implicit trust in voluntary taxpayer compliance. The success of this model is intricately linked to the timely and accurate submission of returns, particularly concerning Input Tax Credit



**VIKRAM NANKANI**

Senior Advocate

**I**T is often said that simplicity is one of the key elements of a good tax administration. The challenge to translate this fundamental requirement in a behemoth like India is stupendous. India prides itself by unity in diversity. This however has its own set of challenges in founding a tax administration based on simplicity.

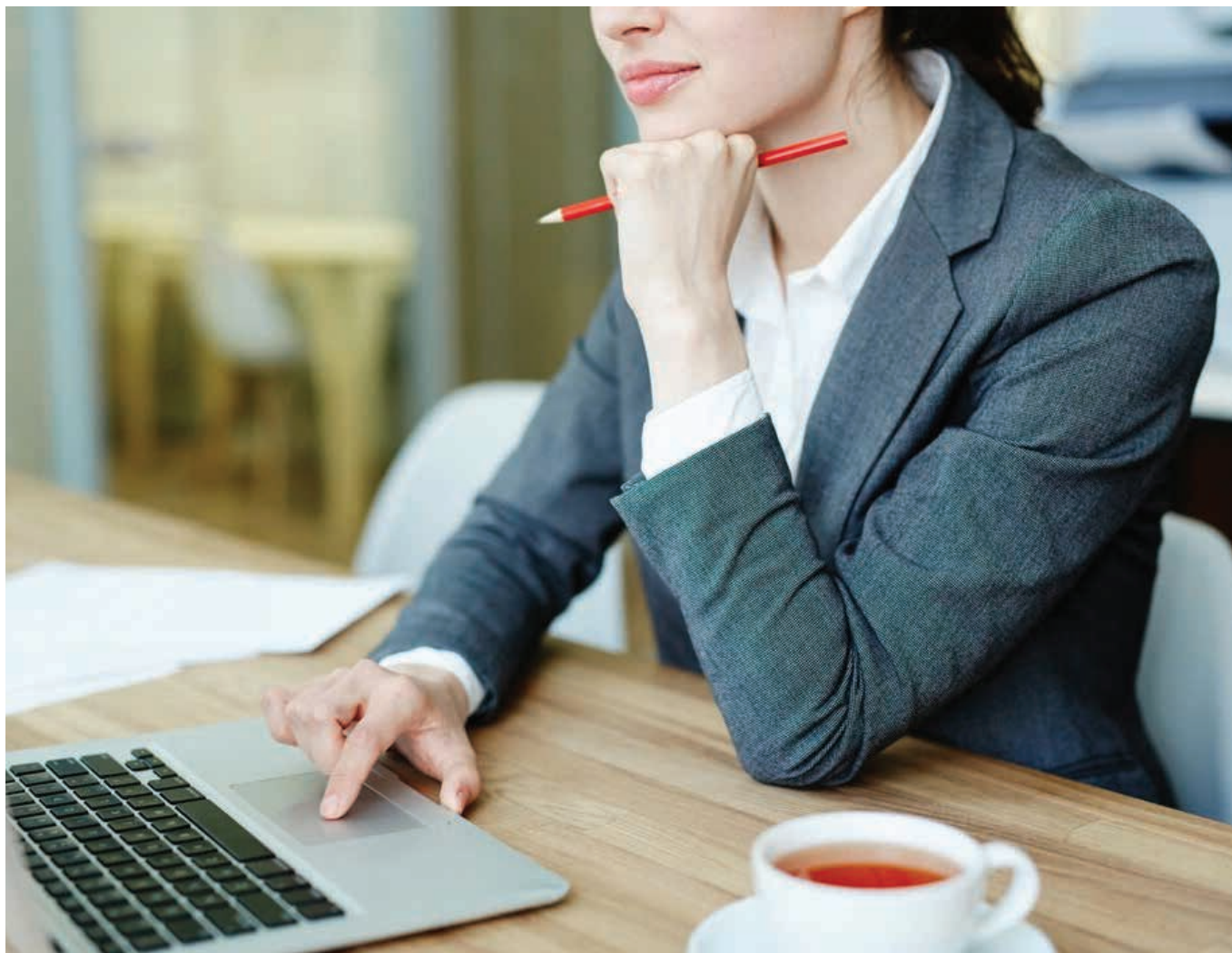
### **Vision of One Nation One Tax**

The GST announcement was founded on the theory of 'One Nation One Tax'. Implicit in this tagline is the voluntary compliance by the taxpayer. The success of the GST model hugely depends on how the assessee faithfully adheres to timelines, particularly in filing different returns, and more importantly, feeds in accurate information. After all, the credit mechanism is the bedrock of the GST framework.

The law therefore is designed in a manner that if there is a flaw in the first step, there is a chance to correct at the second or, for that matter, the third step. The baton has to be handed over securely for the relay race to be successfully completed.

### **Understanding the Myriad Forms**

Currently, there is a web of forms prescribed under GST. Leaving aside those taxpayers, who opt for payment of composition tax, the regular assessee has to file nearly 24 forms which includes returns



and the records mandatorily required to be maintained.

To begin with, every tax payer (supplier) files GSTR-1 containing details of the outward supply by the 11th day of the succeeding month. This triggers generation of an auto populated statement called GST-2A. This contains details of inward supplies/purchases in respect of which Input Tax Credit (ITC) is available to the recipient. It is a dynamic statement and is updated on new additions/amendments made by suppliers on a real time basis, which details are then reflected in the GSTR-2A of the recipient. Then there is GSTR-2B, which is an auto drafted static statement generated for a normal taxpayer on the basis of information furnished by a supplier in GSTR-1,

5 and 6. It indicates the availability and the non-availability of ITC against each document filed by the supplier made available on the 14th day of the succeeding month. This is finally followed by filing GSTR-3B by the 20th day of succeeding month containing details of inward and outward supplies, ITC availed, tax payable and tax paid.

### **Driven By Technology**

When the GST law was introduced, it was designed to be driven by technology. Technology is expected to increase compliance and make it a smooth process. It has also enhanced inter-departmental data feeding. This has enabled greater interplay between different agencies and assisted enquiries and investigations. The use of

## **SNAPSHOTS**

1. The GST announcement was founded on the theory of 'One Nation One Tax'. Implicit in this tagline is the voluntary compliance by the taxpayer.
2. The 101st Constitutional Amendment envisaged compensation cess to continue for five years, but despite lapse of the time, one has to see the end of compensation cess.
3. As reported, the cost of electricity in the manufacturing sector in India is high compared to other competitive economies like China.



Currently, there is a web of forms prescribed under GST. Leaving aside those taxpayers, who opt for payment of composition tax, the regular assessee has to file nearly 24 forms which includes returns and the records mandatorily required to be maintained

technology has boosted detection of cases in easily identifying tax evaders and fraudulent transactions paving the way for higher collections. The proof of the pudding, as they say, is in the eating. Monthly collections have crossed record levels and continue to do so.

As all compliances are to be made electronically, it is obvious that this needs a robust digital network. Like all new systems, GSTN has had its own share of teething glitches. But this article

is not about rating GSTN. It's about the design of the GST, as a tax model, in which compliance by one assessee is inextricably linked to the compliance by the other.

#### **Challenges in Data Accuracy**

The significance of compliance can hardly be emphasised. Inherent in the compliance are two benefits. The first is that the set off based on the available credit, when validly taken, will

bring down the cost of the transaction by taxing only the value addition, and secondly, this will ultimately reduce the incidence of tax on the ultimate consumer.

It may reasonably be argued, on the other hand, that there is over compliance required, and this makes the life of an assessee cumbersome which in turn has a direct impact on an increase in the cost of transaction.

One way to deal with this argument is to reduce the number of forms and documents to be filed. But the other and more serious one is a change of mindset by taxmen. Clamping down with iron fist, more so, for pure venial breaches like errors in e-Way bills is counterproductive.

Like all technologies, GSTN also operates on "garbage in garbage out principle". Hence data accuracy can hardly be emphasised. Currently, a major irritant to the seamless operation of Input Tax Credit (ITC) is data mismatch. Discrepancies in description, value or other material particulars act as barriers to the ease of availing credit. A Large amount of credit is lost in the system, and some solution to rectify the mistake at the earliest needs to be put in place.

Since cost of transaction is intertwined with compliances, one way to address the issue of cost while streamlining compliance requirements is to widen the net of GST. The present GST regime is fractured since the energy sector has been kept out. As reported, the cost of electricity in the manufacturing sector in

India is high compared to other competitive economies like China. Electricity duty goes entirely to the State, and no set-off is allowed since electricity, though considered as “goods”, is not covered by the GST laws. Similarly, the oil and gas sector is heavily taxed. The cost of transportation accounts for a substantial portion in a rupee towards the cost of transaction. 80% of the expenditure of the transport sector is towards fuel. India continues to mainly use road transportation followed by railways and the balance by other means of transportation such as coastal, shipping, air etc. There is a significant cost involved in transactions towards transportation and the consumption of energy. Taxes on these two sectors, namely, electricity and fuel, remain today unabsorbed by the credit mechanism being outside GST and needs to be imminently set off.

### **GST Exclusion and Impact on Cost**

It has been six years since the introduction of GST, but there is no move to bring the energy sector within the net of GST. Perhaps, there is also no political will to do so. At the time of introduction of GST, there was a provision for levy of compensation cess. This cess was introduced to safeguard the State revenues in case of a shortfall on account of migration from VAT/Sales-tax to GST. The 101st Constitutional Amendment envisaged compensation cess to continue for five years, but



**A major irritant to the seamless operation of Input Tax Credit (ITC) is data mismatch. Discrepancies in description, value or other material particulars act as barriers to the ease of availing credit. A Large amount of credit is lost in the system, and some solution to rectify the mistake at the earliest needs to be put in place**

despite lapse of the time, one has to see the end of compensation cess. Probably, compensation cess may enjoy an extended tenure in case the energy sector is also brought within the GST fold.

In this backdrop, the inclusion of goods kept out, particularly the energy sector, will offset the cost of compliance and coupled with reduction in the number of forms with improved GSTN, one can

expect rationalisation of tax rates and slabs. The compensation cess period is over but at the same time there has been consistently higher collection with record breaking sums in a few months. With an expected buoyant economy, there is an inextricable link between improved compliance and tax rationalisation compliance assumes greater significance. **T**

# CHALLENGES OF VICARIOUS LIABILITY IN GST: A CONTINUING STRUGGLE

GST's 2017 introduction reshaped India's taxation. It brought Input Tax Credit (ITC) but burdens recipients with supplier tax payment oversight, sparking legal debates for fair liability. ITC should protect bona fide recipients from supplier defaults







**TARUN GULATI**

Senior Advocate

**T**HE introduction of Goods and Services Tax (GST) in 2017 was, undoubtedly, one of the biggest tax reforms in India. It was also one of the most significant constitutional reforms the country has ever seen, at least in terms of taxation law. The entire legislative scheme of the Constitution was changed to introduce GST in as much as the Union Legislature and the State Legislatures were conferred concurrent legislative powers (See the Constitution of India, 1950, Article 246A.) to levy tax concurrently for the first time. *Union of India v. VKC Footsteps India (P) Ltd., 2021-TIOL-237-SC-GST.*

GST is special also in the sense that it is the first parliamentary legislation in which the concept of Input Tax Credit (ITC) has been statutorily engrafted. In the past, grants of ITC were left to the discretion of the executive government and rolled out in the form of subordinate legislations (See CENVAT Credit Rules, 2016). With the statutory recognition of ITC as a substantive right, it has become an integral part of the charging provision itself. In the absence of ITC, GST would lose its character as a value added tax. ITC

can, therefore, no longer be regarded as a mere concession which can be restricted by the executive by imposition of arbitrary conditions.

### **The Significance of Input Tax Credit (ITC)**

The design and structure of GST is such that ITC is granted to a recipient because of the payment of GST made by it to its supplier on anterior transactions. Once the recipient has paid the GST on the inputs and input services, can it be held liable for a default in compliance by the supplier? Would action against the recipient not be a clear case of double jeopardy? The Government is seeking to adopt an easy way out by allowing demands to be raised against recipients without proceeding against the defaulting suppliers. It is not as if there is no recourse against the defaulting supplier.

The ghosts of the previous tax regimes continue to haunt the taxpayers in the current times-as per the current position of law under GST, taxpayers are required to reverse the ITC availed by them in case their supplier defaults in making the payment of tax. In fact, it is not even a non-payment of tax which is now leading to demands against the recipients. A mere mismatch of the supplier's returns with the recipient's return is now being made the basis for action against the recipients if there is a failure to recover ITC on account of such a mismatch.

### **Section 16(2)(c) of the CGST Act**

Section 16 of the Central Goods and Services Tax Act, 2017 (Act)

### **SNAPSHOTS**

1. GST is special also in the sense that it is the first parliamentary legislation in which the concept of Input Tax Credit (ITC) has been statutorily engrafted. In the past, grants of ITC were left to the discretion of the executive govts.

2. Sections 16(2)(c) and 41 operate as safeguards to protect govt dues by ensuring that the supplier has paid tax to the govt before the consequent ITC is made available to the recipient.

3. The claim for ITC is substantive in nature and is available to the recipient only because it has already paid the tax to its supplier. It should not be denied to the recipient on mere technicalities on mismatch of returns.

provides for the eligibility and conditions for availing ITC. One such condition provided in Section 16(2)(c) requires that the tax charged in respect of the supply of goods must be actually paid to the government by the supplier. However, the said condition is subject to the provisions of Section 41 of the Act. Section 41 (as substituted by the Finance Act, 2022) provides that the taxpayer shall be entitled to avail the ITC of the self-assessed input tax. It further provides that where the recipient has claimed ITC of such GST which is not deposited by the corresponding supplier, the recipient shall reverse the ITC along with interest. However, the provision thereafter allows the recipient to re-avail the ITC as and when the supplier makes the payment of tax.

Sections 16(2)(c) and 41 operate as safeguards to protect government dues by ensuring that the supplier has paid tax to the government before the consequent ITC is made available to the recipient. However, the situation becomes problematic as an additional burden is cast on the recipient to cross-check whether the supplier has paid tax to the government failing which, the recipient would not be entitled to ITC. This prejudices the bonafide recipients who are wrongly precluded from claiming ITC or forced to reverse it afterwards even when the default occurs on the part of the supplier.

### A Legal Quandary

It is pertinent to note that this issue was highly debated even in



the pre-GST regime. The jurisprudential position surrounding this issue can be understood from the following judicial decisions. In *Tarapore and Co. v. State of Jharkhand*, 2020-TIOL-93-HC-JHARKHAND-VAT. The High Court of Jharkhand held that ITC cannot be denied to a bonafide purchasing dealer when he has paid the VAT amount, but the selling dealer defaulted in depositing the tax. The High Court of Punjab and Haryana, in *Gheru Lal Bal Chand v. State of Haryana*, (2011) SCC OnLine P&H 13205. observed that no liability can be fastened on the purchasing dealer on account of

non-payment of tax by the selling dealer. A similar view was adopted by the High Court of Madras wherein it held that ITC cannot be disallowed on the ground that the seller has not paid tax to the Government, when the purchasing dealer is able to prove that the seller has collected tax and issued invoices to the purchaser. *Infiniti Wholesale Ltd. v. Assistant Commissioner (CT)*, 2015-TIOL-01-HC-MAD-VAT; *Ranganathar Valves (P) Ltd. v. Assistant Commissioner*, 2020-TIOL-1611-HC-MAD-VAT.

Further, in *Quest Merchandising India Pvt. Ltd. v. Govt. of NCT of Delhi*, the High Court of Delhi held that Section

## The ghosts of the previous tax regimes continue to haunt the taxpayers in the current times-as per the current position of law under GST, taxpayers are required to reverse the ITC availed by them in case their supplier defaults in making the payment of tax

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9(2)(g) of the Delhi Value Added Tax Act, 2004 (“DVAT Act”) was violative of Article 14 of the Constitution. On *Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi*, 2017-TIOL-2251-HC-DEL-VAT. Section 9(2)(g) of the DVAT Act contemplated a condition similar to that provided under Section 16(2)(c) of the CGST Act, whereby purchasing dealers were denied the ITC on account of non-payment of tax by sellers. After conducting a detailed analysis, the Court observed that Section 9(2)(g) is violative of Article 14 since it fails to make a distinction between selling and purchasing dealers and further between bona fide purchasing dealers and those not bona fide. The Court, further, observed that purchasing dealers cannot be expected to do the ‘impossible’, i.e., to ensure that the selling dealer makes payment of tax, and where he fails to do so, to undergo the risk of being denied the ITC. This decision was affirmed by the Supreme Court. *Commissioner of Trade and Taxes v. Arise India Ltd.*, 2018-TIOL-11-SC-VAT.

This view was, further, buttressed by the Supreme Court in *Commissioner of Central*

*Excise v. Kay Kay Industries*, 2013-TIOL-41-SC-CX. wherein it held that it was practically impossible for the purchasing dealers to ensure payment of tax by selling dealers. Furthermore, in *Commissioner of Central Excise v. Tata Motors Ltd.* 2015-TIOL-3063-HC-JHARKHAND-CX., the High Court of Jharkhand held that once a buyer of input received invoices of excisable items, the buyer was entitled to presume that the excise duty had been paid. The Court, further, stated that it would be unreasonable and unrealistic to expect the buyer to go and verify whether actual duty had been paid on the inputs by the supplier as no business could be carried out in such manner, and the law did not expect the impossible. In *Supdt. of Taxes, Dhubri v. Onkarmal Nathmal Trust*, (1976) 1 SCC 766. The Supreme Court held that when the performance of requirements contemplated under a tax statute were rendered impossible, the non-compliance of such requirements would be excused. The Supreme Court, in the case of *State of Rajasthan v. Shamsher Singh*, AIR 1985 SC 1082. accepted the contention that however mandatory the provision

may be, where it was impossible of compliance, it would be a sufficient excuse for non-compliance. It is submitted that the aforesaid principles are squarely applicable to the issue at hand as it is impossible for the recipients to comply with the condition contemplated under Section 16(2)(c) to avail ITC.

Therefore, the non-fulfillment of Section 16(2)(c) must be excused. It is critical to mention that the GST law has gone one step further compared to the erstwhile law to ensure that the interest of the revenue is protected by providing for a mandate that the tax liability shall be defrayed either at the hands of the supplier or the purchaser. In the event of non-payment of tax by the supplier, the Department, inter alia, has the powers to initiate recovery proceedings against the supplier and to impose penalties on him.

In *D.Y. Beathel Enterprises v. State Tax Officer*, 2021-TIOL-890-HC-MAD-GST. The High Court of Madras held that recipients should not be ideally denied the ITC if it is found upon verification that all the purchases and transactions in question were genuine and supported by valid documentation. The Court, further, held that when it is proved that supplier has collected tax from recipient, the omission on the part of the seller to remit the GST in question must be viewed very seriously and strict action ought to have been initiated against him. Similarly, in *Sanchita Kundu v. Assistant Commissioner of State Tax*, the High Court of Calcutta observed



It is critical to mention that the GST law has gone one step further compared to the erstwhile law to ensure that the interest of the revenue is protected by providing for a mandate that the tax liability shall be defrayed either at the hands of the supplier or the purchaser

that the benefit of ITC cannot be denied to genuine recipients, acting in a bona fide manner. *Sanchita Kundu v. Assistant Commissioner of State Tax, 2022-TIOL-724-HC-KOL-GST.*

Recently, in *Suncraft Energy Pvt. Ltd. v. Assistant Commissioner, State Tax*, the High Court of Calcutta held that it is essential for the Department to take action against the supplier before seeking reversal of ITC from the recipient. *Suncraft Energy Pvt. Ltd. v. Assistant Commissioner, State Tax, 2023-TIOL-917-HC-KOL-GST.* The Court held that in the event of default in payment of tax by the

supplier, recovery of such tax shall be made from the supplier before taking any action against the recipient. Therefore, ITC cannot be denied to the recipient in the absence of initiating any proceedings against the defaulting suppliers.

#### **Towards Fair and Balanced Liability in GST**

Further, it is a settled position of law that once the credit has been availed validly, it becomes an indefeasible right of the assessee. *Collector of Central Excise v. Dai IchiKarkaria Ltd., 2002-TIOL-79-SC-CX-LB.* In the case of *Eicher Motors Ltd. v. Union of India,*

*2002-TIOL-149-SC-CX-LB*, the Supreme Court remarked that ITC which has been availed is “as good as tax paid”. The High Court of Gujarat, in the case of *Siddharth Enterprises v. The Nodal Officer, 2019-TIOL-2068-HC-AHM-GST* held that denial of ITC amounts to violation of Articles 14 and 300A of the Constitution of India, 1950. Similar decision was pronounced by the High Court of Punjab and Haryana in *Adfert Technologies Pvt. Ltd. v. Union of India, 2019-TIOL-2519-HC-P&H-GST.*

The claim for ITC is substantive in nature and is available to the recipient only because it has already paid the tax to its supplier. The claim of ITC should not be denied to the recipient on mere technicalities on mismatch of returns or for the default of the supplier. The law should consider the case of bonafide recipients differently from those who collude with defaulting suppliers and prejudice the interest of the revenue. 🚫

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# CHALLENGES IN ADMINISTERING INPUT TAX CREDIT

The GST has brought significant changes to the taxation system. It aims to ensure smooth credit flows and reduce the tax burden on goods and services. However, the conditions for claiming Input Tax Credit (ITC) have been a subject of debate, with issues arising in cases where buyers face difficulties due to non-compliance or fraud by suppliers



**RAKESH KUMAR**

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**T**HE Goods and Services Tax, which came into effect from 1st July, 2017, operates by taxing the outward supplies of a registered person while permitting credit of the tax charged on his inward supplies of goods and services used or intended to be used in the course or furtherance of his business and its utilisation for discharging tax liability on his outward supplies. While the supplier pays tax on his outward supplies to the government through utilisation of Input Tax Credit (ITC) to the extent possible and discharges only the rest of his tax liability through cash, he recovers from his customers full amount of tax paid, as mentioned in the tax invoices issued by him, in cash and in this manner, while he recovers from his customers the tax charged on the inputs which he keeps with him, he pays to the government in cash only the rest of the amount which represents the tax on the value addition. If in the supply chain from the suppliers of inputs, capital goods and input services at one end to the supplier of final products to the ultimate consumer at the other end, none of the sales is fully exempt at any stage, every supplier in the supply chain will pay tax only on his value added and pass on its burden to his customer and it is only the ultimate consumer who will bear the burden of tax, as being the ultimate consumer, he cannot pass on the burden of tax on the goods or services bought by him to anybody. As per Sec 171 of the CGST Act, the ultimate consumer gets the benefit of ITC claimed by his supplier by way of proportionate reduction in price. The Goods and Services Tax is, therefore, a destination-based value added tax on consumption and

ITC is its core and essence.

### Challenges in GST Administration

As explained below, this tax system will work smoothly only when every supplier in the supply chain faithfully pays to the government within the time limit specified in the law, the tax leviable on his outward supplies (which he has recovered from his customers in cash) either through cash or through utilisation of the ITC admissible to him or partly through cash and partly through ITC, and also files the prescribed returns within the due date prescribed.

Sec 37(1) of the CGST Act, 2017 requires every registered person, other than an Input Service Distributor (ISD), a non-resident taxable person and a person paying tax under Sec 10, Sec 51 or Sec 52, to file a monthly return of outward supplies (GSTR 1) on or before the 10th day of the month succeeding the month to which the return pertains.

Section 39(4) requires every taxable person registered as an ISD to file for every calendar month or part thereof, a return in the prescribed form (GSTR 6) electronically within 13 days after the end of such month.

### SNAPSHOTS

1. The Goods and Services Tax (GST) had been introduced with a promise of seamless flow of ITC across the entire supply chain. While some conditions and restrictions for claiming of ITC would be necessary to prevent misuse of the ITC provisions.

2. Filing a valid GSTR 3B return by a seller is proof for his buyers, who have taken ITC, based on the tax invoices, issued by him, that he has paid the tax amount mentioned in those invoices to the government either in cash or by using admissible ITC.

3. The cases of bona fide buyers suffering on account of default or wrongdoing on the part of their supplier can be considerably reduced if there is a system to enable a bona fide buyer to ascertain the background of his supplier before transacting with him.



Section 39(5) requires every registered non-resident taxable person engaged in business in India to file, for every calendar month or part thereof, a return in the prescribed form (GSTR-5) electronically, within 13 days after the end of the calendar month. The GSTR 1 and GSTR 5 filed by the resident suppliers and non-resident suppliers respectively and GSTR 6 filed by the ISD get auto-populated in the buyer's Form GSTR 2B which enables matching of his inward supply invoices, as reported by him in his GSTR 3B return and on the basis of which he wants to claim ITC, with the inward supply invoices reported by his suppliers and his ISD.

Such matching of the inward supply invoices of an assessee with the outward supply/input service distribution invoices of his suppliers/ ISD will not be possible if his one or more suppliers or ISD do not file their GSTR 1/ GSTR 5 /GSTR 6 return at all or file incorrect returns or file the returns very late. If the entitlement of an assessee for ITC is restricted to the invoices figuring in his GSTR 2B, he will suffer denial of ITC for failure of his suppliers/ISD to file correct GSTR 1/GSTR 5/GSTR 6 returns in time.

Sec 39(1) of the CGST Act, 2017 requires every registered person to file for every calendar month or part thereof, a return in GSTR 3B form electronically containing details of his inward and outward supplies of goods or services or both, ITC availed, tax payable on outward supplies, tax paid and other details as prescribed on or

before 20th of the month succeeding the month to which the return pertains and before filing of this return the tax payable, as mentioned in the return, is required to be paid through cash or through utilisation of ITC or partly through cash and partly through utilisation of ITC, otherwise the return will be treated as an invalid return under Sec 2(117) of the CGST Act.

and they may end up taking ITC based on invoices for which their seller has not paid the tax. Non-payment of tax by a seller for tax invoices issued by him, based on which his buyers have taken ITC, causes a much bigger problem. If a seller, after collecting full tax amount, as mentioned in the tax invoices, from his buyers, does not pay the tax for those sales to the government either in cash or by using admissible ITC, the

**The GST Council in its 27th Meeting had recommended that there should be no automatic reversal of ITC from the buyer on non-payment of tax by the seller and in case of default in payment of tax by the seller, recovery should be made from the seller and the option of reversal of credit from the buyer should be exercised only in exceptional situations like missing dealer, closure of business by the supplier etc**

**Conditions for Availing ITC**

Therefore, filing a valid GSTR 3B return by a seller is proof for his buyers, who have taken ITC, based on the tax invoices, issued by him, that he has paid the tax amount mentioned in those invoices to the government either in cash or by using admissible ITC. If the seller has not filed his GSTR 3B return at all or has filed it very late, his buyers, when filing their GSTR 3B returns would not know whether their seller has paid the tax for the tax invoices based on which they have claimed ITC in their returns

government suffers double loss, as while the seller has not paid the tax on his sales, his buyers take ITC based on tax invoices issued by him, and use that credit to reduce their tax liability. In this regard, there may be cases where the sellers have simply not paid any tax either in cash or by using ITC and have not filed their GSTR 3B returns, or there may be cases where they have filed their GSTR 3B returns but have paid all or part of their tax by using ITC that is not allowed, i.e. credit taken against GST Laws, such as credit taken based on fake



invoices without actually receiving any goods/ services mentioned therein. In such cases, while there may be cases of collusion between sellers and their buyers, there would also be many cases where buyers are innocent victims of non-payment of tax or payment of tax through fraudulently taken ITC by sellers. Thus, in the GST system,



breaking the GST Law by a registered person in the supply chain can lead to breaking the law by his buyer who may be an innocent victim of default or intentional wrongdoing of his seller. The challenge for the government administering this tax is how to punish those who have deliberately broken the law without hurting innocent taxpayers. For dealing with such cases, CGST Act/ State GST Acts and CGST Rules/ State GST Rules make a difference between cases where there is collusion

between sellers and their buyers and cases where buyers are innocent victims of wrongdoing of sellers.

Sec 16(2) of the CGST Act prescribes the following conditions for availment of ITC by a registered person in respect of his inward supplies -

(i) The person is in possession of a valid tax invoice or a debit

note issued by the supplier or any other tax-paying document as may be prescribed. (Clause (a) of Section 16(2))

(ii) The details of the invoices/ debit notes mentioned above have been furnished by the supplier in the statement of outward supplies which gets auto-populated in the Recipient's Form GSTR 2B/ GSTR 2A. (clause (aa) of Section 16(2))

(iii) He has received the goods or services covered under the invoice, debit note or other tax-paying document. (Clause (b) of

Section 16(2))

(iv) The tax charged in respect of the supply has actually been paid by the supplier to the Government either through cash or through utilisation of ITC admissible in respect of the said supply. (Clause (c) of Section 16(2))

(v) He has furnished the GSTR-3B return prescribed under Section 39 of the CGST Act. (Clause (d) of Sec 16(2))

(vi) He has paid to the supplier of the goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of the supply along with tax payable thereon, within a period of 180 days from the date of issue of invoice by the supplier (second proviso to Section 16(2)). This condition becomes relevant immediately on expiry of 180 days from the invoice date.

From the above, it will be seen that while compliance with the conditions of clauses (a), (b) and (d) of Section 16(2) and the condition prescribed in second proviso to Section 16(2) is in the hands of the recipient who wants to take ITC on the basis of tax invoice issued by his suppliers, the fulfilment of the conditions prescribed in clause (aa) and clause (c) of Section 16(2) is not in his hand, but is in the hands of his suppliers and the recipient of the supply has no control over fulfilment of these conditions by his suppliers.

### **Review of Judicial Precedent**

Hon'ble Supreme Court in its judgement dated 13.03.2023 in

case of *The State of Karnataka Vs M/s ECOM Gill Coffee Trading Pvt Ltd & Others* reported as 2023-TIOL-18-SC-VAT, wherein in spite of the purchasing dealers being in possession of the tax invoices issued by their selling dealers and there being evidence of full payment for the goods including tax leviable thereon having been made by the purchasing dealers to their selling dealers, ITC was sought to be denied to the purchasing dealers on the ground that there were certain evidences to doubt the genuineness of the transactions and the purchasing dealers have failed to discharge the burden of proof cast on them under Sec 70(1) of the Karnataka VAT Act to prove the correctness of their claim for ITC, has held that-

(i) when the provisions of Sec 70 of Karnataka VAT Act clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC, the burden of proving the correctness of the ITC claim remains upon the dealer claiming such ITC and in this regard, mere claim of the dealer that he is a bona fide purchaser and production of invoices and evidence of payments having been made to the selling dealer by cheque is not enough and cannot be said to be discharging the burden of proof cast under Sec 70 of the KVAT Act;

(ii) the dealer claiming ITC, in order to discharge the burden of proving the correctness of his claim cast under Section 70 of the Karnataka VAT Act, has to prove beyond doubt the actual



The challenge for the government administering this tax is how to punish those who have deliberately broken the law without hurting innocent taxpayers. For dealing with such cases, CGST Act/ State GST Acts and CGST Rules/ State GST Rules make a difference between cases where there is collusion between sellers and their buyers and cases where buyers are innocent victims of wrongdoing of sellers

transaction, which can be proved by furnishing the name and address of the selling dealer, the details of the vehicles which delivered the goods, payment of freight charges, acknowledgment of taking delivery of the goods etc, and this information would be in addition to tax invoices and particulars of payment; and

(iii) for claiming ITC, the genuineness of the transaction has to be proven beyond doubt, for which in addition to tax invoices and payment particulars, the evidence of physical

movement of the goods and their delivery to the purchasing dealer is the sine qua non;

The provisions of Section 70(1) of the Karnataka VAT Act 2003, providing that for the purpose of any claim to ITC under this Act, the burden of proving that the claim for deduction of Input Tax is correct, shall lie on the dealer making such claim, is in pari materia with the provisions of Section 155 of the CGST Act and, therefore, the ratio of this judgement of the Apex Court would be squarely applicable to

the GST cases also. However, the ratio of this judgement would be applicable only in those cases where, based on some evidence, there is allegation that there was connivance between the assessee and his supplier and the tax invoices on the basis of which ITC has been claimed by the assessee, are fake. This judgement would not be applicable to the cases where the genuineness of the transaction is not in question and the customer is an innocent victim of the wrongdoing of the supplier.

### **Conclusion**

The Goods and Services Tax (GST) had been introduced with a promise of seamless flow of ITC across the entire supply chain.

While some conditions and restrictions for claiming of ITC would be necessary to prevent misuse of the ITC provisions, the conditions and restrictions should be such whose compliance is in the hands of the assessee claiming the ITC.

Making availment of ITC by a buyer in the supply chain subject to fulfilment of the conditions of clause (aa) and (c) of Sec 16(2) of the CGST Act which are to be fulfilled by the supplier, without making any distinction between a bona fide buyer who had actually received the goods or services covered by the supplier's invoice, had made full payment to the supplier towards the value of the supply along with tax leviable thereon within the period specified in Sec 16(2) and the buyer who was not a bona fide buyer and had connived and colluded with the supplier in tax evasion, not only results in punishing the bona fide

buyer for the wilful default or wrongdoing on the part of his supplier, but also leads to litigation. The denial of ITC to a bona fide buyer, who had made full payment to the supplier for the value of the goods/services received along with tax leviable thereon, for the default or wrongdoing on part of the supplier for which the buyer is not responsible, results in double loss to him, as while he has paid the tax amount to the supplier in cash, because of denial of ITC he has to discharge tax liability on his outward supply through cash to that extent and, thus, has to shell out extra cash which blocks the working capital for that tax period.

### **The Way Forward**

Till the constitutional validity of clause (aa) and clause (c) of Sec 16(2) is finally decided by the courts, the following measures would go a long way in alleviating the suffering of honest and law-abiding taxpayers.

The cases of bona fide buyers suffering on account of default or wrongdoing on the part of their supplier can be considerably reduced if there is a system to enable a bona fide buyer to ascertain the background of his supplier before transacting with him. Though Sec 149 of the CGST Act provides for assigning a GST compliance rating score to every registered person based on his record of compliance with the provisions of this Act which would be updated at periodic intervals and also placed in public domain, no comprehensive system in this regard has been put in place.

Under e invoicing there is not

only automatic generation of the supplier's GSTR 1, as the invoices reported by the supplier to the Invoice Registration Portal (IRP) get auto-populated in his GSTR-1 after authentication and validation, there is also auto-sharing of invoices uploaded on IRP with the buyer for reconciliation. Thus, under e-invoicing, there will be no scope for mismatch between the invoices on the basis of which ITC has been claimed by the buyer in his GSTR 3B and the invoices figuring in his GSTR 2B, and, therefore, no occasion for denial of ITC under Sec 16(2) (aa) of the CGST Act read with Rule 36(4) and 88D of the CGST Rules. Besides this, e invoicing reduces the scope of fake GST invoices. Though at present, e-invoicing is mandatory only for the businesses whose annual turnover exceeds Rs 5 crores, the taxpayers with lower turnover should also be encouraged to go in for e-invoicing.

The GST Council in its 27th Meeting had recommended that there should be no automatic reversal of ITC from the buyer on non-payment of tax by the seller and in case of default in payment of tax by the seller, recovery should be made from the seller and the option of reversal of credit from the buyer should be exercised only in exceptional situations like missing dealer, closure of business by the supplier etc. While a Press Release dated 04.05.2018 was issued by the CBIC regarding these recommendations of the GST Council, the same have not been implemented. These recommendations should be implemented so as to protect bona fide buyers. 🚫

# UNRAVELING THE COMPLIANCE CHALLENGES IN INDIA'S GST REGIME

GST is a revolutionary reform in India's indirect tax system. It aims to unify the country under a single tax regime, supported by strong IT infrastructure. Since its launch in 2017, GST has seen significant changes and improvements, reflecting the government's dedication to fine-tune the system



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**O**NE NATION ONE TAX' with compliances driven through IT backbone was the genesis for introduction of Goods and Services Tax (also referred to as Good and Simple Tax by the Hon'ble Prime Minister of India). With more than 6 years of implementation of GST during which over 50 GST council meetings have been held so far, the way indirect tax compliances are being done in India has been completely transformed.

This is one of the primary reasons of buoyancy in GST collections, which was over ~INR 18.10 lakh crore (22% higher than the last FY) for FY 22-23. It is also relevant to underline that as of 30th June 2023, the number of taxpayers has grown to 14.08 million (from 5.96 million in July 2017).

There is an intent and visible endeavor of the Government to reduce the compliance burden on the taxpayers. After initial hiccups, the technology interface for compliances has stabilized a lot. However, many compliance challenges remain and need to be addressed. In the next phase of compliance ecosystem, the Government should seek to achieve stability and eliminate compliance related encumbrances for the taxpayers.

## **Integration of e-Invoicing and e-Way Bill Compliances**

To start with, integrating e-invoicing and e-way compliances is a low hanging fruit. At present, e-invoicing compliances depends on threshold of the taxpayer and whether the invoicing is to a GST registered customer (known as Business to Business or B2B invoicing). Parallely, e-way bill requirement is triggered depending on movement and the value of goods above a threshold (which could vary from State to State). To ease out the compliance burden, the Government should consider merging these compliances (with

## SNAPSHOTS

1. To ease out the compliance burden, the govt should consider merging e-invoicing and e-way bill compliances in a manner which serves the ultimate purpose for which these compliances were rolled out.

2. The govt should consider introducing provisions of faceless assessments in the GST law. This will help streamline the process and standardize the approach on a PAN India basis.

3. The recipient taxpayers can be provided with vendor analytics in a holistic manner along with facility to integrate such information with their ERPs to build adequate controls around the same.



suitable modifications) in a manner which serves the ultimate purposes for which e-invoicing and e-way compliances were being introduced. Alongside this proposal, the Government can also contemplate to drive the sustainability agenda by discontinuing the need to carry physical invoices/ e-invoices or e-way bill documents along with the shipment.

### **Real Time Ccess of Vendor's Compliances/ Analytics**

One of the key compliance challenges is the restriction on availment of input tax credit where tax payment has not been made by

the vendor, even though there is no mechanism for the recipient taxpayer to ensure if the vendor has made correct payment of tax to the Government. Moreover, the status of filing of Form GSTR-3B, only comes to the knowledge of the recipient taxpayer in the subsequent month. In this respect, recipient taxpayers can be allowed to access/download e-invoice generated (as validated on government portal) by the suppliers on real time or periodic basis. This would help prove the genuineness of purchase (subject to other considerations), allow recipients to take timely action and would also deter authorities to question the credit eligibility

where the recipients have acted in a bona fide manner. Additionally, the recipient taxpayers can be provided with vendor analytics in a wholistic manner along with facility to integrate such information with their ERPs to build adequate controls around the same. Further, besides analytics, the Government may also consider proposal to roll out vendor risk scores/ratings (basis detailed parameters and sophisticated data analytics – like a CIBIL score) for the taxpayers and publish the same in public domain. An enabling provision already exists in the law for this, and it would help in creating a more compliant eco-system.

**Providing Adequate Time Before Introducing Compliance Changes**

Frequent changes in compliance requirements have become quite a norm under GST era of compliances. Illustrative recent instances of such changes at a short notice include introduction of amended format of monthly summary return (Form GSTR-3B); e-invoicing compliances for specified taxpayers were to be done within 7 days of invoice date including for



**Level Return**

One of the features of GST is the requirement of State level returns (which was in existence for State VAT earlier but not for service sector). One idea that can be considered is to have a single consolidated return at a PAN level.

Given the architecture of the GST law, it is understood that the State level information of taxpayers is required. However, such information can be submitted by the taxpayers vide a single return for

and cash payout in another. It is also expected to reduce the administration burden of the Government whereby at present such amounts are individually monitored as compared to a proposed scenario where such amounts would be required to be validated at a state where such common wallet is being maintained.

The way audits/assessments are being done could also be revamped. The Government should consider introducing provisions of faceless assessment in the GST law, in line with income tax. This will help streamline the process and standardize the approach on PAN India basis. As a welcome step in this direction, the Government has recently introduced automated return scrutiny module to streamline the process of GST return verification. Further, to further ease out compliances, the Government may also consider allowing amendment in the GST law to allow revisions in GSTR 3B; create facility to automatically file GST related refund with the portal using GSPs; etc.

**From a working capital standpoint, the taxpayers should be allowed to have a single credit ledger (specially CGST and IGST) in a common wallet at PAN level. This would enormously help the businesses who often have accumulated credit in one State and cash payout in another**

all invoices issued till 30 April 2023 (this was deferred after industry representation). These changes were weighty and were to be implemented in a very short span of time leading to confusion amongst the taxpayers. It is important that industry is given adequate time to understand and implement such changes rather than introducing them at a very short notice.

**Roll Out Consolidated PAN-**

all the States together rather than a taxpayer with multi-State operations submitting return for each State separately.

**Other Suggestions**

From a working capital standpoint, the taxpayers should be allowed to have a single credit ledger (specially CGST and IGST) in a common wallet at PAN level. This would enormously help the businesses who often have accumulated credit in one State

**Conclusion**

It is well understood that there are still cases of GST evasion (particularly the menace of fake invoicing continues). Hence, any big bang changes in compliance framework would need to be stress tested so that it cannot be misused. However, the industry at large would be happy to partner with the Government to strike a 'balance' between these compliances with the objective of 'ease of doing business'. 🚫

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# TKF | TIOL Tax Congress 2023

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GOVERNMENT OF RAJASTHAN

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Judge, Hon'ble  
Supreme Court of India



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Vice-Chairman,  
NITI Aayog



**JUSTICE DILIP GUPTA**  
President, CESTAT



**SMT SHRINJINI KUMAR**  
Co-founder,  
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**SHRI GAUTAM MEHRA**  
Senior Partner,  
PwC India



**SHRI SHAILENDRA KUMAR**  
Chairman,  
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former Vice-President,  
ITAT



**SHRI SANDEEP PURI**  
Partner, PriceWaterhouse  
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Joint Secretary, CBDT,  
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Head Direct Tax Planning  
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Free Trade Agreements (FTAs) & Customs – Impact on Tax and supply chain

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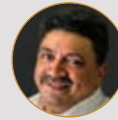


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Hon'ble Minister for IT &  
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# TAXATION IN INDIA: COMPLIANCE-BY-DESIGN



## SECTION C

# CUSTOMS - NOT GOING OUT OF KILTER!

# INDIAN CUSTOMS: MAINTAINING THE BALANCE

The focus of this article is on Customs - and it is in this background that one should analyse the steps taken by CBIC to ensure compliance without hindering facilitation - this is a dichotomy which all tax administrations must manage



**NAJIB SHAH**

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Central Board of Indirect  
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**T**HE quote attributed to Louis XIV's Finance Minister, Jean-Baptiste Colbert, very trite now, bears repetition because it is still true - 'the art of taxation consists in so plucking the goose as to obtain the largest possible amount of feathers with the smallest possible amount of hissing'. And translated to the present day it would mean that every tax administration should collect the largest revenue with the least amount of inconvenience to the taxpayer. And what this would mean is that fairness, equity, clarity, and simplicity should be the hallmarks of any fiscal legislation such that compliance becomes easy. Tax as they say should not be more taxing than necessary. In the context of India, we should also not forget that the tax-to-GDP ratio is just about 11.2%, much lower than the 21% emerging market economy average and the OECD average of 34%. The Government would be cognizant of this and would expect the two Boards - Central Board of Indirect Taxes (CBIC) & Central Board of Direct Taxes (CBDT) to take all necessary steps to ensure that all that is due is collected.

The focus of this article is on Customs - and it is in this background that one should analyse the steps taken by CBIC to ensure compliance without hindering facilitation - this is a dichotomy which all tax administrations must manage.

## Customs Compliance

As has been said it makes little sense to have tax laws if they are not complied with and enforced. The compliance expected from the taxpayer is that the requirements of the customs law are adhered to. This would mean that the administration needs to know who the importer or exporter is - a process of identification or



registration. Thereafter it is essential that the importer/exporter file details of goods sought to be brought in or out - a filing of declaration. What will be expected is that the declaration be accurate in terms of quantity, value, specifications and classification. Having done so the importer/exporter is expected to pay the taxes due. Given the sheer volumes and the need to confirm that the declarations given are correct, it is essential that the administration identify the major compliance risks; having identified them to put in place a protocol to address the risks. The emphasis is on focusing only on the 'risky' consignments. Each one of these aspects necessarily must be technology driven for effective compliance.

### **Role of Technology**

The Indian Customs embarked on a journey of going digital very early

on. The Indian Customs EDI Systems (ICES) began in 1995 and today is a robust and mature electronic data interchange. As the website of ICEGATE, which is the Indian Customs National Trade portal mentions, on any given day it receives more than 58,00,000 hits, processes 50,000 documents filed, has 12,460 e-payment transactions, and handles more than 1600 user grievances. This is impressive by any standards. The entire process of registration from the filing of declarations, to assessment to payment of duty to clearance being given is handled electronically. A compliance Information portal which is a one-stop solution for all clearance-related procedures for all import/export of any goods is available at ICEGATE.

The Directorate General of Analytics & Risk Management with the appropriate acronym, DGARM has been at the forefront of

### **SNAPSHOTS**

1. The Directorate General of Analytics & Risk Management has been in the forefront of identifying risky consignments so that targeted action is possible. They have had some outstanding success.
2. The trade facilitation process has become more trust-based and less intrusive. This means that the import controls have been reduced and shifted to the stage after the clearance.
3. Streamlined IT system that permits the issuance of Export Rebate in the form of a transferable duty credit/electronic scrip (e-scrip), RoDTEP, made WTO-compliant export plan further modernised.

identifying risky consignments so that targeted action is possible. Armed with AI/ML tools they have had some outstanding success. The corollary of this approach has been that a larger portion of risk-free consignments has been assured speedier clearance. The facilitation levels have been more than 90% of the consignments. Regular time release studies to quantify the average time taken for the release of import cargo are undertaken. It

changes in 2011; deferred payment of duty was permitted to benefit Authorised Economic Operators (AEO), advance filing of bill of entry was mandated to reduce the processing time. The CBIC has also undertaken steps to decriminalise several provisions of the customs act.

The facilitation measures kept pace with the requirements of the trade. ICEGATE, RMS, the launch of the AEO programme, the launch of a single window

creating an environment of trust-based compliance has taken a firm shape and is an accepted part of trade facilitation. This in effect meant that controls at the point of import have reduced and shifted to the post-clearance stage. Self-assessment of liability is an integral part of all clearance now. Deferred payment of duty which offers importers the facility of clearance of goods first and payment of duty later, a concept unheard of a few years back is in vogue now. India is a signatory to the Trade Facilitation Agreement and has enthusiastically implemented the terms of the agreement.

Financial Year 2022 saw the reforms process continue with renewed vigour. The Remission of Duties & Taxes on Exported Products (RoDTEP) a WTO-compliant export scheme has been further 'modernised' through a simplified IT System which enables the issue of Export Rebate in the form of a transferable duty credit/electronic scrip (e-scrip). Further, the validity of the e-scrips has been extended to 2 years from one year.

A procedure for enabling clearance of goods imported in containers from Bangladesh with CONCOR being permitted to execute the running bond has been put in place. The postal export regulations have been implemented and should benefit the MSME sector by leveraging post offices across the country. The year also witnessed an increased use of the 12 scanners which are there in various ports. Technology has been at the front

The Indian Customs EDI Systems began in 1995 is transformed into a robust and mature electronic data interchange today. As the website of ICEGATE, which is the Indian Customs National Trade portal mentions, on any given day, it receives more than 58,00,000 hits, processes 50,000 documents filed, has 12,460 e-payment transactions, and handles more than 1600 user grievances

is today at 88.23 hours-down from 181.34 hours in 2017.

### Customs Facilitation

All this has been on the back of robust trade facilitation measures steadily evolving over a period. The Customs Act has been amended wherever required to increase facilitation. Thus, for instance, 1983 saw the appointment of a place for ICDs to reduce bottlenecks at ports and enable clearance of goods at the doorsteps of the importers/exporters; Self-Assessment was introduced through statutory

interface for facilitation of trade (SWIFT), Direct Port delivery, launching of TURANT Customs with its emphasis on faceless assessment, contactless customs, and paperless customs, have all become part of the trade ecosystem. What TURANT has also ensured is that it has addressed issues of integrity. 24X7 customs clearance has been there for a long time now-presently extended also to ICDs.

### The Risk Management Approach

Post-clearance audit aimed at



of all these measures, both to ensure compliance and to increase facilitation.

In short, the approach has been to look at the entire life cycle of cargo clearance from its arrival to its ultimate receipt by the importer and address challenges in the smooth clearance of the cargo, get resolved. The same philosophy has guided exports.

All this has resulted in India's performance as benchmarked against global standards dramatically improving. As per the UN Global Survey on Digital and Sustainable Trade Facilitation, India's score was 90.32% in 2021-up from 63.44% in 2015. The Logistics Performance Index score went up to 3.18 and a rank of 44 up from 2.08 and a rank of 54. The World Bank mandated Ease of Doing

Business ranking improved to 67 in 2019.

The Directorate of Revenue Intelligence (DRI), the apex agency tasked with protecting the economic frontiers, has been leading the charge against tax evaders. For instance, they have been having stupendous seizures of gold attempted to be smuggled into the country. In 2022 there have been as many as 3892 cases leading to the arrests of 1710 individuals. A total quantity of 3502.16 kgs of gold was seized in the period. Enforcement action by the DRI and the field formations has kept the focus on compliance.

### **Trust leading to Facilitation with Enforcement**

What compliance and facilitation both require is close interaction between all the stakeholders-the

CBIC, its field formations, industry bodies, trade, port administration and DGFT; this the CBIC has ensured through various mechanisms which are firmly in place.

There is also an institutional mechanism with a National Committee on Trade Facilitation headed by the Cabinet Secretary ensuring inter-ministerial cooperation. This is so essential for the success of any trade facilitation programme straddling as it does multiple departments. What all this ensures is a creation of awareness about both the determination of the department to enforce the law and ensure compliance and also about the facilitation measures, which are in place and address concerns of the trade; a velvet glove approach concealing an iron hand.

As per a World Bank paper, any compliance programme has three elements-enforcement, facilitation, and trust. What the Indian customs administration has demonstrated is that they can switch the sequence to Trust leading to Facilitation with Enforcement keeping a hawk eye on transgressions. While each of these dimensions is important, a trust-based approach pays richer dividends as has been demonstrated by CBIC and positively reciprocated by the Indian trade, equal partners with the department as the country marches to a Kaal of Amrit.

The Customs have been collecting revenue which is due and Exim trade has grown exponentially while the hissing has reduced! This then is the triumph of the CBIC. 🇮🇳

# THE DIGITAL REVOLUTION IN CUSTOMS

Indian customs has witnessed a remarkable transformation over the years. This article traces the milestones that have transformed the landscape of customs administration in India and plot a possible road ahead



**SANDEEP KUMAR**

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**T**HE first electronic Bill of Entry was filed in December 1995 by M/s. Indian Telephones Ltd., at the New Customs House, Delhi marking the inauguration of ICES. The introduction of the RES (Remote EDI System) was a first of its kind. The application was implemented by leveraging NICNet, by a crack team in the Directorate General of Systems and NIC. Numerous digital milestones have since been crossed by CBIC. Directorate General of Systems & Data Management developed its own network or gateway to accept electronic filing from trade. ICEGATE was launched as India crossed into the current millennium. The next milestone came in 2006, with the implementation of the Risk Management System (RMS). It was a watershed moment in digital governance in customs and went on to become CBIC's cornerstone for faceless customs. IT consolidation and upgradation envisioned by DGS enabled the launch of ICES 1.5 (2009). In April 2016, Central Board Of Indirect Taxes & Customs (CBIC) launched SWIFT (Single Window) enabling submission of an Integrated Customs Declaration and seamlessly connecting with the other regulatory agencies (PGAs). With the advent of GST at midnight on 1st July 2017, DGS was up to the challenge and became fully functional within a few hours of that morning. The launch of CBIC's proprietary application for the clearance of courier shipments, Express Cargo Clearance System (ECCS) was launched ahead of schedule in June 2020, despite the adversities of Covid. The Taxpayer's Information Portal was launched in 2021, which addressed a long-standing demand from both officers and



businesses to have fully updated Acts, Rules, Regulations and Notifications with their entire history of amendments online.

### **Covid Crises**

One would fail to do justice to DGS without mentioning of rapid response of the digital systems during the crises posed by COVID-19. DGS enabled the officers, customs broker community and trade to function effectively and keep the supply chain alive. GST officers of the CBIC were enabled to work from home with similar alacrity.

### **Turant Customs: Transforming Indian Customs**

Under the umbrella of Turant Customs, facilities like web-based registration, Auto-queuing for clearance, Machine Release, PDF Bill of Entry, e- Sanchit (a digital

locker), E-scrips, and electronic cash ledger, have been developed, which have made Indian Customs greener, more digital, transparent and faceless.

### **Using AI**

ICEGATE has also ventured into AI for handling grievances (and that was before the release of ChatGPT). Text mining of emails and tickets allowed the team to map ‘pain points’ for re-engineering business processes and de-bugging. It progressively improved client experience by eliminating repeat tickets in select business processes.

### **Launch of ICEGATE 2.0**

ICEGATE 2.0 was launched in 2022 and comes with an array of value-added features, starting with personalised dashboards, which make for a very convenient user interface.

## **SNAPSHOTS**

1. In April 2016, CBIC launched SWIFT enabling submission of an Integrated Customs Declaration and seamlessly connecting with the other regulatory agencies (PGAs).

2. ICEGATE 2.0 was launched in 2022 and comes with an array of value-added features, starting with personalised dashboards, which make for a very convenient user interface.

3. The Risk Management System marked a leap in digital governance in customs and went on to become CBIC’s cornerstone for faceless customs.

### Network Expansion

During all this time, DGS was continuously undertaking hardware upgradation and network expansion, which has expanded from 32 locations to 1420, of which 728 are on MPLS (for the un-initiated, MPLS stands for Multi-Protocol Label Switching - a virtual private network - and as such is partitioned off from the public Internet. Therefore, MPLS is considered a secure mode of data transmission).

### National Time Release Survey

The National Time Release Survey was released by the CBIC in June 2023, showing marked improvements in cargo release times. One cannot but appreciate the progress achieved in minimising dwell times and smoothening the process of customs clearance. The achievements of DGS have been thrice acknowledged with awards from the Prime Minister (2009, 2015 and 2023). All of this could not have been possible without the untiring (and mostly backbreaking) efforts of the officers in DGS, NIC and partners in the private sector.

### Digital Transformation (or Revolution)

One does not have to look beyond everyday life to feel the transformative impact of digital technologies. Be it messaging or communicating (email, WhatsApp, telegram video-conferencing, collaborative work tools), reading habits (Kindle and reading Apps), commuting (Uber,

DGS was continuously undertaking hardware upgradation and network expansion, which has expanded from 32 locations to 1420, of which 728 are on MPLS

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Ola), entertainment (OTT platforms), upskilling (Ed-Tech platforms and YouTube), eating out or shopping (Zomato and other e-commerce sites), social media (Facebook, Twitter, Instagram), payments (UPI) or even the way we identify ourselves (Aadhaar), all have transformed our day-to-day personal & work life. Couple this with the expectation of how AI (ChatGPT) is going to transform all of this even further, the pace of change is overwhelming.

### Collaboratorial Innovation

In the last nine years, the government has strongly driven the agenda of reshaping governance through technology. The launch of Aadhaar as a biometric proof of identity; UPI as a mode of digital payments; and GST accompanied by e-invoicing, e-way bill, and FASTag, have all come together to unleash a force of “collaboratorial” innovation (a term used by Nandan Nilekani to describe the ongoing digital transformation). To quote - “this first-in-the-world stack of ‘digital public goods’ is forecasted to revolutionise India’s supply chain and logistics industry, credit flow and e-commerce.”

### Towards a Collaboratorial Path

This profound context should set the road ahead for the next phase of CBIC’s mission of digitalization, where a collaborative path is leveraged to the fullest for shaping ongoing innovations. For instance, inspiration can be drawn from the GSTN’s program of GSPs (GST Suvidha Providers), where ITES providers in the private sector act as an enabler or authorised intermediaries for businesses to access GST portal services. They help comply with the provisions of GST law through their proprietary software applications using APIs and are able to provide a wide array of conveniences & facilities to the industry. For example, the e-Invoicing system has led to an explosion in accounts receivable financing and factoring, thereby improving the flow of finance and credit to MSMEs.

### Strengthening Enforcement

Another possible area for innovation would be to focus on strengthening KYC as a key strategy to combat bad actors and support the current enforcement campaign against fake-invoicing in GST.





This malaise equally plagues the ecosystem of Customs and DGFT. Over the years, enforcement agencies have consistently found shell companies (using fictitious IECs) in cases involving under-invoicing and smuggling. During the earlier enforcement drive against IGST refund frauds, which was launched in June 2019, immense time and human resources had to be expended for physical verifications. One can sense significant synergies from a ‘collaboratorial’ model of real-time data exchange between GST, Customs, Income Tax and DGFT, coupled with the voluntary upload of information by taxpayers themselves for improved outcomes in KYC. This would immensely improve the categorization of entities with attendant benefits in targeted enforcement and facilitation.

### Technology Shift

A third area for improvement would be prescribing a technology standard based on

IoT for ‘tracking, tracing & securing’ cargo handling at airports and ports. It can bring tremendous improvement in cargo visibility for trade and strengthen the anti-smuggling capability of customs. By tweaking the Handling of Cargo in Customs Area Regulations, Ports and Airports can be mandated to upgrade cargo management systems to meet these requirements. Today, the business community and citizens have an enhanced expectation of the digitalization of Government services & how applications ought to perform. A less-than-optimal digital journey prompts citizens to express their frustration by taking to social media. No one has articulated this phenomenon better than Ms. Jennifer Pahlka, former U.S. Deputy Chief Technology Officer, celebrated social entrepreneur and author of the book “Recoding America” and founder of the United States Digital Service. She says that

more modern technology can be handy—but successive layers of policy, regulation, procedure, and process that have accrued over decades encumber our digital services and make even the most modern technologies opaque and hard to use. While more outsourcing can help with the quality of service delivery, today’s technology-led model of governance requires a digital mindset in the entire bureaucracy, including amongst policymakers. There has to be a realisation that eventually each law, rule, regulation, notification and form should be so designed that it can be successfully translated into binary. Laws that begin or end with – “subject to the satisfaction of the proper officer” belong to an archaeological layer. As Thomas Friedman says in his seminal work – Thank You For Being Late - it’s a time “to make old things work better, to make new things possible, and to do old things in fundamentally new ways”. 🚫

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# TAXATION IN INDIA: COMPLIANCE-BY-DESIGN



## SECTION D

# PILLARISATION OF INTERNATIONAL TAXATION

# THE ROAD TO PILLAR TWO: ADAPTING TO A NEW ERA OF GLOBAL TAXATION

Pillar Two is a new and complex tax framework for Multinational Enterprise (MNE), and its impact will be felt globally from January 1, 2024. MNEs should prepare now with a plan that data strategy, operational readiness, and quantitative analysis will be instrumental in ensuring a smooth transition into this new tax regime



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**D**IGITALISATION and globalisation have changed the way we live, work and do business. These changes have made the current tax system (which dates back to the 1920s) outdated, creating opportunities for base erosion and profit shifting. The OECD/G20 is currently working on a project comprising more than 140 countries ('the Inclusive Framework') to redesign the current international tax system. The project consists of two Pillars.

## **Difference Between Pillar One and Pillar Two**

Pillar One aims at allocating a portion of profit of large and highly profitable MNEs to the destination or market country, i.e., where consumers or users are based. Pillar Two or global minimum tax, will ensure that Multinational Enterprises (MNEs) pay a minimum level of tax in all the countries where they operate, i.e., Minimum Effective Tax Rate ('ETR') of 15% on a jurisdictional basis. While there is still uncertainty around Pillar One implementation, Pillar Two is almost a reality as over 50 countries are in different phases of its implementation.

Pillar Two applies to MNEs with global revenues above EUR 750 million (aligned with the Country-by-Country Reporting [CBCR] threshold), with certain exceptions. If an in-scope MNE's ETR in a country is below 15%, it will have to pay a top-up tax under the Pillar Two rules.

## **Mechanics of Pillar Two**

Three mechanisms are contemplated for collection of this top up tax. The primary rule is the Income Inclusion Rule (IIR) which gives the country where the MNE's Ultimate Parent Entity (UPE) is situated the right to collect the top up tax. The IIR is accompanied



## SNAPSHOTS

1. Pillar Two is designed in such a way that if any one country where the MNE has a presence legislates it, the entire top-up tax could be collected by that country.

2. Pillar Two compliance requirements are significant considering its global scale. MNEs may need to implement controls and processes to operationalize and execute accounting and reporting.

3. A robust data management strategy will be required for early cross-functional engagement between various departments in an MNE to ensure appropriate data readiness for meeting compliance obligations.

by a 'backstop' rule called the Undertaxed Profits Rule (UTPR) which permits any other country where the MNE operates to collect the top up tax if it has implemented Pillar Two rules.

The IIR and UTPR rules are collectively referred to as the Global Anti-Base Erosion Rules (GloBE). Additionally, the low tax country where the top up tax arises itself can collect it if it introduces a Qualified Domestic Minimum Top-Up Tax (QDMTT).

For example, if an Indian headquartered MNE has an ETR of 10% in Singapore, it will have to pay a top-up tax of 5% to India (UPE jurisdiction) under the IIR. However, Singapore can also collect the top-up tax if it introduces QDMTT. If neither India nor Singapore introduces

Pillar Two, the top-up tax will be collected by other countries where the MNE operates that have introduced Pillar Two under UTPR.

In summary, Pillar Two is designed in such a way that if any one country where the MNE has a presence legislates it, the entire top-up tax could be collected by that country. Therefore, no country, including India, would like to be left behind in the implementation process since India is among the active participants at the Inclusive Framework.

### Overview of GloBE Rules

The Pillar Two framework introduces a new tax computational mechanism and reporting requirement for MNEs.

The ETR computation under Pillar Two is done using a standardised tax base (known as GloBE income) and covered taxes. The GloBE income for each entity of the MNE is determined using the financial net income or loss of the entity after making certain adjustments and elections. Covered taxes of an entity generally refer to taxes accrued in the financial accounts with respect to that entity's taxable income, including deferred taxes. To make the required calculations to comply with Pillar Two, 230+ data points have to be tracked for every legal entity within the MNE. The Pillar Two rules also require MNEs to file a standardised GloBE information return (GIR) disclosing voluminous information covering

both tax and non-tax details.

However, to ease the Pillar Two transition, the Inclusive Framework has designed a short term transitional CbCR safe harbour. The safe harbour allows an MNE to avoid undertaking detailed GloBE calculations in respect of a jurisdiction if it can demonstrate, based on its qualifying CbCR and certain financial accounting data, that in that jurisdiction it has revenue and income below the de minimis threshold (the de minimis test), an ETR that equals or exceeds an agreed rate



### Operational Readiness

Computing the jurisdiction-wise top-up tax liability and understanding the financial impact will require numerous data points and voluminous and complex calculations. MNEs would need to ensure that they have the required data to forecast and model the Pillar Two impact on the group ETR, as well as meet the reporting/compliance requirements upon enactment.

### Safe Harbour Analysis

Pillar One aims at allocating a portion of profit of large and highly profitable MNEs to the destination or market country, i.e., where consumers or users are based. Pillar Two or global minimum tax, will ensure that Multinational Enterprises (MNEs) pay a minimum level of tax in all the countries where they operate

(the ETR test), or no excess profits after excluding routine profits (the routine profits test).

Thus, Pillar Two will have a significant impact on large Indian headquartered MNEs who would need to adapt their processes and systems to brace this new legislation.

In order to ensure Pillar Two readiness, the following key aspects must be considered by MNEs:

As an immediate step, MNEs should evaluate the safe harbour criteria and assess their applicability. MNEs would need to analyse their CbCR data along with some additional information contained in qualified financial statements. This would help identify safe harbour qualifying jurisdictions and evaluate the benefits of opting in. Further, filtering out safe harbour qualifying jurisdictions can help

MNEs focus their efforts on addressing the Pillar Two impact on the material jurisdictions (to whom the safe harbour does not apply) which will have to do the detailed and complex GloBE computations.

### Preparedness for Compliance Obligations

Pillar Two compliance requirements are significant considering its global scale. MNEs may need to implement controls and processes to operationalize and execute accounting and reporting for Pillar Two. Many data points may not be readily available at present due to the granularity required under Pillar Two. Therefore, a thorough current state analysis can help to identify and remediate any gaps in the system. A robust data management strategy will be required for early cross-functional engagement between various departments in an MNE to ensure appropriate data readiness for meeting compliance obligations.

### Conclusion

Pillar Two tax framework represents a fundamental change in the way MNEs were taxed under the international tax rules. Given the novelty and complexity involved in implementation and the fact that Pillar Two will be effective in different parts of the world starting 1 January 2024, the time to start preparing and adopting an action plan for Pillar Two is now. A robust plan that includes data strategy, operational readiness and quantitative analysis will enable MNEs to smoothly transition into the regime. 📌

4<sup>th</sup> & 5<sup>th</sup> October 2023  
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# ESG INTEGRATION FOR SUSTAINABLE TAX ADMINISTRATION

In a landscape where financial success alone no longer guarantees survival, organisations must embrace a model that offers both business advantage and quantifiable value. Hence transition towards sustainable and resilient systems, the pillars of environmental, social, and governance (ESG) considerations are becoming imperative components of strategic planning



## PARNEET SACHDEV

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*Taxation is the price which we pay ... for our social, civil and political institutions, for the security of life and property, ...*

— Journal of the House of Representatives of the State of Vermont, October Session, 1851

**A**S nations and organisations head towards sustainable, future-proof systems; environmental, social, and governance (ESG) pillars must find their way to the very core of strategy.

In a world where financials alone cannot guarantee long term survival, every organisation must take bold steps towards a model that will deliver viable business advantage and quantifiable value.

Tax evasion and avoidance are not merely revenue collection issues for tax authorities. These tend to erode critical common spaces necessary for the smooth functioning of regulatory compliance, organisational integrity, and society (Bird and Nozemack 2016). Casanegra de Jantscher (1990, p. 179) writes that, “tax administration is tax policy” (the work focuses more on developing countries).

Therefore, the future of tax administration that aims not only to bridge the tax gap, but also eyes at becoming a reliable partner for ‘ease of business’, lies in integrating sustainability principles, and corporate social responsibility in tax administration.

In this paper, the role of sustainability in transfer pricing, adoption of Corporate Social Responsibility (CSR) by the tax





authorities, through balancing of both soft and hard regulations, understanding the role of embedded, generative AI and measuring sustainability using globally accepted standards are discussed to arrive at a conclusion that a paradigm shift in tax administration in India may be the need of the hour.

### **ESG Pillars: Core to Strategic Frameworks**

While the future of tax administration is already here and much work has been done globally; however, the role of ESG needs to penetrate almost all aspects of the functioning of the tax departments. As multinational enterprises (MNEs) rapidly work on sustainable development goals (SDG), their choices of suppliers are changing. Earlier, for sourcing goods from countries, MNEs would invariably take into account lowest cost, quality etc. An important consideration now is whether the suppliers are ESG compliant (Greil

et al., 2023). The supplier could, in some cases, not be the one with the lowest pricing. Hence, aligning closely to ESG targets may lead to alterations in product costs, and different supply chain costs (Silverwood et al, 2023). In such scenarios, tax jurisdictions can no longer rely upon their traditional databases for determining arm's length pricing (ALP). OECD Transfer Pricing Guidelines (OECD TPG) also need to address how ESG should be integrated in the TP analysis (Greil et al., 2023).

Therefore, growing economies and tax jurisdictions like India, urgently need to work on incorporating ESG goals into TP considerations. Perhaps the databases used for arriving at ALPs might demand a tweaking. On the other hand, as a major organisation itself, the Indian Income Tax Department may immediately think of working on their own supply chains, so that every supplier of theirs, be it an IT developer MNE or any other, should be ESG compliant.

### **SNAPSHOTS**

1. Sustainability, implanted with the dimensions of Environment, Social and Governance is now a central concept in resource management in the economic, social, and political spheres.

2. A determined push with CSR and administrative ethics will integrate the tax administrations deeply into the business and social landscape; fostering the much-needed trust in the taxpayers and avoiders.

3. Taking a broader perspective, as the tax department begins to work closely on CSR with the corporates, over time, businesses can be influenced to make tax compliance an essential ESG goal.

### Balancing Hard and Soft Regulations through CSR

A tax administration requires tough statutory backing, incorporating penalties and sanctions (Shaffer and Pollack 2010). Bereft of such hard law, a tax organisation cannot perform its functions. Having recognised the issues of tax gaps, the OECD Base Erosion and Profit Shifting (BEPS) initiatives have recommended concrete actions in this regard. Howsoever important hard laws may be, they alone

cannot motivate people to adopt a voluntary tax compliance culture.

Penalties and prosecutions cannot possibly violate the basic liberty enshrined in the constitution. Hence, the penal provision and their implementation need to function within the confines of such domains. The result is that a taxpayer will always engage in monetary cost benefit analysis vis-à-vis tax avoidance and evasion.

Soft law, in contrast, can

compensate for the limitations embedded in a hard law system (Bird and Nozemack 2016). Examples of soft law include NGO legislation, CSR, and governmental policy statements (Sheppard 2014). Taxpayers comply with tax laws for a diverse variety of reasons other than the threat of hard law sanctions (Listokin and Schizer 2013). Studies have shown that a taxpayer's perception of the ease of procedures and fairness of tax administration affects compliance



## As per a KPMG report, 93% of 250 large global companies provide sustainability reporting. The United Nations considers sustainability as basic questions of fairness, social justice, and a greater access to an improved quality of life

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(Cummings et al. 2009). Responsive tax administrations can influence justice, fairness and their perceptions. Engaging with taxpayers and encouraging a taxpayer “voice” in the making of tax law and enforcement policy could affect taxpayers’ willingness to comply (Kornhauser 2007).

### **Perception of Fairness**

Keeping in view the above empirical evidence, it is clear that a tax administration which actively engages in CSR, relates more to the people, both to the existing taxpayers as well as to the potential taxpayers. Over time, the perceived adversarial relationship may incorporate a fair bit of trust; paving the way for deeper tax compliance. The Indian tax administration may consider specific budgetary allocations to the Principal Chief Commissioners for this purpose. The CSR activities should be tuned to sync with ESG goals of the tax administration. Incorporating them in detail in the annual central action plan may provide a greater focus and structure to these efforts.

### **Ethics, Sustainability, and Tax Administration**

Sustainability, is a superset of Corporate Social Responsibility (CSR). It places primary emphasis on preservation of the resources impacted by business activity of the enterprise. On a direct level, CSR will help the tax administration to stick closer to its own ESG goals. Taking a broader perspective, as the tax department begins to work closely on CSR with the corporates, over time, businesses can be influenced to make tax compliance an essential ESG goal.

Furthermore, sustainability places value in common resources. Sometimes the scope of a firm’s ethical commitments may wane under financial duress, but common resources do remain worthy of conservation through economic cycles and over time (Bird and Nozemack 2016).

As per a KPMG report, 93% of 250 large global companies provide sustainability reporting (KPMG 2013). The United Nations considers sustainability as basic questions of fairness, social justice, and a greater access to an improved quality of life (UNDP 2011).

Hence incorporating CSR and ESG are vital for any tax administration.

The next issue, which flows from the earlier studies on trust is that of tax transparency.

### **The Power of Tax: Transparency in Governance**

Tax transparency fosters a public domain discourse on the design and implementation of tax policies. It facilitates an insight into the focus of the government in setting and implementing socio-economic objectives.

A tax transparent system must place the key governmental objectives in the public domain. The next step is to place specific policy of the government and the tax administration agendas in the same domain. The administration frameworks and achievements must be measurable against the overarching intent and purpose.

Governments should regularly publish not only goals and objectives, but also the assumptions on which they are based, and the information needed to evaluate whether a tax system is working in the public interest (Murphy and Baker 2021). Such steps would greatly enhance trust and iron out governance issues, making the tax administration in tune with ESG goals.

### **Tech-Driven Tax Ecosystems**

Improving the functioning of tax administration being the core of domestic resource mobilisation strategy, mention must be made of the technological inputs needed in the tax administration of the future.

The initial wave of digitization



## Tax transparency fosters a public domain discourse on the design and implementation of tax policies. It facilitates an insight into the focus of the government in setting and implementing socio-economic objectives

in the last 20 years focused primarily on doing away with paper and the embedded delays in analog processes. Tax return e-filing, faceless regimen and integration of many functions have been more or less integrated into the IT endeavours in India. Functional hitches do remain though. However, with the advent of generative AI and a quantum jump in technologies, the future rests within the realm of connected and embedded tax

ecosystems. In India, as in the other progressive tax administrations, data collection has been a critical piece in enabling the technology transformation initiatives. AIR, prepopulation of tax returns, e-assessment, faceless assessments and appeals are examples.

### **Increased Accuracy With Real-Time Data**

The next step would be to embed

tax into natural systems functioning in a business as well as in market places. This has the potential to greatly enhance data quality with real-time data validation checks. For example, the Australian Tax Office (ATO) has implemented a single touch payroll, which enables contemporaneous employer's payroll information to be supplied to the ATO. It embeds the employer's reporting information directly into the payroll batches and data management systems to enable the reporting of salary, taxation and superannuation data to the ATO.

Such an embedded system would greatly help in the dynamic calculation and payment of advance taxes and would of course require a standardised system that could be embedded into business organisations' software.

Globally, some progressive tax administrations report directly to the political superiors. In India, too, the structural matrix of the organisation may require the flow of information and reporting directly to such superiors so as to enhance communication and focus.

### **Ethical Shift in Responsibility**

The entire concept of sustainability came to be highlighted in the pivotal document, 'Our Common Future', which defines the concept as meeting the needs of the present without compromising future generations (World Commission on Environment and Development 1987).

Sustainability, implanted with the dimensions of Environment, Social and Governance (ESG) is now a central concept in resource management in the economic, social, and political spheres (van Marrewijk 2003). Implicit in this view is that demands on resources today can outstrip the ability to deliver those same resources tomorrow. Sustainability certainly includes concepts of ethics, and work integrity; not following them has the potential of terminating the resources required for tomorrow.

India, at CoP26, has pledged to achieve net zero emissions by 2070. One of the pillars of this pledge is the introduction of comprehensive ESG related disclosures to nudge organisations to look beyond the traditional finance-centric models. With the sudden unleashing of next generation technologies coupled with an almost critical requirement of ESG, Indian Tax Administration, at this juncture, requires a paradigm shift.

The complete eco-system requires sustainability clothing. Where the taxpayer and tax administration systems are interconnected, where compliance is automatic and seamless, and where traditional decision functions are done by technology.

### **India's Pledge for Net Zero Emission**

In leading tax jurisdictions like India, there is an urgent need to incorporate ESG goals in the action plans. A determined push with CSR and administrative ethics will integrate the tax administrations deeply into the



**Governments should regularly publish not only goals and objectives, but also the assumptions on which they are based, and the information needed to evaluate whether a tax system is working in the public interest**

business and social landscape; fostering the much-needed trust in the taxpayers and avoiders.

Such an integral push will encourage voluntary tax compliance. Finally embedding tax systems into the natural landscape of businesses will greatly reduce costs of collection, reduce carbon footprints and have the potential to reduce tax gap. Some have criticised “sustainable development,” as an “oxymoron”. Seen from the prism of the future,

ESG standards endorse a paradigm ethical shift in societal and individual responsibility owed to future generations.

Hence the oxymoron may well be an accurate term; just development should be all encompassing. Tax administration must incorporate structures and policies that incorporate resource depletion, ethics, and waste within the cost-benefit calculus of commercial and political decision-making. **T**

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# TAXATION IN INDIA: COMPLIANCE BY-DESIGN



**SECTION E**

# INCOME TAX - THE ADVANTAGE OF BEING FACELESS!

# A COMPLEX LANDSCAPE IMPACTING BUSINESSES

In the intricate tapestry of a nation's economic framework, taxation stands as an essential thread, weaving together the resources needed for growth and development. India, a land of diversity and dynamism, is no exception to the profound influence of taxation on its economic landscape



**JASPER VIKAS**

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**T**HERE is not even an iota of doubt in the fact that taxation plays a vital role in any country's economic framework and India is no exception. The Indian tax system encompasses a wide range of tax statutes, with the Income Tax Act, 1961 and the Goods and Services Tax (GST) Act, 2016 being two significant pillars. Both the statutes outline various mandatory compliances that individuals, businesses and organisations must adhere to. This essay explores the "Compliance by Design" concept within the Indian tax system and examines how as to it affects corporations, small and medium enterprises (SMEs) and the overall economy.

## **Significance of Taxation**

Taxation in India has always been a challenging task and when we add tax compliances, which necessitate (i) ownership of tax technology and (ii) procedural adjustments for all taxpayers, it becomes a daunting task for the taxpayers, as they have to follow not only the circulars issued by the competent authority time to time but also mandates to have a human resource to follow such compliances. And, because of the ever-increase in compliances, expenses are increasing and the transaction costs are eating the bottom line of enterprises facing 'profit-cession'. All this has led to a situation where the businesses are forced to 'invest in tax



technology' so as to improve not only their 'compliance operations and minimise expenses' but also to do 'Business'. Businesses having automated tax technology may automate their,

- (i) Tax computations,
- (ii) Filings, and
- (iii) Reporting,
- (iv) Saving time and lowering the risk of errors and fines.

As these automated models are not immune to errors, there is a need to have a human resource, such as account professionals, to cross-check. This, again, will add to the cost of the business.

### **Complexities of Tax Compliance**

Various challenges are faced by

businesses, especially in the context of a developing economy like India and 'tax compliances' further add to their woes.

It is not at all affordable or feasible to buy tax technologies, as they are expensive, require regular updates and necessitate human resources. It is very difficult for small and medium-sized businesses to survive in such a situation and they need assistance in investing in tax-supporting technologies, making it harder for them to comply. Compliances squeeze the company's capital.

### **Role of Key Statutes: Income Tax Act and Goods and Services Tax Act**

For direct taxation, the Income Tax

## **SNAPSHOTS**

1. Frequent changes in Tax laws and regulations require time and resources to understand, interpret and adapt to new tax provisions, which further require expert guidance.

2. The businesses are required to maintain their books of accounts and other related financial records properly as per the formats prescribed for the specified periods.

3. Small businesses are not well equipped to ensure tax compliances. Despite thereof, they generally do not take the assistance of specialised experts, because engaging experts will add to their expenses.



Act of 1961 and for indirect taxes, the Goods and Services Tax (GST) Act of 2016 provide the legal framework in India. These statutes outline the obligations, procedures and compliances that taxpayers must follow.

Compliance by Design refers to the incorporation of compliance requirements into the design of the tax laws themselves, with the aim of promoting voluntary compliance and minimising tax evasion.

Section 139, ITA 1961 carries various compliances to be followed, which are complex enough to require a good tax or accountancy professional to make the entrepreneur understand its implications. This provision is getting bigger and bigger with every passing year. The Assessee also have to comply with the provisions of Sections 139A (Permanent Account Number), 139AA (Quoting of Aadhar Number), 140 (Return by

alongside the prescribed deductions and as far as possible, with accurate tax liabilities. Taxpayers are then expected to pay their due taxes on time as per Section 211 of the ITA 1961, through any of the modes such as advance tax payments or tax deductions at source, etc.

### **Maintenance of Books of**

**Accounts:** The businesses are required to maintain their books of accounts and other related financial records properly as per the formats prescribed for the specified periods. In fact, recently, the Ranchi Tribunal in Rakesh Kumar Jha (2023) case held that the penalty is justified under Section 271B of the ITA 1961, on account of failure to get the account books audited, even in cases where the assessee maintained no books of accounts. Certain specific compliances also exist, such as the mandatory audit of the Companies under Section 44AB of ITA 1961 whose annual turnover exceeds rupees 10 crores if annual cash transactions do not exceed 5 percent of the turnover. Further tax audit is mandatory even for non-corporate assesseees.

### **Tax Deducted at Source**

**(TDS):** It is mandatory for the Corporates to deduct tax at source (TDS) under Section 194C of the ITA 1961, where they had made the payments towards any work done by the contractors. Similarly, based on one's tax liability, the corporates must also pay advance tax payments under Section 208 of the ITA 1961. This payment can be made in four

**Taxation in India has always been a challenging task and when we add tax compliances, which necessitate (i) ownership of tax technology and (ii) procedural adjustments for all taxpayers, it becomes a daunting task for the taxpayers, as they have to follow not only the circulars issued by the competent authority from time to time but also mandates to have a human resource to follow such compliances**

### **Income Tax Act 1961 (ITA):**

The ITA is the principal direct tax legislation governing the income tax law of India. It imposes various compliances on individuals, corporations and other entities. Some key compliances include:

#### **Filing of the Voluntary**

**Income Tax Returns:** The assesseees have to file the voluntary tax return under Section 139 of the ITA 1961 within the prescribed due dates.

whom to be verified), 140A (Self-Assessment, this provision has been amended many a times till now with various compliances to be followed) and 140B (Tax on updated return, the Finance Act, 2022, inserted this provision and is effective from 01-04-2022 of the ITA). Similarly, is the case of filing annual returns of "Significant Financial Transactions" which is an additional compliance. Thereafter, they have to file the return under any of the mutually exclusive heads of income,



instalments also.

**International Transactions and Compliances:** In present times, most businesses require international transactions, which are subject to transfer pricing provisions as mentioned under Sections 92 to 92F of the ITA 1961 to determine the arm's length price (ALP) for determining the price of the transactions. The corporates also have to pay tax on the buyback of shares from the shareholders under Section 115Q of the ITA, 1961.

**Goods and Services Tax**

**(GST) Act, 2016**

Goods and Services Tax was a pathbreaking indirect tax legislation that has replaced multiple indirect taxes. GST also requires various compliances.

**GST Registration and Filing of the Returns:**

For businesses, the Companies are required to take GST registration in each State wherever they carry out their business activities. And then, the Companies also have to file GSTR-1 and GSTR-3B returns on a monthly basis, where they are supposed to provide the details of their outward and inward supplies to calculate the

tax payable.

**Annual GST Returns and Reporting of Purchases and Expenses for Claiming ITC:**

The Companies then have to file their annual return, GSTR-9, where they summarise their sales and purchases and also have to Input Tax Credit (ITC) claimed in the relevant financial year. The Companies also have to generate Electronic Way Bill (E-Way Bill) for the transportation of goods, whose value exceeds the sum of fifty thousand rupees. A registered person/recipient of service is also required to pay GST under the Reverse Charge

Mechanism (RCM). The Companies can claim ITC on GST paid by them on purchases and expenses related to business activities. The Companies with an annual turnover of less than rupees 1.5 crores can opt for the composition scheme.

**Self-Certified Annual Reconciliation and Anti-Profitereing Measures:** A registered person is required to

file “Self-Certified Annual Reconciliation” in Form GSTRR 9C. It is also required by the Companies to pass the benefit of tax rates (reduced) to the customers by reducing the cost of the goods and services provided.

**Tax Compliance has Adversely Affected the Corporates, Especially SMEs:**

Tax compliance has adversely

affected businesses, especially small-scale and medium-scale enterprises. Tax compliances are necessary for the corporates to operate legally as well as responsibly. In case of, firstly less tax compliance and secondly, trust in the corporates, a conducive environment is created for the businesses to grow. In fact, more tax compliance would affect the businesses, as the cost of doing business will increase. Too many compliances many times, force the businessmen to take adverse decisions, which in fact affects the quality and efficiency of the business. Following are the adverse impacts on corporate businesses.

**Diversion of Resources:**

firstly, tax compliances take noteworthy time, along with effort, and financial resources from the businesses. Secondly, because the tax complexities require tax planning and record-keeping and reporting, this can divert the management’s attention and resources away from the main business activities of the Company. This diversion actually hampers the (i) innovation (ii) strategic decision-making and (ii) competitiveness.

**Tax Compliances and**

**Related Costs:** Tax obligations incur an additional cost for the businesses. In fact, hiring of new tax professionals, while investing in accounting professionals and also conducting tax audits, will definitely increase the financial burden. The penalties and the costs for the non-compliance hits the profits of the Companies.

In present times, most businesses require international transactions, which are subject to transfer pricing provisions as mentioned under Sections 92 to 92F of the ITA, 1961 to determine the arm’s length price (ALP) for determining the price of the transactions





Considerable time is invested in understanding and complying with the tax requirements, which may not seem to be worthwhile for a corporate entity which aims at rapid growth. This diverts its focus from (i) operational efficiency (ii) product development and most importantly from (iii) customer satisfaction

### **Frequent and Massive Regulatory Changes:**

Frequent changes in Tax laws and regulations require time and resources to understand, interpret and adapt to new tax provisions, which further require expert guidance. The small Companies have limited resources and therefore, any small increase in the budget, adversely affects their financial position. The tax compliance obligations place a 'disproportional burden' on these SMEs. The expected costs for (i) hiring tax professionals (ii) employing tax software and also

(iii) meeting tax compliance deadlines, further affect the budgets of the Companies and also hinders the growth prospects.

**Spending on Experts:** Small businesses are not well equipped to ensure tax compliances. Despite thereof, they generally do not take the assistance of specialised experts, because engaging experts will add to their expenses. Consequently, they are compelled to face penalties for non-compliances, which again affects their businesses.

### **Time Constraints and Distracted Focus**

Considerable time is invested in understanding and complying with the tax requirements, which may not seem to be worthwhile for a corporate entity which aims at rapid growth. This diverts its focus from (i) operational efficiency (ii) product development and most importantly from (iii) customer satisfaction.

Indubitably, tax compliances are necessary for maintaining the integrity of the tax structure, but it is also crucial to acknowledge the adverse impact of such compliances on small businesses. SMEs generally struggle with the prevalent complexities of the market and society. In such a scenario, the burden of tax compliances on such entities further leads to diversion of their limited crucial resources which impedes the smooth operation and growth of the businesses.

### **Simplifying Tax Compliance Procedures**

It is thus clear that the governments should work towards (i) simplifying the tax compliance procedures (as much as possible) (ii) reducing the administrative burden and (iii) providing necessary support to the businesses, especially Small and medium-sized enterprises so as to ensure the much necessary balance between the compliance requirements and the business operations. This will help to develop a conducive environment necessary for the sustainable growth and building competitiveness amongst the SMEs. 📌

# CBDT'S FACELESS SCHEME IS WELCOME, BUT FALLS A SANDWICH SHORT OF A PICNIC!

The implementation of faceless assessment and appeals by the income tax authorities in India are a major change in the taxation system. They aim to improve transparency, corruption, and accountability. However, they face challenges such as delays and judicial issues. It is important to know why these changes happened and how to make the system better and fairer



VINAY JALAN

Advocate

**T**HE implementation of faceless assessment and faceless appeals by the income tax authorities in India has been an vital step towards improving the transparency and efficiency of the taxation system. These changes have created much-needed responsibilities for officers in the stream, but the delay in disposal and judicial bottlenecks remain a significant concern. While many people argue that the system should revert to the earlier setup, it is important to understand why these changes have been introduced and how they can be improved to ensure greater accountability and fairness in the taxation system.

When it comes to income tax assessment and appeals, the faceless system has been a hot topic of discussion for quite some time now. This new system has brought in much-needed accountability and responsibility for officers, who are now required to handle these processes without any personal identity or connection with the taxpayers in question. However, it's important to acknowledge that there have been certain issues that have arisen since the implementation of this system.

### **The Rationale Behind Faceless System**

One of the primary reasons for implementing faceless assessments and appeals was to reduce corruption and other malpractices associated with the taxation system. By eliminating the human element in these processes, the authorities hoped to avoid potential

biases and favouritism that may lead to tax evasion. This system is also intended to bring in more transparency to the system and reduce the need for personal appearances by taxpayers, making it easier and more convenient for them to comply with their tax obligations.

Faceless assessment and faceless appeals have been introduced by the Income Tax Authorities as a way to ensure transparency and accountability in the Indian economy. This new system has created much-needed responsibilities for officers in the stream, but it also comes with its own set of challenges.

One of the major issues with the faceless assessment and appeal system is the delay in disposals. It can take a considerable amount of time for the authorities to resolve disputes and make decisions, causing frustration and inconvenience for taxpayers. This is a valid concern, and the authorities

need to work towards finding ways to speed up the process. With the introduction of the system, there has been a backlog of cases that were previously handled by officers on a face-to-face basis. This has led to certain delays in processing cases, which can be frustrating for taxpayers who are eagerly waiting for the outcome of their appeals.

### **Addressing Delays and Judicial Bottlenecks**

The current system has not been without challenges. The most significant problem has been the delay in disposing of cases, which has led to a bottleneck in the judicial system. Due to the high number of cases awaiting disposal, taxpayers may face long waiting periods before receiving a verdict from the tribunal or appellate authorities. This delay has often led to significant financial burdens on the taxpayers, who may be required to pay additional interest or penalties for any outstanding tax

## **SNAPSHOTS**

1. Faceless assessment and faceless appeals have been introduced by the Income Tax Authorities as a way to ensure transparency and accountability in the Indian economy.

2. Due to the high number of cases awaiting disposal, taxpayers may face long waiting periods before receiving a verdict from the tribunal or appellate authorities.

3. Despite these challenges, it is essential to recognize that the faceless assessment and appeals system is a crucial step towards creating a more transparent and efficient taxation system in India.





The health of the Indian economy and the need for transparent functioning are paramount concerns that can be addressed by the faceless approach. By eliminating the potential for external biases and helping to streamline the assessment and appeals processes, the system can ultimately lead to a fairer and more efficient approach for all parties involved

liabilities.

Another challenge is the lack of clarity in the judgement process. While faceless assessments and appeals aim to eliminate the human element, the system still lacks transparency in the decision-making process. Many taxpayers are dissatisfied with the outcomes of their appeals, as they cannot understand the basis on which their cases have been decided. This lack of clarity often leads to frustration and mistrust in the taxation system.

Despite these challenges, it is

essential to recognize that the faceless assessment and appeals system is a crucial step towards creating a more transparent and efficient taxation system in India. By removing the human element and replacing it with technology-driven processes, it is possible to reduce the potential for corruption and to ensure greater accountability of tax officers.

However, some changes are required to enhance the efficiency and effectiveness of the system.

### Enhancing Transparency

### and Clarity

One of the most critical changes needed is the need to speed up the process of disposing of cases. The authorities must take steps to reduce the backlog of cases and ensure that decisions are made promptly. This will help to ease the financial burden on taxpayers and ensure that justice is delivered swiftly.

Secondly, there is a need for greater clarity in the decision-making process. The government should ensure that the procedure for decision-making is transparent and understandable to taxpayers. This will help to build trust in the taxation system and improve compliance rates.

Another concern is the judicial bottlenecks that have been observed in the faceless assessment and appeal system. This refers to the backlog of cases that often arise due to a lack of proper infrastructure for resolving disputes. This issue needs to be addressed promptly, as the delays can have a significant impact on the functioning of the Indian economy. Despite these challenges, many believe that the faceless assessment and appeal system is beneficial for the health of the Indian economy. It ensures a level of transparency and accountability that was lacking in the system that was previously in place. Transparency is essential for building trust among taxpayers and ensuring that everyone is held to the same standards.

Some changes are needed in the judiciary to ensure that the system works effectively. There should be more focus on training



and capacity building for judges, as well as the creation of more specialised courts to handle tax disputes. By addressing these issues, the Indian government can ensure that the faceless assessment and appeal system is more effective and efficient.

### **Potential Benefits vs. Previous System**

Overall, the faceless assessment and appeal system has its pros and cons. While it is a step in the right direction for ensuring transparency and accountability, there are still some issues that need to be addressed to make the system more effective. By working towards solutions to these challenges, the Indian government can create a more efficient and trustworthy tax system. Additionally, the judicial system has not yet fully adapted to the faceless approach. As a consequence, bottlenecks have arisen, leading to further delays in the appeals process. This has also given rise to concerns that the process lacks transparency, which could potentially lead to errors and injustices.

There are some who argue that the previous system, which involved face-to-face interactions, was more effective and efficient. They believe that the personal touch provided by officers helped to build trust and establish better lines of communication, leading to more accurate assessments and resolutions. However, it's important to remember that the face-to-face system was not without its flaws. Officers could be influenced by external factors, leading to biased assessments or decisions.

### **The Way Forward**

Despite some of the issues that have come to light in the faceless assessment and appeals system, it's important to focus on the potential benefits that the system can bring. The health of the Indian economy and the need for transparent functioning are paramount concerns that can be addressed by the faceless approach. By eliminating the potential for external biases and helping to streamline the assessment and appeals processes, the system can ultimately lead to a fairer and more efficient approach for all parties involved.

Of course, some changes are

assessments and appeals cases.

In conclusion, the implementation of faceless assessments and faceless appeals by the income tax authorities is an important step in creating a more transparent and efficient taxation system in India. While the system has faced some challenges, it is essential to continue refining it to ensure that it meets the needs of taxpayers and the overall economy.

By addressing the bottlenecks and enhancing the transparency of the process, the system can fulfil its intended objectives, leading to a fairer and more compliance-friendly taxation system in India. The faceless

**This new system has brought in much-needed accountability and responsibility for officers, who are now required to handle these processes without any personal identity or connection with the taxpayers in question**

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necessary to ensure that the faceless approach is fully functional. The judiciary needs to adapt to the new system and put in place safeguards that ensure transparency, accuracy, and timely disposal. This will require substantial effort from all parties involved, but the long-term benefits of an efficient and fair system are worth the investment.

Finally, as the system evolves, there is a need for changes in the judicial process to accommodate the new system. The judiciary should consider adopting new procedures to handle the increasing number of faceless

approach to income tax assessment and appeals has created much-needed responsibility for officers, but there are still some concerns that need to be addressed. Despite the delay in disposals and judicial bottlenecks, the system has the potential to be a beneficial approach towards creating a transparent functioning system and a healthier Indian economy. There are some changes necessary that require all parties to come together to ensure the system is functional, creating trust, transparency and accurate assessments. 🚫

# THE DIGITAL ERA OF INDIA'S TAXATION

Filing income tax has become incredibly easy with just a click of a button. In a country like India, where there are many complicated tax procedures, transitioning to the digital era has made compliance easier for both taxpayers and the Income Tax department



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Advocate



**DINESH  
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**G**ONE are the days when the manual filing of Return of Income and other tax-related compliances viz., on collation of data and filing of prescribed statutory forms, which gave rise to many complications have now been substantially put to rest by the introduction of the e-filing system. The e-filing system is a significant development in the tax administration providing a platform for the taxpayers to file their Returns of Income and also comply with many other provisions anytime from anywhere. The Income Tax Department introduced an e-filing portal for every taxpayer who has an active PAN. The taxpayer who registers with the e-filing portal is provided with a separate profile which notifies the taxpayer about the filing of Return of Income, processing of Return of Income, processing of refunds, service of notices/communications and other allied matters. Compliance with Income Tax procedures is now at the click of a button. In a country like India with so many taxing procedures, shifting to the digital era (electronic era) has shown an ease of compliance both for the Department as well as the taxpayers across the country.

### **Ease of Compliance Through Web Portal – Direct Tax**

The Income Tax Department has its own Portal – the Income Tax Business Application (ITBA) for every officer who keeps track of the Income Tax proceedings in the case of every taxpayer. This portal has certainly reduced the time consumption on procedural compliance. For instance, reasons recorded for re-opening of an assessment u/s.148 ought to be sanctioned by a higher authority to whom a communication will be sent, which will be routed through a particular authority. In the digitised era, such compliance need not be routed through any authority in as much as the officer who initiates proceedings shall update in the Income Tax Business Application (ITBA) portal which can be accessed by the higher officials who in turn can approve or reject the same by click of a



button.

The e-filing portal has the following components; the dashboard which gives an overview of the Taxpayer profile wherein the jurisdiction details and account details as to which email address and mobile number as primary & secondary details wherein the taxpayer is notified about any proceedings. One of the significant aspects is where the Pending actions are notified viz., pending assessment proceedings, outstanding demand, reporting portal & compliance portal. The e-proceedings tab has two different compartments which are “for your information” wherein the information regarding defective returns, intimation letters, and initiation of proceedings are notified & “for your action” wherein

proceedings, which are initiated culminates into an order. The assessment orders and penalty orders are segregated under the “for your action” tab.

The compliance portal, developed recently under the operation “project insight”, is designed to collect information and reflect the same in the Annual Information Statement (AIS) like Tax deducted at source, specified financial transactions etc., whereas the e-campaign is to get hold of the Non-filers of Return of Income and those taxpayers who enter into high-value transactions. This portal initially had technical glitches which led to a series of litigation which resulted in the taxpayers knocking on the doors of the High Court/s. A separate grievance portal (e-Nivaran) also forms part of the e-filing portal

## SNAPSHOT'S

1. The shift to the electronic era has brought about a significant improvement in the efficiency and transparency of tax compliance procedures, benefitting taxpayers across the country.

2. The e-filing system is a significant development in the tax administration providing a platform for the taxpayers to file their Returns of Income and also comply with many other provisions anytime from anywhere.

3. The significant aspect of the e-compliance is that it is paperless which is environmentally friendly, with every notice being e-generated. The question of proper service of notice also is answered in the portal.

where the grievances of the Assessee's are addressed.

The significant aspect of the e-compliance is that it is paperless which is environmentally friendly, with every notice being e-generated. The question of proper service of notice also is answered in the portal.

The notice is generated by the Income Tax Officer with his ITBA portal by affixing his Digital signature; as and when the same is e-generated, the same stands transmitted to the E-filing portal registered by the taxpayer and simultaneously served to the registered email address (primary and secondary mail IDs) as per the PAN database viz., Income Tax e-filing portal. Despite there being a space for litigation as to the service of notices/ communication to unknown or different email addresses which is not registered with the PAN database, it cannot be concluded that the e-system has failed. The main fabric as to whether the Income Tax proceedings are transparent is still unaddressed insofar as there are more technical glitches in the Portal.

The income tax e-system has opened the gate for the taxpayers, probably for the individuals to file Income Tax returns on their own in so far as everything is captured by the Department through the Annual Information system and other allied attributes. The question of transparency of the income tax proceedings has been largely answered in as many as various units viz., assessment unit, verification unit, technical unit & review unit are set up to complete an income tax

proceeding. The introduction of faceless proceedings u/s.144B has been a game changer completely striking down the human interface.

The e-system has substantially reduced the cost of infrastructure, is environmentally friendly and substantially reduces the procedural burden cast on the Income Tax authorities as well as the taxpayers. Any communication/order gets notified in the e-filing portal and the same can be advertised to in the e-filing portal itself. The online compliance is user-friendly in that it adjusts the refund against the outstanding demand by giving notice (an opportunity) to place a submission. With the click of a

assessments could be re-opened for 10 years and the Income Tax Department gets hold of the transactions and related information regarding a particular taxpayer for at least 10 years. This is only possible in the electronic era.

### **Ease of Compliance Through Web Portal - Indirect Taxation**

As far as the Indirect taxes are concerned which were brought in for the first time vide Finance Act, 1994 has substantially been notification / circular driven since its inception. The catena of circular/s issued from time to time adds more space for confusion. The first major change was in the

**The robust mechanism built in such a short period to bring all the taxpayers inside a single framework needs to be appreciated, although the portal needs to be revamped for seamless business transactions**

button, one can file his Income Tax Return sitting anywhere in the globe and e-pay taxes from anywhere at any time. This paradigm shift in compliance is surely a move that has resulted in the benefit which is a way forward to digitization.

Digitization of records is to preserve the records in a cloud server which can be accessed from anywhere at any time. The electronic era focuses on such digitization which is the main fabric that could provide information for over a period of time. For instance, the

year 2017 with the introduction of the Goods and Service Tax Act, 2017 and the main fabric for the enactment is the unified flow of the Input Tax Credit avoiding cascading tax effect. This major change was bolstered by the introduction of a common portal wherein all the compliances are complied with. GST council was set up where the fitment committee acts on the recommendations placed during the course of the meeting where significant changes are brought in, be it, the rate of taxes, classification of goods or any



other significant changes. This transition initially led to various problems since the GST portal had much fewer options to solve the issues.

### **GST Transitional Credit**

The difficulty during the transitional period was drastic and one had to approach the jurisdictional adjudicating authority. The transitional credits which permit the carry forward of credit under Central Excise, Service tax and VAT as available in the last return viz., 30th June, 2017 couldn't be claimed by the taxpayers for various reasons. This being a time-bound compliance couldn't be complied with by filing TRAN-1 due to technical glitches, which was under the direction of the High Court and was considered in the GST council meeting.

### **GST Electronic - Invoice**

One significant change brought in recently is the electronic invoicing system (e-invoice) where an identification number will be issued against every invoice by the Invoice Registration Portal (IRP) to be managed by the GST Network (GSTN). The e-invoices are generated in a separate portal which is transferred to both the GST portal and e-Way bill portal in real-time. This eliminates the need for manual data entry while filing a GSTR-1 return since the information is directly passed to the GST portal. The only drawback is that an e-invoice cannot be cancelled after 24 hours of its generation. There may be instances where e-invoices are generated and the contract fails which would require cancellation of e-invoice which has to be addressed by the Government.

The registered taxpayers under GST find it more convenient to access everything that is required without any hassle. The common portal has to be improved in all four corners to put a quietus to the long-drawn battle of claim of Input Tax Credit, blocking Input Tax credit, Reconciliation of details which arise on account of mismatch of monthly return in GSTR -2B and annual return in GSTR-9. Though there are issues that still need to be resolved, the legislature comes up with more amendments every year to add more to the development of the common portal. The robust mechanism built in such a short period to bring all the taxpayers inside a single framework needs to be appreciated, although the portal needs to be revamped for seamless business transactions. 🚫



**GEETA SINGH**

Managing Editor & Co-Founder  
Parliamentarian Magazine

**LAST WORD**

## INDIA'S G20 LEADERSHIP: LEADING THE CHARGE IN GLOBAL CRYPTO ASSET REGULATION

In today's swiftly changing global financial arena, India's G20 presidency has assumed a proactive role by giving priority to the regulation of cryptocurrencies and crypto assets

India's G20 presidency, emphasising crypto asset regulation, aligns with global efforts. In collaboration with the Financial Stability Board (FSB), the International Monetary Fund (IMF) has produced a joint policy paper in response to India's request. This paper consolidates existing standards and emphasises addressing root drivers of digital asset demand rather than advocating for an outright ban on cryptocurrencies.

Globally, countries vary in their approaches to cryptocurrencies, from strict regulation to outright bans. India combines regulation with taxation, recognizing that an outright ban isn't simple. Thorough regulation, oversight of licensed crypto entities, and enforcing anti-money laundering and counter-terrorism standards enhance transparency and cross-border monitoring.

This initiative aims to enable the exchange of information regarding non-financial crypto assets, set to commence by 2027. To achieve this, the ongoing development of the Crypto Asset Reporting Framework (CARF) aims to prevent the misuse of non-financial crypto assets for concealing undisclosed wealth. The G20 Leaders' declaration has unanimously endorsed the rapid implementation of CARF, along with recommendations for amendments to the Common Reporting Standard (CRS). Furthermore, it urges the Global Forum on Transparency and Exchange of Information for Tax Purposes to establish a coordinated timeline for the commencement of exchanges among relevant jurisdictions.

The global tax agreement, involving about 140 nations, including India, aims to transform global tax standards, ensuring that multinational corporations pay a minimum tax rate of 15 percent where they operate. Yet, several unresolved issues require attention before full implementation. The G20 nations have urged the OECD (Organization for Economic Co-operation and Development) to create a comprehensive framework to swiftly address pending matters related to the Multilateral Convention (MLC), with the goal of finalising the MLC for signature in the latter half of 2023.

The G20 nations endorse various countries' efforts in implementing the Global Anti-Base Erosion (GloBE) Rules collectively. They acknowledge the crucial

importance of coordinated endeavours to enhance the capability of developing nations in effectively implementing the two-pillar international tax package.

In the Indian context, the regulation of cryptocurrencies remains a subject of ongoing debate. While cryptocurrencies are not subject to comprehensive regulation, they are not entirely without oversight either. Various statements from different government bodies indicate a cautious approach to cryptocurrencies. In 2018, a circular from the Reserve Bank of India discouraged banks from engaging with entities involved in virtual currencies. However, in 2019, the Supreme Court overturned this circular, allowing banks to carry out due diligence for virtual currency transactions under existing regulations related to anti-money laundering, foreign exchange, and counter-terrorism financing.

Furthermore, the Finance Act of 2022 introduced the concept of 'virtual digital assets,' encompassing cryptocurrencies, and imposed a 30 percent tax on their transfers. In February 2022, the Advertising Standards Council of India issued guidelines for advertisements related to virtual digital assets and services, mandating disclaimers regarding the risks associated with such transactions, given the absence of regulatory recourse.

India's exploration of a 'Central Bank Digital Currency' (CBDC) as an alternative to cryptocurrencies faces criticism from crypto businesses, advocating for their coexistence. The CBDC pilot launched in late 2022 is still in its early stages.

Beyond cryptocurrencies, it's essential for both investors and the government to embrace blockchain technology. Despite India's stringent tax regulations, crypto-related scams such as FTX may continue due to vulnerabilities in both centralised and decentralised systems. Strengthening cryptographic architecture is vital to fortify the ecosystem against these threats.

The cryptocurrency landscape is on the verge of technological advancements aimed at enhancing security and transparency. Regulations may adapt in response to these changes. The government's decisions will carry significant weight in shaping the trajectory, expansion, rights, and safeguards associated with this technology, impacting the broader cryptocurrency community. 📌



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