

## **Tax collectors masquerading as Tax-Adjudicators - Reforming Tax system FEBRUARY 09, 2015**

**By Dr G Sreekumar Menon & Arjun Banerjee**

**INDIA's** ambitious tax reform initiative, the Goods and Services Tax (GST) is likely to be implemented from April 2016 onwards. The present taxation system is a mix of levies by both Centre and States, ranging from manufacture to sale, causing difficulty to trade and industry and the end consumers. Introduction of GST will open a new Chapter in Tax Reform by replacing the complex mix of central and state levies, such as Central Excise, Value added tax and octroi by a single unified tax, across the country. This is going to be an ambitious and path breaking tax reform, set to dramatically alter A to Z of Tax Collection. The integration of Central and State taxes will involve transforming Tax Administration itself, which is very essential, as in the present scheme of things, there is considerable tax-evasion, huge tax-amounts locked up in litigation for decades, and taxes not getting remitted to the Public Exchequer, resulting in huge tax-arrears. Despite these shortcomings the economy of India is eleventh largest economy in the world by nominal GDP and the fourth largest by Purchasing Power Parity (PPP). Economists predict that by 2020, India will be among the leading economies of the world, a worldwide survey by the German Bertelsmann Stiftung says that three-fourth of Indians see themselves as a super power in 2020. This can become a reality only if the current tax system and Tax Administration are subjected to substantial refinement.

The Government of the day, while, embarking on a major surgical exercise, of the tax system, has to design a world class Tax Administration also. Many Tax Reforms fail because of poor implementation and enforcement in addition to complex legal interpretation and biased adjudications of tax disputes. Compounding the ills of the bad design of these taxes are the weaknesses of the Tax Administration. Tax Administration Reform Commission (TARC) has observed - "the Indian Tax Administration is at its nadir. A fundamental and deep reform is urgently called for." Without reforming the present Tax Administration, we can ill-afford to have a new Tax System being implemented. Reforming the Indian Tax System is vital if the Indian Economy wants to surge ahead into the league of super economies. However, the focus of the Government has been on redesigning the taxation structure by shifting to GST. Hardly any emphasis is there to change the tax regime. TARC has made a detailed study of the ills of the current Tax Administration and suggested several recommendations. The writers of this Article feel that before GST is implemented, the tax regime needs to be overhauled from A to Z, otherwise, it will have an adverse impact on GST implementation. An inefficient Tax Administration can jeopardize the entire GST Scheme. So the Tax Administration needs to be revamped and reformed and designed to implement the landmark reform of GST. How this can be achieved is the scope of this Article.

### **Present Tax Administration:**

The current practice of blind fixation of revenue targets, unbridled pursuit of revenue targets, uncontrolled issue of Show Cause Notices, highly biased Adjudications and consequently huge pile-up of tax cases at all levels, has given the Indian Tax Administration a bad reputation in jurisdictions across the world. The state of Indian Tax Administration is also reflected in the World Bank Report on doing Business in India, 2015, which ranks India at a dismal 156 out of 189 countries in terms of ease of paying taxes. Investors are wary of entering into tax disputes that can take decades to resolve. Governments use the tax system for multiple social, economic, and political objectives, which create complexities in Tax Administration and this undermines the objective of fairness, and lead to misallocation of resources in the economy. Reforms are needed from time to time to flush out the undesirable elements of the tax system and restore efficiency, fairness and equity. What is the way out of this impasse and what is the

guarantee that our Tax Administration will not enmesh GST into another legal quagmire?

### **GST Road Map:**

Hon'ble Prime Minister Shri Modi's vision for market-led growth will require the formation of a single Indian common market in which businesses can source anywhere, manufacture anywhere and sell anywhere. But India's current indirect tax System is a serious impediment to achieving this goal.

India's Complex and multi-layered tax structure (Central, State, local) not just makes it a difficult place to do business but makes it a high-cost place as well. The new Goods and Services Tax is rightly seeking to get rid of this 'one country, several markets' syndrome. The enormity of the potential economic opportunity of such transformation is well mapped out in the CII-KPMG Report (Vibrant India : Best Place of Doing Business - An Action Plan). The change in business environment can potentially create 25 million more jobs and Rs. 8 lakh Crore incremental GDP over five years.

The GST model, as we all know, will have CGST and SGST as two lines of taxes across the supply chain with credits across these lines of GST. In case of interstate sales or stock transfer, the proposed Integrated GST (IGST) model will be destination based and will see the elimination of the origin based Central Sales Tax (CST).

GST will affect all industries, irrespective of the sector. It will impact the entire value chain of operations, namely procurement, manufacturing, distribution, warehousing, sales and pricing. It will also trigger the need to relook at internal organization and IT Systems.

### **All India Services Model:**

The Constitution provides for the creation of All India Services (AIS) common for the Union and the States. The All India Services Act, 1951 provides that the Central Government may make rules for regulating the recruitment and the conditions of service of persons appointed to the All India Services.

Thus, the Central Government and the State Governments are going to actively collaborate and implement the GST. Where such integrations are in existence, the Government has the concept of an All India Service already in operation. The IAS, IPS and IFS are successfully performing models, where the Centre and States perform in harmony.

Why should the Government not make IRS into an All India Service? Clayton Christensen, a renowned professor at the Harvard Business School opines: "If you wait until the weather is so hot and then and only then do you plant a shade tree, it doesn't have much impact. You have to plant the shade tree long before it gets hot".

His theory of disruptive innovation, for examples postulates that, our traditional ways of organizing defence is getting disrupted by terrorism. Our armed forces are not organized to deal with terrorism as a disruptive force. Similarly, our tax regime has been disrupted by the avalanche of Show Cause Notice being generated across the length and breadth of the country by Inspectors to Commissioners. The system was never designed to be a generator of Show Cause Notice to be self-adjudicated by legally ill trained and ill qualified adjudicators. Our Tax Adjudications have thus become a disruptive force, which we are not able to tackle.

The lack of timely disposal of high value commercial cases are taking a huge toll on the

country's GDP. Almost 40 projects worth over Rs. 4 lakh crores are stuck in litigation process in different courts and tribunals in the country according to industry chamber ASSOCHAM.

The proposed GST should not get ambushed by our Tax-Adjudicators as it can spell doomsday for the Government. Hence implementation of GST will need advance planning, by way of reformation of the Tax Administration.

If we are serious of having a world class GST, then we need to set the Tax Infrastructure in proper shape and readiness. The new Tax System will be a turning point in fiscal federalism of our country. Continuation of the present mode of Tax Administration will not be a sagacious move. Adopt the All India Service pattern and then transform the Tax Administration to make GST a success.

The Central Board of Excise and Customs is the nodal national agency responsible for administering Customs, Central Excise, Service Tax and Narcotics in India. The Customs & Central Excise department was established in the year 1855 by the then British Governor General of India, to administer customs laws in India and collection of import duties/land revenue. It is one of the oldest government departments of India.

Currently, the Customs and Excise department comes under the Department of Revenue, Ministry of finance. The agency is staffed by IRS officers and assisted by subordinate officers of Group 'B' and 'C' cadres.

It cannot be denied that the present history of Central Excise and Customs taxation finds its roots in the history of revenue department of England. It was the English rule that introduced the organized system for collection of Central Excise and Customs revenue in India.

At present IAS, IPS, IFS Constitute All India Services. In 1948, the Imperial Police (IP) was replaced by the IPS. The modern IFS was established in 1966, after independence under the All India Services Act, 1951 for protection, Conservation and regeneration of forest resources. Thus any organized service can be brought under the All India Services Act, 1951. So the IRS(C&CE) may be incorporated into All India Services Act, 1951 for effective implementation of GST at Centre and State level.

The ills of the present Tax Administration are quite lengthy. While most State Governments have just one post of Sales Tax Commissioner with a Revenue Secretary and a Principal Revenue Secretary at the top of the hierarchy, the CBEC has multiple Commissionerates with top-heavy *administrations* in every State. The transfer policy has been a source of grouse for many officers. Resultantly, many posts are lying vacant, hampering work. By adopting the IAS/IPS/IFS pattern of All India Service, the Government of the day can bring a masterstroke and reform the Tax Administration.

Tax Adjudications need to be handled by a dedicated cadre of Tax-Adjudicators specialized in tax laws. The present system of tax collectors masquerading as Tax-Adjudicators has played havoc on the economy, on the trade and industry and on our courts. This triple assault needs to be effectively stopped, if GST and Make in India policy, needs to succeed.

Before the game begins, the pitch needs to be prepared and not *vice versa* .

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