

Improving the Infrastructure of Indirect Taxation: An Analysis of TARC Reports

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INTRODUCTION

The amount of revenue that is generated through taxes is dependent on two factors, namely; taxation policy and tax administration/infrastructure. As far as the policy is concerned, the aim is to ensure the degree of responsiveness of possible revenue to the nation's aggregate economic growth, tax base and rates. Tax administration or infrastructure, on the other hand, strives to achieve efficiency and effectiveness in the generation of potential revenue. It is common to see that the policy framework is modified, minimally or majorly, on a regular basis or as and when the need arises. But when it comes to the infrastructure of taxation in India, there have been very few instances of reforms and the whole administrative structure is in dire need of improvements in line with the current global practices adopted by various nations. Thus, it is important to ensure that tax administration/infrastructure is not undermined as opposed to taxation policy. It is for the very same reason that the Tax Administration Reform Commission (TARC) was formed to suggest reforms in the existing tax administration framework so as to bring it at par with the tax administrations of countries who, on a regular basis, externally examine their administration structure with a view to bring about and corrective reforms.

In this paper, I will use the TARC reports as a tool to delve deeper into the possible reforms that can be brought about in areas such as dispute management, information exchange, information and communication technology and the like. Through this paper I shall also make an effort to analyze these reforms in terms of their feasibility and the possibility of their success. While shedding light on these reforms, I will also briefly describe the shortcomings of the old framework.

1. Information and Communication Technology (ICT)

The two major boards for taxation in India namely, CBDT and CBEC for direct and indirect taxes respectively, have successfully adopted information and communication technology in governmental departments and have, thus been able to achieve better compliance, increased taxpayer satisfaction and enhanced efficiency in processing through establishment of directorates that exclusively deal with ICT initiatives.

There are various ICT systems that have been adopted by the CBEC board, such as the Indian Customs EDI System (ICES) which involves e-filing and e-processing of cargo declarations and even e-messaging with banks for details related to collection of duties. Then there is Indian Customs and Excise Gateway (ICEGATE) which essentially allows remote filing of declarations and payment of duties at all times of the year and provides the customs and its trading partners a seamless base to exchange messages. Another important system that has been adopted by the Board is ACES (Automation of Excise and Service Tax) which aims to convert the physical interface between the tax administrative departments and taxpayers to a complete digital interface by way of automating all the central processes in the departments of central excise and service tax. E-registration, e-filing of service tax, customs returns and claims, permissions etc and digitalization of dispute resolution related processes such as tracking show cause notices are some features of this system.

Although there have been considerable efforts made by the administrative departments to effectively implement ICT solutions, there are some significant gaps that require immediate attention. There are a number of important areas that ICT still does not cover. One of such areas is that of customs wherein the very basic transaction related processes have been wholly automated in ICES but processes with respect to enforcement, dispute resolution and refunds are yet to come out of the paper environment. Further, there exists no information and communication technology system for Special Economic Zones and there is a dire need for the same since these zones are as important as any other area. Coming to excise duty and service tax, the effective application of ACES has been restricted to only to e-registration, e-filing of refunds and e-payments; leaving digitalization of dispute resolution related process and other promised developments neglected. Also, there remain huge gaps as far as office automation is concerned, due to which a major chunk of the administration, finance and human resources management related functions are carried out through manual paper work instead of through the systems. The biggest set back of such gap is that productive efficiency is being undermined. Another important finding the Commission found out was that the general perception of the

administrative departments is that ICT is not key to the organization which evident from the piecemeal implementation of ICT. These are only few examples of the existent gaps.

Studies across the world underline the criticality of information technology in organizational transformation and its huge potential to unlock hidden value and eliminate waste.¹ Thus, it is extremely important to fill the gaps between what is written on paper and what is actually implemented since incomplete automation also means lack of transparency in the areas not covered by ICT, which has an impact on efficiency at the taxpayers' end.² In order to fully achieve ICT implementation, efforts must be made to incorporate technology in the very DNA of administrations, which essentially entails: keeping in mind ICT while decisions are made and operations are carried out by organizations; leaders of the organizations and administrative departments looking at ICT investment and implementation in a strategic manner; extending ICT coverage to all core functions; making systems capable of dealing with a wide range of data in a safe and reliable manner so that quality decision making can be enabled; and making efforts to increase the human capacity with respect to awareness about the potential that ICT has in terms of data analysts and managers. Further, there are a number of global practices to make ICT implementation fruitful. One of such global practice would be that of 'proactive demand management', which has been undertaken by some of the best performing administrations in the form of using technology to restrict the amount of work load that came their way to what was most important. By allowing strong validation checks, guidance and self-help and certification programmes for software vendors etc the error rate in returns and payments are minimized which thereby reduces the workload on scrutiny and examinations.³ Another important global practice is 'sophisticated taxpayer segmentation' which highlights the correlation between quality of taxpayer segmentation and the effectiveness of different kinds of operations such as taxpayer services, audit and enforcement.

In addition to the above ways to improve ICT implementation, there is one more approach to tackle the situation. One could try to fill the gap between what the taxpayers expect from ICT implementation and what the current scenario is. The taxpayers usually expect that ICT would, firstly provide them with essential information about the law, procedures, clarifications and not to mention organization; secondly, make available to them a step by step guide to help them with procedures, tax compliance, calculation of tax liability, determination of exemption available and dispute related matters; and thirdly, there is facilitation of comprehensive automation of tax operations including the status of assessments, documents submitted and even the ledger accounts of discharge of tax liability and arrears. Following this approach would ensure that not only the administrative operations are conducive in a productive and efficient way but also that the expectations of taxpayers' are met.

2. E-invoicing

There has always been a major risk of abuse and fraud while CENVAT credit is availed by tax payers which is likely to increase with the introduction of GST since both the central and state tax administrations would be enlarging their tax bases to deal with the entire supply chain starting from manufacture and ending at final consumption. In order to prevent credit frauds, e-invoicing can prove to be an effective solution. Setting up a portal to facilitate e-invoicing can help in reduction of compliance burden on taxpayers and helps in generating invoices in standardized formats by tax payers since they are required to fill in data related to invoice by logging in to the system. Further, e-invoicing means availability of invoice data to the authorities at all times, and thus, the authority personnel would not have to go through the pains of undertaking physical verification of such invoices. Having hand written invoices are difficult to handle and scrutinize given that they suffer from infirmities of handwriting, making it hard for the staff to go through them. Moreover, e-invoices are much easier to handle in terms of storage, simpler to deal with respect to scrutiny and come in a standard format.

3. Dispute Management

The importance of the dispute settlement mechanism should not be undermined when the credibility of any country's tax administration is being assessed. The level of promptness, consistency, transparency and fairness of the dispute settlement mechanism uplifts the credibility of the tax infrastructure in the eyes of the tax payer. Thus, in order to enhance the quality of any dispute resolution mechanism, what is required is that the laws, rules and procedures in place are clear and disputes that can be avoided do not occur or are disposed in a timely manner. As far as India's framework for dispute settlement is concerned, there are a number of weaknesses that the structure suffers from.

¹ Dr. Parthasarthy Shome et Al, Tax Administration Reform in India: Spirit, Purpose and Empowerment, First Report of Tax Administration Reform Commission, 346 (2014)

² Dr. Parthasarthy Shome et Al, Tax Administration Reform in India: Spirit, Purpose and Empowerment, First Report of Tax Administration Reform Commission, 342 (2014)

³ Dr. Parthasarthy Shome et Al, Tax Administration Reform in India: Spirit, Purpose and Empowerment, First Report of Tax Administration Reform Commission, 347 (2014)

Firstly, there is a lot of ambiguity diluting the framework of dispute resolution since on one hand we have the Finance Ministry giving out amendments to various indirect laws and on the other hand we have the CBEC board issuing notifications and circulars to support and supplement the primary law. Hence, owing to lack of clear guidelines for the administration in respect of interpretative issues, the tax officers are forced to take recourse to their own discretion in order to address adjudicatory matters. Secondly, due to the 'revenue-target linked performance evaluation' and 'incentive policy' there have been complaints by taxpayers about arbitrary demands being made by the revenue authorities since such policies create a pressure on the officer to make aggressive efforts to enhance revenue collection. Thirdly, the authorities do not stick to the timelines prescribed by the legislation. Fourthly, there is lack of objectivity and fairness which has the consequence of challenging the authority's decision before tribunals and courts. This adds unnecessary compliance and administrative costs and brings in a degree of uncertainty to taxation environment. Also, presently there is no prescribed time limit within which cases must be disposed.

One way to resolve these infirmities would be to work towards shifting the focus from revenue collection since it creates a lot of pressure on the tax officers, making them neglect other critical areas of performance. Another important aspect that needs attention is that of providing the officers with the required guidelines with regard to the investigation that needs to be concluded as per the requirements of the legislation in a timely fashion. Further, CBEC must, while drafting guidelines and supplementary legislation, encourage consultation of tax payers. Next, there must be the tax laws with regard to dispute resolution must be precise and unambiguous and thus, a considerable amount of care needs to be taken when the laws are being framed, making sure that there is no scope for confusion. While framing legislations, the stakeholders must be given a chance to express their views on the draft of the law, and this could be further ensured by making such draft law publicly available to the tax payers so that they can point towards the areas that might suffer from ambiguity, thereby leading to the possibility of causing disputes. One more effective way to lessen the number of avoidable disputes and reduce the burden of dispute resolution authorities is to set up 'pre-dispute consultation mechanism' in the administration which would function to resolve tax disputes before the notice is issued, giving the taxpayer an opportunity to articulate and present his position on the matter. Through this solution an amicable yet viable result can be achieved which caters to the views of both the taxpayer and the revenue department

4. Information Exchange

There is no tax administration in the world which is not information centric and does not depend upon acquisition of data for the purpose of enhanced revenue collection, better compliance and enforcement and not to forget analysis. Thus, it is not hard to imagine that tax administrations around the world have to deal in humungous volumes of data which obviously makes the whole task very hard in terms of management. But one very prominent gap in the area of information exchange lies with respect to the lack of information sharing between CBDT and CBEC since both these boards maintain data solely for their own use. Further, what has been seen is that even within the same department, there is a practice of maintaining different data among various wings and divisions leading to absence of any common access. Such a practice results in development of patchy data devoid of any integration, consistency and quality of being comprehensive. If a common storehouse of data and information could be created for both the boards, not only there would be economies of scale resulting in cost cuts but there would also be much less instances of duplication, availability of accessing cross-data and better success chances of enforcement efforts made. Thus, a strategy needs to be developed to make the framework of information exchange better.

The first step in trying to achieve a better framework for information exchange could be creation of a mechanism for sharing data and information with each other so that the common objective of attaining reduction of tax gap can be achieved. Though the two boards have taken a step or two to consolidate their database, there has been no concrete effort to create a common database or provide a mechanism that lays down a set procedure or manner in which information can be exchanged. Hence, there has to be a sense of "mutual trust, openness and willingness to share"⁴ which can be only achieved by way of either creation of enabling provision in various statutes related to taxes or passing an umbrella legislation with respect to exchange of data/information between all agencies. Additionally, MoUs between agencies and the two boards can also help in achieving such openness and willingness among the boards. While implementing this particular solution, it is important to remember that such framework must mandatorily consist of such consequences that would follow on non-sharing of data, delayed sharing and also wrongful sharing.

A second way of improving the information exchange is to strive to achieve common standard and taxonomy which involves standardizing description, context and sharing of data. Further, for the purpose of ensuring credibility if the information received and exchanged it is extremely important to pay heed to the confidentiality of such information. This can be achieved by way of adopting a protocol whereby the agency that receives information and the agency that shares the information both establish a mechanism for assess the security and confidentiality of the information.

⁴ Dr. Parthasarthy Shome et Al, Tax Administration Reform in India: Spirit, Purpose and Empowerment, Second Report of Tax Administration Reform Commission, 671 (2014)

Additionally, there needs to be a process set up whereby the data that is received is processed and structured in order to make it readily available for the purpose of analysis. This will promise quality information that would help in conducting an earnest analysis.

Also, in order to prevent duplication and save costs and precious time, what can be done is that re-use of data should be encouraged. Rather than acquiring new information from the same source again and again, there should be process which promotes such re-use by the same or some other agency which rightly requires the data

CONCLUSION

After looking at the reports of the Tax Administration Reform Commission, it is clear that the current tax infrastructure has many loopholes, not only with respect to indirect taxes but also direct taxes. And this is when the framework of the administration has been existent for so many years and there was ample of chances, scope, time and resources to improvise the infrastructure. These reports are an eye-opener in terms of not only where our tax infrastructure stands weak but also with respect to the possible solutions that could help make the tax framework better. Since the implementation of Goods and Services tax has been long over due and is now finally going to be brought into force, one can only expect more and more taxpayers coming in and making the task of the tax departments more complex due to the increased number of cases. The GST project not only presents several public policy changes, but also requires adherence to tight timelines.⁵ But the suggestions and recommendation of the TARC reports are not only practical but also logical and thus, must be implemented whole-heartedly.

⁵ Nandan Nilekani et Al, Report of the Techological Advisory Group for Unique Projects, 59 (2011)