

Union Budget 2023: From Obstacles to Opportunities

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Viral Shah

Tax professional working with a Multinational Corporation in India

All eyes will be anxiously looking at the Hon'ble Finance Minister Nirmala Sitharaman when she unveils the India Union Budget 2023 on February 1. Though there are many expectations from this Budget, the topic discussed in this article is of utmost importance for business taxpayers apart from the common expectation on lowering of tax rates or giving more incentives to businesses. This article covers a very vital theme on "Ease of doing business" from tax perspective.

Going by the experience around the globe, we have seen that countries which have encouraged the ease of doing business have flourished enormously and became economic powerhouses envied by others. India, a country which is on the cusp of a great economic boom, cannot grow unhindered unless it removes major obstacles impacting the progress of businesses.

India has a history of having one of the oldest tax systems in the world. Our scholars like Chanakya who lived between 375BC-283BC in his acclaimed work "Arthashastra" presented a beautiful thought on tax administration. He advised Rulers to "Collect taxes from a taxpayer just like a bee collects honey from a flower without disturbing its petals".

However, in recent times, India is facing a backlog of pending high tax litigations and controversies impacting the ease of doing business. In fact, there are approx. 40,000 cases pending before the tax tribunals, in addition to cases pending before the higher Courts. Tax litigation in our country is emanating from factors such as ambiguous legislative changes, aggressive enforcement by tax authorities, differing interpretations by courts, etc.

At present, quick and effective approach to reduce tax litigations is the need of the hour. An effective way to reduce such high tax litigations is to quickly adopt various Alternative Dispute Resolution ('ADR') mechanisms. ADR typically denotes a wide range of dispute resolution processes and techniques that could be used to settle disputes. Its importance can be gauged from the fact that the former Chief Justice of India (Supreme Court) NV Ramana had said "The concept of Alternative Dispute Resolution has the potential to transform the Indian legal landscape by providing a platform for millions of people to settle their grievances".

Indian government has tried implementing ADR measures to reduce tax litigation and improve the coherence of international tax rules and effectiveness of domestic and international dispute resolution which include:

- Introduction of Dispute Resolution Committee to provide tax certainty to small taxpayers.
- Set-up of Board for Advance Ruling to provide clarifications on the taxability of proposed transaction for ensuring tax certainty.
- Introduction of Advance Pricing Agreements program to provide certainty in Transfer Pricing ("TP") matters.
- Allowing Mutual Agreement Procedure to resolve disputes giving rise to double taxation or taxation not in accordance with tax treaties.
- Setting-up of 'Vivaad se Vishwas' scheme for resolving direct tax disputes through a one-time

settlement in 2020.

- Setting-up of Dispute Resolution Panel ('DRP') to resolve TP related disputes.

Despite that numerous ADR mechanisms, Indian Judiciary faces challenges in clearing the backlog of pending cases which remain very high.

Alternate Dispute Resolution Mechanism in other Countries

The dispute settlement process in the United States of America ('US') and the United Kingdom ('UK') are well-established and helps them in managing their tax litigations effectively.

- In the US, the Internal Revenue Service ('IRS') offers its taxpayers various ADR options, including:
 - Offer in Compromise ('OIC'): It allows taxpayers to negotiate a settlement with the IRS to resolve their tax liabilities for less than the full amount owed if they meet certain criteria, such inability to pay the full amount, or that it would cause them undue economic hardship to do so.
 - Instalment Agreement: Taxpayers are allowed to pay their outstanding tax liabilities in monthly instalments over a period.
 - Penalty abatement: Taxpayers can request a reduction or elimination of penalties imposed by the IRS.
 - Audit reconsideration: This allows taxpayers to request a re-examination of the findings of an IRS audit.
- Similarly, the HM Revenue and Customs ('HMRC') in the UK provides different ADR options which include:
 - Litigation and Settlement Strategy ('LSS'): Taxpayers and the HMRC work together to resolve disputes related to taxes, such as tax assessments, penalties, or interest. The LSS involves the taxpayer and the HMRC discussing and resolving any issues related to taxes through negotiation and mutual agreement.
 - Code of Practice 9 ('COP 9'): COP 9 is a process that is used when the HMRC suspects that a taxpayer has deliberately evaded taxes. The process is designed to encourage taxpayers to come forward and make a full disclosure of their tax liabilities. There are two options given to taxpayer under COP 9:

a. Accept the Contractual Disclosure Facility (CDF)

CDF allows taxpayers to voluntarily disclose any unpaid tax or other inaccuracies in their tax returns and typically offer reduced levy of penalties.

b. Reject the Contractual Disclosure Facility (CDF)

In case of rejection, if HMRC carry investigation and find that fraud is committed, higher penalties and/ or prison sentence could apply.

Additionally, both countries have developed fast-track settlement process for resolving disputes for taxpayers that are willing to accept a settlement but do not agree with the tax authority's position. This process is faster and less formal than traditional dispute resolution procedures.

Budget Expectation

India would be enormously benefited by time tested best practises used in countries which have well-established ADR systems in place and quickly adopt those that are deemed suitable for the India context. I believe, Union Budget 2023 is the best platform for our government to make bold changes to address obstacles like high tax litigations and quickly seize opportunities to provide tax certainty for promoting ease of business.

** The views and opinion expressed are personal and do not reflect the views or positions of any of the entities which the individual represent.*