



सत्यमेव जयते

# TAX ADMINISTRATION REFORM IN INDIA SPIRIT, PURPOSE AND EMPOWERMENT

## FIRST REPORT OF THE TAX ADMINISTRATION REFORM COMMISSION





सत्यमेव जयते

**Govt. of India**  
**Ministry of Finance**  
**Tax Administration Reform Commission**  
NBCC Plaza, 3rd Floor, Pushp Vihar, Saket, New Delhi-110017

F. No.

SO/TARC/Report/36/2014-15

Date


30/05/2014

To

Shri Arun Jaitley  
Hon'ble Minister of Finance  
Government of India


Sir,


We submit herewith the First Report of the Tax Administration Reform Commission (TARC).

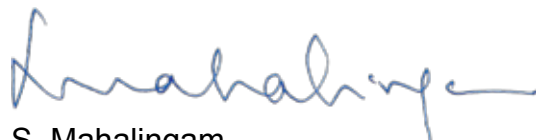
  
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Chairman


  
Y. G. Parande  
Member

  
Sunita Kalia  
Member

  
M. K. Zutshi  
Member

  
S.S.N. Moorthy  
Member

  
S. Mahalingam  
Member

  
M. R. Diwakar  
Member



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## Preface

Tax revenue yield is influenced by both tax policy and tax administration. While tax policy design ensures responsiveness of potential revenue to overall economic growth, tax base and tax rates, tax administration seeks to secure potential tax revenues effectively and efficiently. It is because the two are inextricably linked that reform in tax administration is as important as that in tax policy.

In India, tax policy reforms have been accelerated since the economic liberalization unveiled in 1991. But no comprehensive reform in tax administration was undertaken in the same depth. Of course, changes in tax administration practices have occurred, *albeit* through a slow and incremental process reflecting the immediate requirements of the organization as opposed to much needed fundamental reform. The two administrative restructurings undertaken in 2001-02 and 2013-14, of the two Boards, the Central Board of Direct Taxes (CBDT) and the Central Board of Excise and Customs (CBEC), were also aimed at expanding the tax administrations primarily by increasing tax assessment units, thereby giving more promotional avenues to officers and staff. But neither of the two restructurings was aimed at reorganizing the operations or their structures so as to make them oriented towards the needs of taxpayers.

Further, the restructurings have essentially stopped short of recognizing that direct and indirect tax services need to be delivered in a more synergistic manner so that there are gains for both taxpayers and the tax administration that should be buttressed by more rationalized enforcement activity, drawing upon information garnered from both direct and indirect taxes. Even within indirect taxes, service tax and excise duties are dealt with by separate commissionerates under the CBEC even though both are consumption taxes. The tax administration in the above regard did not, by and large, keep the prevalent global practices in view, i.e., it was not a benchmarked approach. Such a non-intersecting approach continues through the current restructuring process. The restructurings, therefore, have lacked a reform flavour. Since the focus is almost entirely on the extent of revenue collection irrespective of prevailing economic realities, any rise in collection could successfully mask the underlying need to fundamentally reform the tax administration. Indeed, the two tax administrations often attributed the gain in tax collection to the so-called restructuring.

What has been overlooked is that the impact of tax administration on revenue collection as opposed to the revenue gain due to economic growth needs to be separately recognized. The year-to-year high nominal growth in tax collection over and above the inflation rate may have generated a sense of complacency regarding administrative performance. One deleterious outcome has been the inexorable rise in disputes, reflecting rising pecuniary and non-pecuniary costs of compliance to the taxpayer. The tax administrations witnessed large tax revenues becoming uncollectible due to disputes emanating from tax demands that were of a protective nature, i.e., issued just to insure the tax officials against future liability. Such disputes were commonly viewed to have had adverse ramifications for the investment climate

as business decisions became increasingly difficult in an environment of growing tax uncertainty.

The Commission (TARC), constituted to recommend reform exclusively in tax administration, was specifically mandated “to review *the application of tax policies and tax laws in the context of global best practices* and to recommend measures for *reforms required in tax administration* to enhance its effectiveness and efficiency.” The mandate reflected a deep concern of policymakers regarding the need for fundamental tax administration reform. Accordingly, the TARC tasked itself to address the thus-far missing elements of best practices in tax administration in a comprehensive manner. Such reform should aim at a vision that focuses on taxpayers and their relationship with the tax administration. This vision has to recognize the growing links between direct taxes and indirect taxes as occurring in most modernizing tax administrations in cross-country experience, and show the way to building an administrative structure that will bring accountability in the processes as well as greater outcome orientation. This would require the structure to be overhauled for purposive delivery and be so oriented that officers and staff are empowered while being given key performance indicators to reflect accountability and responsibility at both the individual and organizational levels. Only such a fundamental reform could ensure that the objective of bringing palpable benefits to taxpayers in terms of a transparent relationship and enhanced communication, ease of compliance, and quicker dispute resolution, is achieved.

In order to comply with the above mandate, the TARC identified four terms of reference, based on their relative importance, for immediate attention in its first report out. The selected terms of reference are:

- *To review the existing organizational structure and recommend appropriate enhancements with special reference to deployment of workforce commensurate with functional requirements, capacity building, vigilance administration, responsibility and accountability of human resources, key performance indicators, staff assessment, grading and promotion systems, and structures to promote quality decision-making at high policy levels.*
- *To review the existing business processes of tax administration including the use of information and communication technology and recommend measures best suited to the Indian context.*
- *To review the existing mechanism of dispute resolution, time involved for resolution, and compliance cost and recommend measures for strengthening the process. This includes domestic and international taxation.*
- *To review existing mechanism and recommend measures for improved taxpayer services and taxpayers education programme. This includes mechanism for grievance redressal, simplified and timely disbursal of duty drawback, export incentives, rectification procedures and refunds etc.*

While covering these terms of reference, the TARC decided to address the other segments of the terms of reference in its subsequent reports. Issues such as impact assessment analysis, economic analytical models and strengthening database are examples of such aspects that are planned to be covered in future reports.

To achieve the desired goal, the TARC sought the views of its stakeholders, including the two Boards and its field offices, and the taxpayers. The TARC held meetings with the two Boards separately and of the officers, staff and their respective associations at the five metros of Bengaluru, Chennai, Delhi, Kolkata and Mumbai. Views from the directorates of the two Boards were separately ascertained keeping in view the policy dimension of their work. The TARC also met newly recruited officers at the National Academy of Direct Taxes and the National Academy of Customs, Excise and Narcotics to assess whether the training - in content as well as regularity, either at the induction stage or later - was sufficient to frame a structure that would be able to deliver in the manner outlined above. It was also imperative for the TARC to meet industry and professional associations at all five metros to ascertain their experience with the tax administrations, their expectations and suggestions for reform. One of the most important aspects of tax administration is the dispute resolution mechanism, since an inadequate or tardily functioning one could impede tax collection and create a climate of distrust. In view of this, the TARC had meetings with the President of CESTAT and Members of ITAT.

A list of such meetings is given at Annexure -I. The TARC is thankful to all the stakeholders for their suggestions and also for the free and frank discussions. These suggestions formed the basis of many of TARC's recommendations. The TARC also acknowledges the co-operation and support of the CBDT and the CBEC in providing information and data that enabled TARC's recommendations to be based on robust foundations.

Looking at the task at hand, which required in-depth analysis of various aspects relating to the four terms of reference, the TARC constituted six focus groups, comprising officers of the two tax administrations – former as well as current – and professionals from the private sector. The topics to be addressed by each focus group were framed after detailed deliberation within the TARC. The focus groups themselves met several times and came up with innovative suggestions by providing a forum for open and frank discussions with TARC Members. In the final analysis, the role of the focus groups in deliberating on various issues in depth and bringing in knowledge of calibrating them with global best practices was crucial in forming the TARC's views. This helped the TARC to successfully thrash out many a new idea and emerge with a critical mass of recommendations. A list of participants in the focus groups is at Annexure -II.

The TARC's recommendations were formulated at many meetings, formal and informal. A list of meetings in which TARC discussions were held is at Annexure – III. The TARC's findings, conclusions and recommendations were unanimous, clearly pointing towards an overwhelming need for fundamental reform in tax administration that should successfully draw the attention of policymakers. Chapter I presents a comprehensive Executive Summary covering TARC's coverage, main findings, conclusions and recommendations for the various

aspects of the terms of reference covered in the report. The TARC believes this is the right moment in the light of a new reform environment that is expected to emerge precisely at this point of time.

The TARC places on record its appreciation of the Department of Revenue for providing support. It also thanks the Chief Commissioners of Income Tax and Central Excise and Customs of Bengaluru, Chennai, Delhi, Kolkata and Mumbai for organizing meetings with officers and staff and for providing support in organizing meetings with stakeholders.

The TARC also wishes to recognize the overarching support of the Secretary to the Commission in all aspects. The Director and Under Secretary as well as other support staff were also helpful. The work of three research consultants was important for the background studies that were carried out. The editor's meticulous work at top speed was crucial. But for their intensive efforts, timely delivery of the report would not have been feasible.



Dr. Parthasarathi Shome

Chairman

Tax Administration Reform Commission

New Delhi  
30<sup>th</sup> May 2014

# Tax Administration Reform Commission

## Chairman

Dr. Parthasarathi Shome                      Level of Minister of State

## Members- full time

Y. G. Parande                                      Ex-Member, CBEC  
Sunita Kaila                                        Ex-Member, CBDT

## Members- part time

M.K. Zutshi                                        Ex-Chairman, CBEC  
S.S.N. Moorthy                                    Ex-Chairman, CBDT  
S. Mahalingam                                    Ex-Chief Financial Officer and Executive Director,  
TCS  
M.R. Diwakar                                    Ex-Vice President, Taxation, Murugappa Group

## Secretariat

Sanjay Kumar                                    Secretary  
N.K. Jain    Director  
Sukalyan Banerjee                              Under Secretary

## Administrative Support

M.C. Batra                                        Consultant (Administration)  
Ankur Verma                                    Steno/Assistant  
Jagdish    Steno/Assistant

## Research Consultants

Vrinda Jaju  
Prativa Shaw  
Tarique Hasan Khan



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## Glossary of Technical Terms

AAR	Authority for Advance Ruling
ABN	Australian Business Number
AC	Assistant Commissioner
ACA	Annual Compliance Arrangement
ACES	Automation of Central Excise & Service Tax
ACP	Accredited Clients Programme
AD	Assistant Director
ADC	Additional Commissioner
ADCIT	Additional Commissioner of Income Tax
ADG	Additional Director General
ADR	Alternative Dispute Resolution
AE	Associate Enterprises
AEO	Authorised Economic Operators
AIS	Assessee Information System
AMC	Annual Maintenance Contract
ANAO	Australia National Audit Office
AO	Accounts Officer
AO	Assessing Officer
AOP	Association of Persons
APA	Advance Pricing Agreement
APAR	Annual Performance Appraisal Report
ARC	Administrative Reforms Commission

ARTS	Automated Recording and Targeting System
ASI	Assistant Sub-Inspector
ASK	Aayakar Seva Kendra
AST	Assessment Information System
ATM	Automatic Teller Machine
ATO	Australian Taxation Office
ATO IDs	Australia Taxation Office Interpretative Decisions
AU	Assessment Unit
AWDL	Average Working Days Lost
BIFR	Board for Industrial & Financial Reconstruction
BIN	Business Identification Number
BOA	Board of Approval
BPR	Business Process Re-engineering
BRC	Bank Realisation Certificate
C & CE	Customs and Central Excise
CAAP	Computer Assisted Audit Program
CAG/C&AG	Comptroller & Auditor General
CAO	Chief Accounts Officer
CASC	Community Amateur Sports Club
CASS	Computer Aided Selection System
CAT	Central Administrative Tribunal
CBDIT	Central Board of Direct & Indirect Taxes
CBDT	Central Board of Direct Taxes

CBEC	Central Board of Excise and Customs
CBI	Central Bureau of Investigation
CBIN	Common Business Identification Number
CBN	Common Business Number
CC(CSDF)	Chief Commissioner (Customer Service Delivery Field)
CC(CS-TE)	Chief Commissioner (Customer Service - Technology Enabled)
CC(DT)	Chief Commissioner(Direct Tax)
CC(EC)	Chief Commissioner(Excise & Customs)
CCA	Cadre Controlling Authority
CCIT	Chief Commissioner of Income Tax
CCR	Confidential Character Role
CDR	Chief Departmental Representative
CEI	Central Excise Intelligence
CEIB	Central Economic Intelligence Bureau
CENVAT	Central Value Added Tax
CESTAT	Customs, Excise and Service Tax Appellate Tribunal
CFC	Certified Facilitation Centre
CFO	Chief Financial Officer
CGA	Controller General of Accounts
CHA	Custom House Agent
CHCO	Chief Human Capital Officer
CIN	Challan Identification Number
CIO	Chief Information Officer

CIP	Criminal Investigations Program
CIT	Commissioner of Income Tax
CIT	Corporate Income Tax
CIT(CO)	Commissioner of Income Tax(Computer Operation)
CIU	Central Intelligence Unit
CMR	Cargo Management Reengineering
CO	Charged Officer
CPC	Central Processing Centre
CPU	Central Processing Unit
CRA	Canadian Revenue Authority
CRCL	Central Revenue Control Laboratory
CRIS	Centre for Railway Information Systems
CRM	Customer Relationship Management
CRO	Customer Relationship Office
CSO	Chief Security Officer
CSS	Central Secretariat Service
CTO	Chief Technology Officer
CVC	Central Vigilance Commission
CVO	Chief Vigilance Officer
DA	Disciplinary Authority
DAVP	Directorate of Advertising & Visual Publicity
DC	Deputy Commissioner
DCIT	Deputy Commissioner of Income Tax

DD	Deputy Director
DEMAT	Dematerialised Account
DG	Director General
DG (P,P&PE)	Director General (Customer-Policy, Planning and Programme Evaluation)
DG(F & A)	Director General (Financial Control & Audit)
DG(HRM)	Director General (Human Resource Management)
DGCEI	Directorate General of Central Excise Intelligence
DGEP	Directorate General of Export Promotion
DGFT	Directorate General of Foreign Trade
DGHRD	Directorate General of Human Resource Development
DGIT	Directorate General of Income Tax
DIS	Decision Impact Statements
DIT	Director of Income Tax
DLA	Directorate of Legal Affairs
DoPT	Department of Personnel & Training
DoR	Department of Revenue
DoS	Directorate of Systems
DPPR	Directorate of Publicity & Public Relations
DR	Departmental Representative
DRAPE	Directorate of Research, Analysis & Programme Evaluation
DCRS	Directorate of Customer Relations Support
DRI	Directorate of Revenue Intelligence
DRP	Dispute Resolution Panel

DTAA	Double Taxation Avoidance Agreement
DTRTI	Direct Tax Regional Training Institute
DW & BI	Data Warehousing & Business Intelligence
EASIEST	Electronic Accounting System in Excise and Service Tax
ED	Enforcement Directorate
EDD	Extra Duty Deposit
EDI	Electronic Data Interchange
EDP	Electronic Data Processing
EDR	Early Dispute Resolution
EDW	Enterprise Data Warehouse
EFPO	Employees Provident Fund Organisation
EFS	Enforcement Information System
EOU	Export Oriented Unit
EPC	Engineering Procurement Construction
ERI	e-Return Intermediaries
ERP	Enterprise Resource Planning
FAQ	Frequently Asked Questions
FDMC	Financial Data Management Centre
FIEO	Federation of Indian Export Organisation
FIPB	Foreign Investment Promotion Board
FIRC	Foreign Inward Remittance Certificate
FIU	Financial Intelligence Unit
FM	Finance Minister

FRS	Financial Resource System
FSLRC	Financial Sector Legislative Reforms Commission
FTC	Foreign Tax Credit
FTD	Foreign Tax Division
FTE	Full Time Equivalent Employees
FY	Financial Year
GAAR	General Anti Avoidance Rules
GDP	Gross Domestic Product
GST	Goods and Services Tax
GSTN	Goods and Services Tax Network
HC	High Court
HMRC	Her Majesty's Revenue and Customs of UK
HR	Human Resource
HRD	Human Resource Development
HRIS	Human Resource Information System
HRMS	Human Resource Management System
HUF	Hindu Undivided Family
IAAS	Indian Audit & Accounts Service
ICD	Inland Container Depot
ICD	International Customs Division
ICEGATE	Indian Customs and Excise Gateway
ICES	Indian Customs EDI System
ICT	Information and Communication Technology

IEC	Import Export Code
IEO	Independent Evaluation Office
IFS	Indian Foreign Service
IFU	Integrated Finance Unit
IGM/EGM	Import/Export General Manifest
IMSC	Inter-Ministerial Standing Committee
IO	Inquiry Officer
IPR	Intellectual Property Rights
IRAS	Inland Revenue Authority of Singapore
IRC	Internal Revenue Code
IRCTS	Indian Railway Catering and Tourism Corporation
IRDA	Insurance Regulatory Development Authority
IRLA	Individual Running Ledger Account
IRS	Internal Revenue Service of USA
IRS(C & CE)	Indian Revenue Service (Customs & Central Excise)
IRS(IT)	Indian Revenue Service (Income Tax)
IRS-CI	Internal Revenue Service-Criminal Investigation
ISD	Input Service Distributor
ITAT	Income Tax Appellate Tribunal
ITBA	Income Tax Business Application
ITC	Income Tax Code
ITD	Income Tax Department
ITES	Information Technology Enabled Services



ITO	Income Tax Officer
ITR	Income Tax Return
ITTN	Income Tax Technical News
IVRS	Interactive Voice Response System
JC	Joint Commissioner
JCIT	Joint Commissioner of Income Tax
JRS	Judicial Reference System
JS	Joint Secretary
KAC	Knowledge and Analysis Centre
KAIC	Knowledge, Analysis & Intelligence Centre
KPI	Key Performance Indicators
KYC	Know Your Customer
LBS	Large Business Service
LBSNAA	Lal Bahadur Shastri National Academy of Administration
LDC	Lower Division Clerk
LEO	Let Export Order
LMS	Learning Management System
LTU	Large Taxpayer Unit
MAP	Mutual Agreement Procedure
MAT	Minimum Alternate Tax
MCTP	Mid-Career Training Program
MD	Managing Director
MIS	Management Information System

MMS	Manpower Management System
MNE	Multi National Enterprises
MoF	Ministry of Finance
MOL&J	Ministry of Law & Justice
MOU	Memorandum of Understanding
MSP	Managed Services Provider
MSTU	Ministerial Staff Training Units
MTS	Multi-Tasking Staff
NACEN	National Academy of Customs, Excise & Narcotics
NADT	National Academy of Direct Taxes
NAIBD	Need Analysis & International Benchmarking Division
NALSAR	National Academy of Legal Studies & Research
NBFC	Non-Banking Financing Company
NCB	Narcotics Control Bureau
NCC	National Computing Centre
NGO	Non-Governmental Organisation
NLP	National Litigation Policy
NMS	Non-filers Monitoring System
NSDL	National Securities Depository Limited
NTP	National Training Policy
OCS	Organisational Climate Survey
ODI	Officers of Doubtful Integrity
OECD	Organisation of Economic Cooperation and Development

OL	Official Language
OLTAS	On-Line Tax Accounting System
OSCPA	On Site Post Clearance Audit
PS	Personal Secretary
P&V	Personnel & Vigilance
PAC	Public Accounts Committee
PAN	Permanent Account Number
PATA	Pacific Association of Tax Administrators
PAYE	Pay As You Earn
PC(CS-C)	Principal Commissioner (Customer Service-Central)
PC(CS-L)	Principal Commissioner (Customer Service-Local)
PCA	Post Clearance Audit
PCCV	Post Clearance Compliance Verification
PFA	Pre-Filing Agreement
PFRDA	Pension Fund Regulatory and Development Authority
PH	Personal Hearing
PIDPIR	Public Interest Disclosure (Protection of Informers) Resolution
PIT	Personal Income Tax
PMD	Performance Management Division
PMES	Performance Monitoring and Evaluation System
PMS	Performance Management System
PO	Presenting Officer
PPP	Public Private Partnership

Pr. CC	Principal Chief Commissioner
Pr. CCIT	Principal Chief Commissioner of Income Tax
Pr. CIT	Principal Commissioner of Income Tax
Pr. DG	Principal Director General
Pr. DG(LBS)	Principal Director General (Large Business Service)
Pr. DG(P,P&PE)	Principal Director General (Customer-Policy, Planning & Programme Evaluation)
PRIS	Performance Related Incentive Scheme
PRS	Physical Resource System
QDP	Qualified Depository Participant
RA	Revision Authority
RBI	Reserve Bank of India
REAP	Risk Evaluation Analysis and Profiling
RFD	Result Framework Document
RM	Relationship Manager
RMD	Risk Management Division
RMS	Resource Management System
RMS	Risk Management System
RTI	Regional Training Institute
RUD	Relied Upon Documents
RWA	Residents Welfare Association
SAD	Special Additional Duty
SARA	Semi-Autonomous Revenue Authority

SARS	South African Revenue Service
SC	Supreme Court
SCM	Standard Cost Model
SCN	Show Cause Notice
SEBI	Securities & Exchange Board of India
SEZ	Special Economic Zone
SFIO	Serious Fraud Investigation Office
SIIB	Special Intelligence & Investigation Branch
SLA	Service Level Agreement
SLP	Special Leave Petition
SMAC	Social media, Mobiles, Applications & Cloud
SMS	Short Message Service
SMT	Social Media Technology
SNC	Serious Non-Compliance
SO	Section Officer
SOFTEX	Software Export
SOP	Standard Operating Procedure
SPRM	Strategic Planning & Risk Management
SPV	Special Purpose Vehicle
SSC	Staff Selection Commission
STPI	Software Technology Parks of India
SVB	Special Valuation Branch
TAN	TDS Account Number

TAGUP	Technology Advisory Group for Unique Projects
TAP	Tax Analysis & Policy
TARC	Tax Administration Reform Commission
TAS	Tax Accounting System
TAS	Tax Advocate Service of USA
TC	Tax Council
TCS	Tax Collected at Source
TDRC	Tax Dispute Resolution Centre
TDS	Tax Deduction at Source
TIN	Tax Information Network
TP	Transfer Pricing
TPA	Tax Policy & Analysis wing
TPL	Tax Policy and Legislation unit of CBDT
TPO	Transfer Pricing Office
TRACES	TDS Reconciliation, Accounting and Correction Enabling System
TRO	Tax Recovery Officer
TRP	Tax Return Preparer
TRU	Tax Research Unit of CBEC
UJV	Unincorporated Joint Venture
UN	United Nations
UNDP	United Nations Development Programme
UPSC	Union Public Service Commission
UTI	Unit Trust of India

VAT	Value Added Tax
VCES	Voluntary Compliance Encouragement Scheme for Service Tax
VOIP	Voice Over Internet Protocol
WCO	World Customs Organisation
ZAO	Zonal Accounts Office

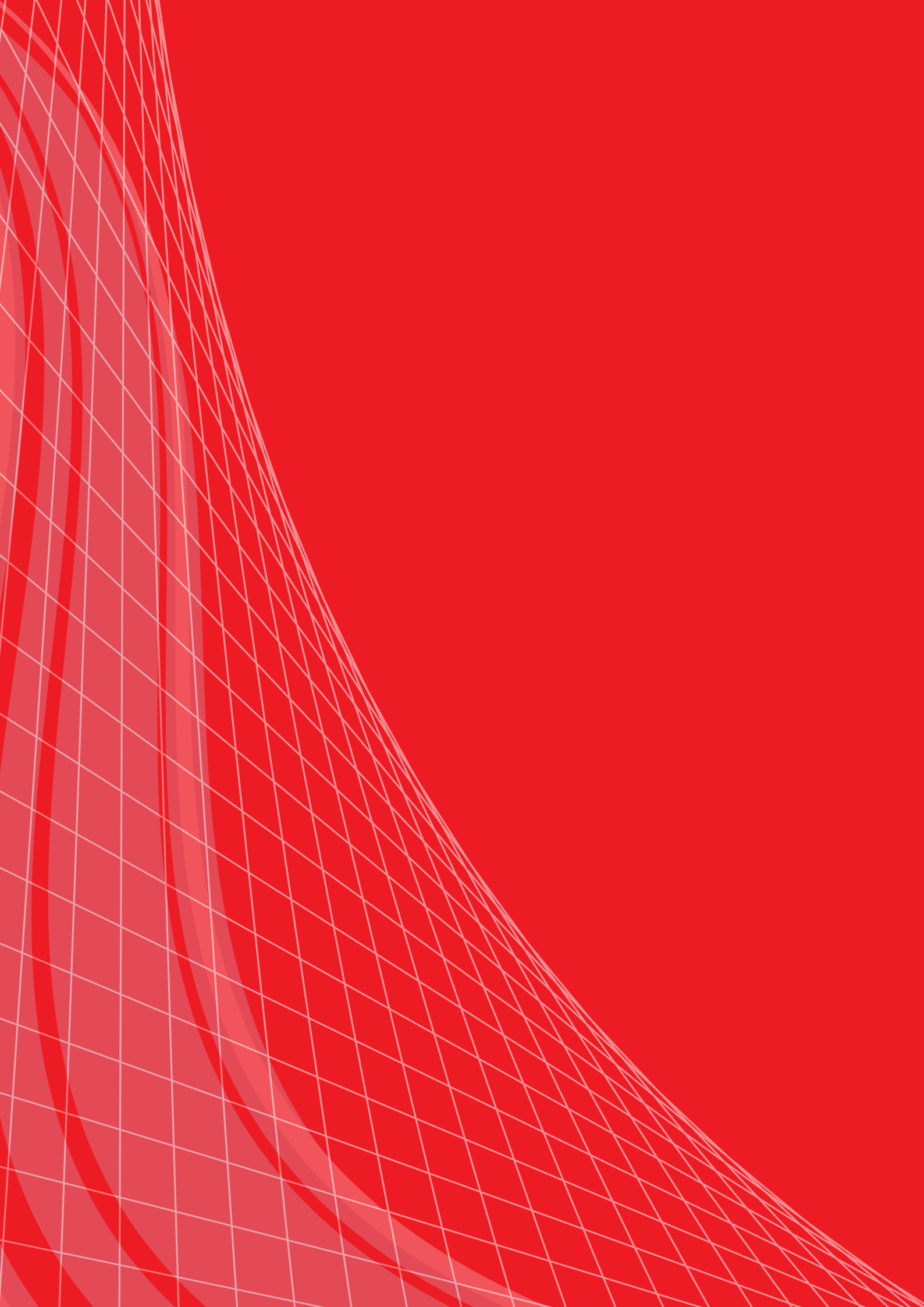




The background is a solid red color. On the right side, there is a white grid of thin lines that curves and tapers towards the top right corner. A thick, white, curved line also follows a similar path on the right side, creating a sense of depth and movement.

# **CHAPTER I**

## **EXECUTIVE SUMMARY**



# Chapter I

## Executive Summary

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*...to liberate the potential...you must first expand your imagination...things are always created twice: first in the workshop of the mind and only then, in reality. When you...take control...and imagine...in a state of total expectancy, dormant forces will awaken...to unlock the true potential...to create a kind of magic...forget about the past. Dare to dream that you are more than the sum of your current circumstances. Expect the best. You will be astonished at the results.*

– Robin Sharma, in *The Monk Who Sold His Ferrari*

Public institutions, including government departments across the globe, need fundamental reform at least every decade, if not more frequently. This reflects the likely, and widely experienced, slide in the improvements made in the structure and practice that usually accompany fundamental reform. Tax administration is one such institution. To counter the anticipated slide, some reforming tax administrations have installed departments of change whose exclusive responsibility is to track the slack and sharpen, on a continuing basis, their productivity, accountability, cost effectiveness and, increasingly in a modernizing context, their service delivery. Some countries have developed the practice of subjecting their tax administration structure to occasional external examination to facilitate and introduce corrective measures.

India had not taken such measures in the past and the tax administration has experienced modest improvement that do not necessarily reflect global movement. Several committees suggested measures combining tax policy and tax administration, albeit selectively. Some committees took up overall public administration of which tax administration forms a component. Apparently for the first time, the Tax Administration Reform Commission (TARC) was set up by the government to examine and suggest reforms focused primarily on tax administration. This is a welcome first step.

Chapter I of the TARC's report presents the Executive Summary. It is divided into four sections: first, the coverage of the report that presents the focus of each chapter, second, a detailed section on the TARC's findings, third, a shorter section on the overall thrust of its conclusions and fourth, an elaborate section that lists its main recommendations.

### I.1 Coverage

The TARC arrived at the view that taxpayer services must comprise the first focus of a tax administration and that it, therefore, must give prominence to “customer focus” in taxpayer services whose activities must be designed to improve the experience of taxpayers with the tax departments. The activities of the two departments - the Central Board of Direct Taxes (CBDT) and the Central Board of Excise and Customs (CBEC) - should be aimed at lowering the cost

of compliance so that existing as well as potential taxpayers find it easier to follow the rules. To achieve this, a framework has to be designed that should aim to reduce uncertainty in tax laws by providing clarity on tax obligations. Opening two-way communication channels between the tax departments and customers would be another aspect of the strategy. **Chapter II** of the report covers these aspects. It also brings out practices in other advanced tax administrations. Some of the innovative approaches adopted by other countries have been highlighted, including recognising the ‘rights’ of the taxpayers.

No tax administration reform can be complete without looking deeply at the structure and management of the tax administration. While recognising that there is no unique model of the structure and management of a tax administration, there are some emerging cross-country patterns. The clear movement is towards a common organisation for direct taxes and indirect taxes. The TARC recognised that and decided to propose appropriate changes in the present structure in a calibrated manner where, to begin with, selected functions may be delivered through a common structure. One clear point to initiate this is the administration of large taxpayer units (LTUs). This would accommodate the prevailing LTUs, whose offices – currently in the five metros – perform both CBDT and CBEC functions, although in disjointed silos. Thus, the LTU experiment of structuring operations around a taxpayer segment has till now not gone far, the reasons being many. Another area of gaining such immediate synergy is in making tax laws. A further area of the TARC’s consideration was the need to reorganise the tax administration on a functional basis instead of its present organisation based primarily on territorial jurisdictions. The TARC has taken an approach to reform in a step-wise manner over time in recognition that the two tax administrations must be given time, albeit on a chalked out roadmap, to move to a fully integrated tax administration. But prior to full integration, a unified management structure through a common Board could be achieved in the next five years based on groundwork to be completed on data integration, common delivery structure for the benefit of taxpayers, and training of officers and staff based on comparable and benchmarked parameters. **Chapter III** of the report deals with these aspects.

Tax administrations that do not allow specialisation among its officers and staff suffer in interfacing with high quality tax intermediaries and taxpayers. They also find it difficult to understand complex business transactions that require deep understanding and skill to decipher. These skills do not come with only theoretical exposure but while working on the subject for a minimum of 4-5 years, international experience revealing even periods as long as a decade during which an officer is encouraged to specialize. It is thus imperative to allow tax officers to develop specialisation in their work. Specialisation is not only required in audit functions, as is commonly held, but also in dispute resolution, taxpayer services, and in other functions of tax administrations such as HR, finance, tax analysis and ICT management. **Chapter IV** of the report deals with the people function of the tax administrations, with training and specialisation forming important components. It also focuses on the wider HR needs of staff by identifying the need to introduce practices that have become common in modern tax administrations including mentoring, effective performance evaluation methods, for example, through assessment centres, and e-training.

**Chapter V** deals with dispute resolution and management. The TARC found in its analysis that the present dispute management structure should be converted into a separate vertical function so that the tax collection functions do not influence the resolution of disputes, which tends to occur at present. The current adversarial approach to disputes also needs to be transformed into one that is more collaborative and solution-oriented. Besides, the dispute structure needs to be modernised by bringing in alternative dispute resolution mechanisms through arbitration and conciliation. This may require legislative change. The role of regular interpretative statements has been emphasized to avoid disputes which otherwise arise due to ambiguity and imprecision in laws, rules and regulations. Equally important is taking due care for greater clarity at the law drafting stage itself.

Processes, by themselves, comprise an integral part of the reform along with structure, people and the use of technology in a tax administration. **Chapter VI** deals with internal processes and the need to design their management structure to bring better delivery to taxpayers as well as to the tax departments. The TARC identified some key processes such as registration, return filing, and tax payment to be further expanded and sharpened. This would be in keeping with the recommendations made in Chapters II and III.

Both the CBDT and CBEC have been among the leading departments in the government in adopting ICT. Both have successfully implemented large projects that have made many processes convenient and transparent for the taxpayers and improved the efficiency of operations. However, there are still many gaps and a large room for improvement. **Chapter VII** is on the need for a deeper penetration of information and communication technology (ICT) in the two tax departments. ICT has to form the backbone of improved service delivery and that could be better achieved through a special purpose vehicle (SPV) as expounded in that chapter.

## **I.2 Critical Findings**

At a macro level, the TARC found, first, that the Indian tax administration is in a vulnerable position due its static structure. For example, the recent “restructuring” of the two departments involved only an expansion in the number of posts without a corresponding reduction or re-allocation of resources away from less productive areas that is a quintessential element of modern restructuring and change. Second, the TARC found that the tax administration remains essentially unable to address rapidly emerging challenges on the domestic or international fronts, reflected in recent decisions that are far removed from international practice. Third, the TARC found that it should make recommendations that may appear to be far reaching and path breaking but are very much desirable and doable in the Indian context since they are benchmarked with prevailing global best practices.

Thus, it is fair to emphasize right at the beginning of this report that the TARC has not suggested any change that it believes cannot be carried out in the Indian context. Indeed, it is imperative that they be carried out given the prevailing tax administration characteristics in India. Some changes should be made with haste and others progressively so. The TARC has made specific suggestions of where the tax administration should make changes immediately,

where it should position itself through continuing, self-generated reform in five years and, once appropriately empowered, where it should reach as a world class tax administration in ten years. In this perspective, a roadmap has been provided for complete and fundamental tax administration reform. Also, the recommendations made in different chapters of this report need to be viewed as a whole and not in isolated fragments, if the reform efforts are to bear the intended fruit. The TARC believes this is the right moment in the light of a new reform environment that is expected to emerge precisely at this point of time.

The major fault lines in the tax administration are listed as follows.

- **Position of Revenue Secretary and autonomy of the two Boards:** The TARC found that these matters are closely related and comprise the crucial shortcoming at the apex level. It also found that earlier taxation committees had addressed the issue time and again – as will be described below – though government action has not followed. The TARC found that its view closely parallels those of the earlier committees, modified however to reflect international experience that has since emerged.

There is a post of Revenue Secretary who occupies the apex position in the Revenue Department and is selected from the Indian Administration Service (IAS). He is likely to have little experience or background in tax administration at the national level and little familiarity with tax, including international tax, issues that are increasingly taking centre stage in emerging global challenges in taxation. yet he is the final signatory on decisions on tax policy and administration matters prior to their arrival for the Finance Minister’s consideration. The TARC found that this has translated to the Indian tax administration’s attention and concerns – in the form of the Revenue Secretary’s control over the CBDT and CBEC - to mainly represent the Revenue Secretary’s area of familiarity, i.e., general administration, in which he may be highly competent but which is likely to possess only thin links to the most challenging matters of tax policy making or modernizing tax administration in the light of current global practices. In a sense, this peculiar practice has assigned the ultimate responsibility for administration and financial control lying with the Revenue Secretary – Department of Revenue – rather than to the CBDT or CBEC.

This is not the first time that a government committee has found that this admixture is anomalous, and that the post of Revenue Secretary is superfluous. It was considered by the Tax Reforms Committee, 1992, chaired by Prof. Raja J. Chelliah. The Committee’s views were as follows:

*“We recommend that (a) the two Boards should be given financial autonomy with separate financial advisers working under the supervision and control of the respective Chairman; (b) the Chairman of the two Boards should be given the status of Secretary to the government of India and the members of the rank of Special Secretary; and (c) the post of Revenue Secretary should be abolished.” (Para 9.27 of the Final Report Part – I)*

The TARC’s finding regarding the role of the Revenue Secretary is congruent. It is surprising that government has so far not visited this matter and, as will be developed in



detail in this report, it is time to give renewed attention to it due to its adverse impact on the efficacy of the tax administration in India.

Interestingly, the Chelliah Committee not only recommended abolishing the post of Revenue Secretary, but also emphasized financial autonomy for the two Boards. To quote,

*“... the Boards should have financial autonomy and that the Chairmen should have a sufficiently high status. We recommend that the two Chairmen should be directly accountable to the Finance Minister insofar as matters relating to tax administration are concerned.” (Para 9.28 of the Final Report Part – I)*

Selected matters relating to the administration/financing structure had been examined in the case of the CBDT by the even earlier Wanchoo Committee, 1971. It recommended making the Board an autonomous body, independent of the Ministry of Finance, with the Chairman enjoying a status equivalent to that of a Secretary to the Government of India as in the case of the Post & Telegraph Board. The subsequent Choksi Committee, 1978, reiterated that,

*“... the Chairman of the Central Board of Direct Taxes should have the status of a Secretary to the Government of India and the Board should have adequate staff assistance and should be provided with personnel having necessary technical background and experience”. (II. 2.16 of Choksi Committee Report)*

The issue of the administrative set up of direct taxes was also examined later by the Estimates Committee of Parliament. In its 10th report (1991-92), the Committee made the following recommendation in Para 3.77 of their report:

*“The Committee note that the existence of Central Board of Direct Taxes as an independent statutory body dates back to 1964 when Central Board of Revenue Act, 1963 was enacted. The Board is responsible for administration of various direct tax laws and rules framed thereunder, and for assisting Government in formulation of fiscal policies and legislative proposals relating to Direct Taxes. They further find that apart from the field offices of the Income Tax Department, a number of attached offices also function directly under the Board and assist it in discharging its responsibilities. At present the Board comprises of (sic) 7 members one of whom is nominated as its Chairman. However, the Committee are surprised to note that the Government have not yet accorded appropriate rank and status to the Chairman and members of the Board....*

*The Committee wonder why the Chairman of the Board cannot be given the rank and status of Secretary of Government of India. The contention of the Ministry that there ought to be a Secretary, Department of Revenue, to coordinate the affairs of the two Boards, viz., CBDT and CBEC, is unacceptable to the Committee as in their opinion the two areas of Central*

*revenues dealt with by the two Boards are fairly distinct from each other and do not require more coordination than that is necessary between the Ministries of Commerce and Finance, which are headed by independent Secretaries reporting to different Ministers. The Committee feel that at the Secretariat level whatever coordination is necessary can best be achieved through inter-ministerial or inter-departmental Committees and consultations. The Committee are amused at the contradictory stand taken by the Ministry in deeming the two departments viz. Income Tax and Customs and Central Excise to be more important than the Railway Board and simultaneously expressing themselves against conferring upon the head of these organizations the rank and status of a Secretary to Government of India particularly when the Chairman, Railway Board holds the rank of a Principal Secretary to Government of India. The Committee find no reason why similar status cannot as well be given to the Chairman of the Central Board of Direct Taxes and the Central Board of Excise and Customs.”*

With regard to the Committee’s observation that the two Boards are “*fairly distinct from each other and do not require more coordination than that is necessary*”, the TARC notes that since 1991-92 international experience has clearly moved counter to the Committee’s observations and as noted in Chapter III, the dominant global trend is in the direction of unification of direct and indirect tax administrations and treating corporate tax and VAT/GST together as business taxes.

The TARC has worked along similar lines. First, it agrees that the post of Revenue Secretary does not merit presence in a modern tax administration. Instead, a Governing Council should be introduced with the chairs of the Boards alternating as its chairperson. In this manner, the TARC adds to the tenor of the Chelliah Committee in that India should benchmark itself with modernizing tax administrations by not only removing the position of Revenue Secretary but by replacing it with a Governing Council that should include members from the non-government sector as well. The Governing Council will oversee the functioning of the two Boards and approve broad strategies to be adopted by the tax administration to fulfil the objective of a more co-ordinated approach to the administration of the two taxes – direct and indirect – and create a structure which is independent. Such a co-ordinated approach also improves the focus of the tax administration towards its customers, or taxpayers.

Second, synergy in tax policies and legislation between the two tax areas is to be achieved through a Tax Council, headed by the Chief Economic Adviser (CEA) at the Ministry of Finance. The Tax Council will bring the rigour of economic analysis and high precision in legislative drafting to tax laws so that tax laws are not only of assured quality, but are also coherent across tax types. The TARC found that the CEA is more equipped to deal with the links between tax and economic policies than the Finance Secretary (who was given a role by the Chelliah Committee). This new pattern reflects prevalent global practice in which



tax and the economy are recognized to be intrinsically linked. That link needs to be established in India rather than linking it with external administrative control, apparently to accommodate an administration oriented service.

The proposed structure would result in more autonomy in the functioning of the tax administration, which is unlikely to be achieved in the present structural framework as it fails to empower tax departments to carry out their assigned responsibilities efficiently. The Kelkar Committee, 2003 also recommended that both the CBDT and CBEC should be given requisite autonomy. The present functions of the DoR could easily be handled by the two Boards. The TARC could not identify the rationale for entrusting such functions to a separate body. Functions such as prevention and combating abuse of narcotic drugs and psychotropic substances and illicit traffic therein, Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, and the administration of central sales tax can be looked after by the CBEC while the enforcement of the Foreign Exchange Management Act, 1999, and Prevention of Money Laundering Act, 2002, can be looked after by the CBDT. The administrative functions relating to the Authority for Advance Ruling, Settlement Commission and Ombudsman can be delivered through the respective Boards.

The Governing Council and Tax Council will operate as single entities over both Boards to achieve better tax governance. The Councils anticipate the eventual convergence of the two Boards. Over the next five years, the two tax departments would move to a unified management structure, i.e. a common Board and operate the services for both taxes, as shown in **Diagram 3.5**. This would pave the way over another five years to a fully integrated tax administration with corporate tax, excise duty and service tax, together comprising taxes on business. When major functions of the tax administration are organized along functional lines, and not on merely tax lines, it will enhance taxpayer as well as staff convenience. This reflects current global practice. This would, of course, not be at the cost of specialisation in different tax types. The description above is a snap-shot of the structure described in greater detail in Chapter III.

- **Artificial separation of two tax Boards:** The tax administration is divided into two Boards – CBEC and CBDT – whose Chairs and Members are selected from career tax officials, and who report to the Revenue Secretary. There are several crucial difficulties with the nature and practice of the two Boards. First, there is no rationale for a functional separation that fails to reflect the common global practice of the day. This is because many of the Members' functions on the two sides repeat the same function that could be carried out ideally and optimally by the same official. This separation appears to accommodate the comfortable existence of Board Members rather than serve the interests of government in a sharp tax administration. Combining at least certain functions immediately would yield more Member positions in currently neglected areas. The Chelliah Committee had also recommended that the two Boards should operate in close co-ordination with each other. To quote:

*“With the abolition of the post of Revenue Secretary some arrangement would have to be made to ensure supervision and coordination of the activities of the two Boards. While alternative institutional arrangements could be considered, it is necessary to ensure that two basic conditions will be satisfied; the first is that the two Boards or the Tax Departments should not act independent of each other; as we have stressed earlier, it is extremely important that the tax system is structured and managed as a harmonious whole and that other inputs besides knowledge of tax administration are brought into the formulation of tax policy.” (Para 9.28 of the Final Report Part – I)*

**Routine placement of officials in the two Boards** (with little relation to length of tenure): Second, the selection of Chairs does not take into account the length of their remaining tenures prior to retirement. The selection is based almost entirely on seniority. As an indicator, in 2014 alone, there are likely to be four Chairs of CBDT and three Chairs of CBEC. For Members, there is a requirement of one year of residual service. Otherwise, the selection process is the same. With such rapid turnover and short tenures, there is little leadership in the Boards and, consequently, scant attention and time being devoted to directing national tax policies or providing administrative guidance – their quantity as well as quality have been reduced to random outcomes of ephemeral Chairs and Members.

**Board assignment has little relation to experience or link to specialized areas:** Third, the assignment of functions among Members does not necessarily reflect their work experience. Additionally, some areas that comprise crucial matters in modernizing tax administrations are given inadequate attention – for example, information and communication technology (ICT). Indeed, in such a specialized area, it is possible that people elevated to the post of Member ICT may have spent hardly any time during their earlier career on this matter. It, therefore, is unlikely that such a Member will be able to manage the area or take dynamic essential steps to keep the tax administration abreast of the latest developments in ICT applications that would be beneficial to the system.

**Members making policy have little policy experience:** Fourth, most Members emerge primarily or exclusively from field functions while, at the Boards, they are expected to design policy. Introduced policies, therefore, are often unrepresentative of the best available and experimented policy options from across tax administrations internationally. This happens even as top taxpayers express willingness to adhere to a rational tax administration framework while increasingly protesting against prevailing practices that do not compare with their experiences in dealing with tax administrations elsewhere.

**Members’ risk aversion leads to low productivity or low motivation to provide guidance or clarity:** Fifth, positioned beneath a Revenue Secretary picked from another Service, the Boards have tended not to assume a leadership posture, their views and decisions increasingly revealing extreme risk aversion. The outcome is that the Boards’ decisions or pronouncements in the form of legislative changes, binding circulars,

clarificatory guidance notes or press releases are few and far between, and that too under external force, in contrast with other tax administrations elsewhere.

- **Risk aversion permeates down, and leads to, infructuous tax demands:** The stance of inaction has permeated down to Chief Commissioners and even Commissioners who are averse to taking strong or even correct decisions that would counter infructuous demands made by lower level officers who have been given the role of a quasi-judicial authority. On the other hand, when an officer is convinced about a demand s/he has made but the Controller and Accountant General's (CAG) auditor has disagreed with it, the Boards have issued standing instructions that a "protective demand" must be issued by the officer to the taxpayer. Thereafter, the departments persist in such futile litigation imposing completely avoidable costs on the taxpayer. The CAG has nowhere stated that such protective demands should be issued and it is entirely up to the Boards not to do so. Non-issuance could lead to their being called to explain by the Public Accounts Committee (PAC) of Parliament; this was not uncommon in earlier years. Where a considered view has been formed on CAG's observations, the Boards ought to display the courage to defend their decisions before the PAC should such a need arise, instead of transferring the risk to the taxpayer. The Board's standing instructions, therefore, reveals excessive risk aversion that could only have an adverse effect on the taxpayer who is left in a completely uncertain and trying position in terms of current cash flows and business decisions for the future. The deleterious ramifications for the economy can only be surmised but not exaggerated.
- **Taxpayers express helplessness against rude or arbitrary behaviour of officers with little assigned accountability in practice:** The continuing impact on the taxpayer who has been relegated to a position of helplessness is unprecedented internationally. The confusing, if not arrogant, environment that they have to face on a daily basis was reported by high finance officials of major Indian corporations who are some of the largest Indian taxpayers. This occurred during the TARC's stakeholder consultations at five Indian metros – Bengaluru, Chennai, Delhi, Kolkata and Mumbai. They did not complain about the disagreements of the quantum decisions as much as about the rudeness in communication, non-maintenance of appointment time, passing on accountability to another location, and going so far in some instances as informing the taxpayer that a demand is being made to obviate "vigilance" – internal audit against the officer – and the taxpayer should take recourse to the appeals process available to him. This matter is detailed further as it has cropped up time and again during consultations with taxpayers in different contexts.
- **Complete absence of economic, statistical, behavioural, or operations research-based analysis of policy or of taxpayers prior to making major or minor legislative or subordinate legislation-based (rule-based) decisions:** Administrative decisions and tax policy making are both based on nil analysis by international standards. No "impact assessment" is carried out before introducing major legislative changes. Even changes in rules that Boards announce have no reference to what background analysis has preceded the decision. Pre-budget discussions are usually back-of-the-envelope calculations of revenue impact. The impact on a taxpayer is considered in a cursory manner, if at all.

Retrospective amendments clustered during 2009-12 may reflect this lackadaisical approach. In turn, this reflects complete lack of accountability at any level except on grounds of lagging behind in revenue collection.

- **Lack of use of Information and Communication Technology (ICT) based data by the Tax Policy and Legislation (TPL) Unit and the Tax Research Unit (TRU):** The two departments on both direct and indirect tax sides have made impressive advances in the installation of ICT and its use in the process function. What has not occurred is data mining. The masses of data generated, for example through the expansion of electronic filing, remain essentially unutilized. In modernizing tax administrations, modelling of taxpayer behaviour to obtain nuanced taxpayer behaviour patterns prior to the formulation of tax administration policy has become common practice. India has not yet begun even rudimentary attempts in this direction. Given its current size and officer backgrounds, in fact, no essential tax policy or tax administration policy analysis is carried out at either TPL or TRU. They function essentially to interpret and draft the law. There is no officer who is, or could be, entrusted to carry out *ex ante* or *ex post* policy analysis. This points to the urgent need to overhaul these units on the basis of a total reformulation in their objectives and scope.
- **Adverse impact of revenue target on tax officer equilibrium:** Revenue target is the sole criterion that is effectively used to assess performance. Targets are set in the Union Budget in a static context. No attempt has been made by the Boards to undertake any post mortem study that would analyse whether the projections were correct over a period of time when placed against the economic trajectory during the past year. Instead, the Boards pressure Chief Commissioners, who pressure Commissioners, who pressure lower level officers to meet fixed revenue targets, irrespective of the prevailing condition of the economy. Officers complained bitterly during the TARC's consultations in the five metros about the anxiety that they go through on account of the revenue collection pressure and some even went to the extent of pointing to the need for mentoring, coaching and psychological support.

**Blind revenue target causes unjust pressure on good taxpayers:** Modern tax administrations do not use a fixed or static revenue target. A revenue projection is made at the time of the budget reflecting the condition of the economy at that point. The projection is changed during the year reflecting the changing economic outlook. This is compared against what revenue is actually being collected. The difference is called the "tax gap". This is continually minimized through better collection efforts by reducing or eliminating tax evasion rather than by putting pressure from the top on officers below who, in turn, pressure even good taxpayers to contribute more revenue or postpone making due refunds in particular during the last quarter of the financial year. Such policies would be illegal in other law abiding societies. Consequently, instead of formulating policies with respect to tax administration and tax policy, several Board Members take on the role of tax collector. The consequence, unsurprisingly, is twofold: first, a dearth of meaningful tax policy or tax administration policy and, second, an inequitable pressure on the good taxpayer. Indeed,

the TARC observed, other than helplessness, deep and openly expressed anger amidst even top taxpayers in several metros.

**Wrong use of tax avoidance instruments for revenue generation:** In the direct tax area, ordinarily, transfer pricing examination between associated enterprises should be used as a tool to minimize tax avoidance. In India, transfer pricing measures are used for revenue generation, which comprises a completely wrong approach. This is revealed through the allocation of revenue targets to transfer pricing officers (TPOs) from transfer pricing adjustments. This is unheard of internationally. Accordingly, India has clocked by far the highest number of transfer pricing adjustments, demanding adjustments even for very small amounts. There is also a high incidence of variation among TPOs in their adjustments for similar transactions or deemed transactions. Taxpayers reported that they often succumb to such adjustments simply to carry on with business activity for, otherwise, they would have to allot or divert huge and unavailable financial and staff resources to such activities. Several other avoidance measures are also interpreted by the administration to be used for revenue generation, which comprises wrong policy.

**Defective formulation and implementation of tax law and rules to generate revenue:** On the indirect tax side, since the introduction of the “negative list” of services – only listed services are not taxed while all others are - has wreaked havoc among taxpayers due to poor management of change by the CBEC, reflecting lack of knowledge, preparedness or Board guidance to field officers leading to multiple interpretations combined with the usual lack of accountability for timeliness in clearing up confusion through circulars or guidance notes. The practice of delaying refunds by asking for irrelevant information reveals an undesirable and non-transparent practice to avoid refunding what is legitimately due to the taxpayer. Such artificial devices to garner revenue reflect an unethical approach to revenue collections.

**Lack of quality in fiscal deficit reduction:** Revenue target policy is usually set to achieve a better fiscal target figure. The TARC observes that the revenue target policy has been erroneous inasmuch as it is not just the numerical figure of fiscal deficit that counts but its quality. If a fiscal deficit is reduced through coercive government action in an era of global information, international rating agencies are going to take note of the overall business environment. Merely reducing the quantified fiscal deficit is not sufficient since the focus turns also to the quality of deficit reduction. Herein lies the fallacy of pursuing a blind deficit reduction policy. It has to be matched, instead, with appropriate approaches towards revenue collection both from tax administrator and taxpayer point of view. Indeed, some countries today are so concerned about the impact of tax policy and tax administration on the taxpayer that they have virtually removed the word “taxpayer” from the lexicon, replacing it with “stakeholder” and “customer”, recognizing them as partners with the administration in generating revenue. India remains a long distance from such an approach.

While revenue target is often achieved due to economic factors, identification of tax administration impact or tax-base impact is not separately attempted. Thus, the overall

impact assessment is confined to a year, and no gainful change is made in the tax administration or conscious efforts made to widen the tax-base.

- **Escalation of disputes and poor recovery from demands:** Lack of accountability in raising tax demands without accompanying responsibility for recovery has led to an unprecedented situation in India, which is experiencing by far the highest number of disputes between the tax administration and taxpayers with the lowest proportion of recovery of tax while arrears in dispute resolution are pending for the longest time periods. Thus, dispute management comprising dispute prevention and dispute resolution is at a nadir. It has also become a profession in its own right in a backdrop where, in modern tax administrations, disputes are entered into only as a last resort.
- **Virtual absence of customer focus:** Much of the modernizing tax administrations across the world have changed their stance towards taxpayers in a visible change in the approach to dealing with them, which is to treat them as partners. Segmenting taxpayers according to their tax behaviour enables the tax administration to develop strategies appropriate for such behaviour and improve the collection mechanism. In India, no customer focus strategy has been developed based on segmentation analysis.

**Examples of customer focus are few and there is no training for it, reducing taxpayers to a subservient status:** It is true that numerous Aayakar Seva Kendras (ASK) are being set up at locations all over India so that a taxpayer can register a question and follow how the matter is progressing through the system. However, selected visits indicated a wide variation in implementation. Second, through installed ICT software, a taxpayer can log in to see whether and how much his tax deduction at source (TDS) has been credited. However, many lacunae remain in terms of non-matching and the system has been slow in correcting anomalies. Third, other than TDS, there are significant cases of mismatch between the ICT-based Centralized Processing Centre (CPC) and the information percolating from there to a taxpayer's Assessing Officer (AO). Although the taxpayer suffers as a result of the mismatch, the lack of responsibility or accountability, leave alone timeliness in resolution, between the ICT and the AO for redressal of the mismatch is striking, despite ardent pleas from affected taxpayers, the latter sometimes even being subjected to scrutiny. Fourth, a common complaint made during the TARC consultations by high and low taxpayers alike was that the Indian tax administration was virtually the opposite of what is understood globally as customer focus orientation in terms of congenial attitude and polite approach to the taxpayer, or in terms of timeliness in decision making.

**Instances of egregious tax officer behaviour:** Taxpayers are subjected routinely to rude and arrogant behaviour, are made to wait hours – being called to appear in the morning though met many hours later, sometimes even in the afternoon – are asked to make photocopies of information already sent to the administration again during the visit without availability of copying machines, CEOs of companies being asked to appear when the CFO or an accounts official from the company would suffice. These characteristics signify practice that has descended to unprofessional levels, to put it mildly. There is no departmental training to behave differently; there are no guidelines or framework of rules



for accountable behaviour. Yet the vision and mission statements of the departments pronounce their intention to care for the taxpayer by incorporating taxpayer perspectives to improve service delivery. The prevailing situation is so far from common global practice that, in the judgment of the TARC, there is likelihood of a tax revolt in the not so distant future unless emergency and compulsory training is conducted for officers, with strong cues from the leadership. Contextually, while Ethics, as a subject, forms a part of probationers' training, Customer Focus is not addressed as a topic at any point in the officer's career. This decidedly reveals how the tax administration has functioned, and continues to function, in isolation and in a feudal manner, protected by systemic job assurance and assessed highly as long as revenue targets are met. The distance of this framework and manner of functioning from authentic customer focus could not be greater. The need for remedy could not be more urgent.

- Large Taxpayer Units (LTUs):** The concept of LTUs was introduced in 2006 following comparable practice in more than 50 countries. There should be a double dividend from the functioning of LTUs. On the one hand, large taxpayers defined according to their size of advance income tax or previous year's excise tax or service tax payment, can pay all taxes –direct and indirect – at one window. On the other, the tax administration can be fully informed of all taxes filed by a single taxpayer – corporate or any other business – enhancing the sharpness of scrutiny and audit functions and their consistency across taxes. It is happenstance that in India, as explained above, direct and indirect taxes are divided into parallel departments with effectively little information passing from one to the other. The institution of LTUs was expected to bridge this gap at least for large taxpayers. This has simply not happened. While large taxpayers get the single window facility, the two tax departments have continued to operate as silos, desisting from sharing information even with respect to LTU participants. To protect their respective turfs, they have bypassed the advantages to be reaped from sharing information even when the revenue ramifications from such exchange could only be positive. Thus, so far, the advantage that should accrue to the tax administration by operating LTUs has not accrued at all. No viable explanation was received by the TARC as to why, despite the introduction of an institution at the highest policy making level, the administrative system could basically ignore the policy intention without the slightest retribution except, once again, to point to the complete absence of accountability in the system. The TARC has found that, were the functioning of LTUs to be revived to a pre-eminent status, they could form the fountainhead of tax administration reform in India.
- Irrational approach to vigilance over officers:** Perhaps the most fundamentally diagnostic finding of the TARC is the almost absurd approach, by global standards, to vigilance over tax officers and the continuance of the system without the slightest revealed interest to change it from within i.e. by the Boards. A primary responsibility of the Boards is the welfare of and justice to their officers. Yet these officers are subjected to anonymous charges against them that could be ruinous to their careers. Vigilance action against them emanating from such anonymous complaints can drag on for years or be kept in abeyance only to be revived for unrelated future adverse steps that may be taken against them if the

system so desires. It is not surprising that correct, fearless decisions cannot be expected from officers in an environment of such uncertainty. Instead, the safe course of action is to relentlessly follow the “revenue protection” goal that is inculcated in them as the primary motto of operation.

**Fear of vigilance in management:** The TARC found that a similar fear of vigilance lurks even in the higher echelons of management, rendering the administration devoid of bold or corrective action where needed or even where obvious. Unresponsive to taxpayers’ legitimate concerns, slow to undertake corrective action, on the contrary, instructing that protective demands be issued to taxpayers automatically on the basis of the CAG’s observations and ignoring its own officers’ assessment, the Boards – comprising top management of the tax departments – have succumbed to the fear of vigilance. The management is functioning to protect itself even while the taxpayer becomes its sacrificial lamb, revealing a lack of accountability towards the taxpayer. In this context, customer focus as enunciated in the vision and mission statements remains relegated to paper. Management becomes doubly irresponsible – towards both its officers as well as to taxpayers.

**Fear of vigilance as a consequence of external pressure and external head:** Possibly the subservient status of the two Boards reporting to an officer from a different service and, more so, without essential background or knowledge of tax matters, is leading to the Boards shirking from taking bold steps or corrective action, or being unwilling to face the legislative or judicial branches as needed, or being unwilling to take initiatives in the building of infrastructure or, last but not least, failing to empower the institution and, instead, remaining inert towards its own officers and taxpayers. All of this characterizes the Indian tax administration of the day. It is clear that unless it is given its own autonomy, the Indian tax administration can never rise to its full potential.

- **HRD – or People – function:** First, while the need is to create a high-performing organisation, the HR policies of the two departments seem to work against the creation of a meritocracy. The promotion, transfer and placement policies do not adequately address the need for recognising merit, developing specialisation and creating a motivated and highly competent and professional work force, which is capable of effectively addressing the emerging challenges and also serving the taxpayers satisfactorily.

Second, several officers mentioned that there is a culture of supervisors doubting and questioning correct decisions merely because they are perceived as customer-friendly. This demotivates even diligent and honest officers and induces them towards risk-averse decisions, thereby passing on an unfair burden on the taxpayer as that would be an easy way out from being subjected to further questioning by management. In short, the common management stance being one of distrust of the junior officer, rather than his empowerment, sows the seed of a chasm between an officer and the management. The former eventually succumbs to the laid out approach expected of him by the system.



Third, the **transfer policy of tax officers** is routine if not archaic. The transfer policy needs to balance the needs of the organisation with the needs of an individual to maintain high morale. The argument that the Indian Revenue Service is an all-India service should not lead to the installation and functioning of a structure that ignores the need for specialisation. Transfers are given first priority over acquiring specialization in any subject that may be quintessential in carrying out acutely specialized tasks in a global context. An officer may be placed in TPL, TRU, systems, or international taxation, directly from the field without prior training merely to adhere to the transfer policy. Nevertheless, there are enough caveats in the policy to accommodate special ‘silver spoon’ cases. Indeed cases appeared to the TARC where circular transfer requests (pertaining to a group of officers) that are entirely ‘Pareto optimal’ – where there are gains without anyone being worse off – are ignored even where the transfer policy is apparently not compromised. Presumably this may reflect an underlying fear that such requests, if conceded to, may be repeated by others, not realizing that meeting such continuing requests would only enhance people welfare. The need for a transfer policy that is meaningful in its fairness and encouragement towards professional specialization cannot be over-emphasized.

Fourth, another oft ignored aspect of the people function is the **implementation of leave policy**. This appears to be randomly applied at least in selected observed cases. The policy has broad scope for leave accumulation, but granting of leave appears inexplicable and unrelated to the accumulation of leave. Rather, it appears to be linked to the professional relationship between an officer and his superior. The right of the officer to take accumulated leave has sometimes been ignored, revealing a lack of information or of training of managers in modern management principles in which rights such as the days of acquired leave, or stipulated number of days of training, comprise the right of a worker and has nothing to do with a work relationship. There is no redressal for the worker in such circumstances. What is worse, there is no accountability assigned to the errant superior. The TARC gathered the impression that the management tends to wield a tough stick on an officer who falls foul inter-personally of the system.

Fifth, an issue that cannot be ignored and appears to work in the reverse direction is that of **moral hazard**. Taxpayers openly complained during the TARC’s consultations about their helplessness against demands for bribes to make refunds, to hold back infructuous demands, or speed up processes from dormancy. While no officers’ names were mentioned for fear of retribution, the TARC views that the open claims made by stakeholders is a cause for deep concern. Even senior officers admitted their ineffectiveness in controlling this growing phenomenon. On the one hand, a toothless institution may suffer from various such maladies as almost a *quid pro quo* for the powerlessness that it endures. On the other hand, if the institution is responsible for delivering a public good and is intended to be the primary institution for generating funds for public expenditure, then bribery represents a leakage from public funds. Whatever tax is not paid and is shared instead between an errant taxpayer and a corrupt officer is an amount that does not enter the exchequer. This institutional disease, to the extent that it exists, cannot be ignored and a solution must be found.

- **Key internal processes:** Glaring gaps prevail in internal processes. Some among those found by TARC are listed here: (1) a basic lack of harmony between direct and indirect tax departments; (2) relatedly, the issuance of PAN, its non-use thus far as a Common Business Identification Number (CBIN) and the lack of provision for de-registration, cancellation or surrender, and slowness in real time verification of PAN; (3) absence of possible consolidation of direct taxes on returns, for example, income tax and wealth tax; (4) continuation of jurisdiction specific returns for direct and indirect taxes; (5) lack of harmony even within indirect taxes, i.e., between customs, central excise and service tax, (for example, not combining audit of customs, excise and service tax paid by the same taxpayer, or not treating a business as a whole and instead treating it as individual audit units); (6) absence of e-invoicing and commensurate monitoring of CENVAT credit flow; (7) absence of audit protocols that separate different scrutiny procedures and protocols for different types of audits; and (8) the virtual absence of risk-based scrutiny selection for income tax despite the use of Computer Assisted Scrutiny Selection (CASS) due to lack of pre-selection data cleansing or systems-based checks and analysis.

A particular gap remains in an interface function with the taxpayer; this is in processing and **making refunds**. (1) In the case of income tax, there is no time limit within which an AO needs to process the refund in case it could not be issued by the CPC. The insistence on manual filing of TDS certificates before the AO for verification of a refund claim stalls the process. (2) Where eligible refunds emanate from Commissioner (Appeals), Income Tax Appeals Tribunal, a high court or the Supreme Court, again, the AO faces no prescribed time limit for issuing the refund. (3) In the case of service tax, a consistent complaint was that of refusal to pay due interest to domestic suppliers and to service exporters under different pretexts – including repeated demands for additional documentation or the use of a provision entitled “unjust enrichment” – by the department. The latest available data reveal that, in 2010-11, interest on refunds was 0.01 per cent and 0.02 per cent of refunds for customs and excise respectively, which may serve as an indicator of the realism of the complaints. (4) It was reported by officers to the TARC that it was routine to receive instructions from above to slow down or stop making legitimate tax refunds in the last quarter of the financial year.

**Tax fraud, intelligence and criminal investigation** comprise another deficient area. The TARC found that: (1) “Search and Seizure” and its legal backing need to be made clearer. Drafting of prosecutable issues and highlighting the offence and the evidence to be adduced either do not exist or are carried out not in a fully professional manner. A dedicated vertical assisted by lawyers is currently lacking and needs to be embedded in the administration. (2) The directorate in charge of investigation of criminal activity on the direct tax side is inadequately linked to other agencies and, remarkably, not even to the indirect tax side. This once again reveals the deep and inexplicable chasm that continues to exist between the two tax departments and is simply tolerated despite obvious synergies that would ensue if common functions were jointly performed.

- **Role of ICT:** ICT today is the most critical underpinning for tax administration reform. All modern tax administrations see it as a key component of their strategy to improve the

efficiency and effectiveness of their operations, be it customer services, internal business processes or effective interventions in the area of audit and enforcement. They are also focusing on enhanced use of analytics to support their actions in diverse areas such policy making, customer segmentation and risk management.

While the two Boards' achievements are creditworthy, and provide a robust basis for future progress, in the TARC's opinion, there is a long road ahead of both the Boards before they could be said to have achieved comparable global benchmarks, of a modern 21st century tax administration, for full and effective utilization of the potential that ICT offers. And in order to reach that destination, they will have to chart a new path as TARC has outlined in Chapter 7 of this report.

ICT does not appear to be fully internalized in the thinking and working of the departments and there is not enough appreciation of its strategic importance as opposed to viewing it merely as a means of automation of transaction processing. The absence of integration of the ICT and business domains at the highest levels has led to sub-optimal realization of the benefits of ICT projects and systems. Greater attention is needed on the part of the senior leadership to the opportunities that ICT offers for re-engineering business processes to do things differently and more productively. Further, there is insufficient focus on the use of data analysis for developing policies and for making informed and evidence based decisions. It is true that the CBEC has already implemented, and CBDT is implementing, a data warehouse that will provide much better access to data as well as powerful analytical and reporting tools. However, in the absence of data sharing between the two Boards, the data warehouses will only provide data from their respective systems, and thus only a partial version of the truth, thereby limiting its utility. Further, merely providing technology is not sufficient. If the required human capacity to use the technology tools to perform advanced analyses is not developed, the potential of ICT will remain unrealized. There appear to be no efforts planned to create such capacity and develop an institutional framework for undertaking research and analysis in either of the Boards.

The implementation so far has been in the project mode, meaning that individual projects were conceived, designed and implemented at different points of time for meeting different needs. There has been no clearly articulated ICT strategy, derived from an overall organizational strategy and vision, forming the basis of the project development. This weakness has been compounded by the absence of a robust ICT governance framework that would have encompassed sound programme and project management, closely linking business goals with ICT implementation. It has also led to heterogeneous approaches to ICT implementation, with systems being developed along different implementation models and not adequately catering to the need of interoperability.

There are also gaps in the ICT implementation. These are either because some processes have not been covered in the scope of automation or because the sub-systems or modules that provide for digitization have are not been implemented. This is true of the core applications of both the direct and indirect tax administrations. The result is that data are

incomplete and the Boards are still dependent on reports from the field, which, besides often being inconsistent and inaccurate, impacts on the efficiency of field operations.

Missing pieces in digitization of operations also means that the Boards are unable to make meaningful performance measurements at the organizational as well as at team or individual officers' levels. Consequently, they are unable to effectively manage performance at all levels.

There also appears to be a communication gap between the DG (Systems) and the officers in the field, leading to difficulties in implementation as users do not seem to adequately perceive value in ICT implementation.

Many administrations adopt suitable ICT maturity frameworks, to assess their progress in ICT implementation, as also the comprehensiveness, depth and effectiveness of such implementation. No such use of framework has been adopted by the two Boards.

The most critical shortcoming of the current implementation arises from the two Boards operating in separate silos and a total absence of data sharing between the two. A big opportunity for radically improving both taxpayer services and enforcement actions is being missed on this account. An opportunity to reduce duplication of efforts and resources too is being missed.

The TARC also finds that a key risk to the ICT implementation lies in the HR policies of the two departments, which are overly oriented towards a generalist approach. Effective ICT implementation requires specialized skills and capacities and all modern tax administrations recognize this. In India, on the other hand, the transfer policy results in situations in which crucial resources get moved out the ICT function, at critical points of time simply because of the prescribed tenures, and new (and often unprepared and unwilling) persons get inducted. Combined with the absence of a reliable process of knowledge transfer, this continues to pose a serious risk to ICT implementation. Compared to the size of the projects, the two DG (Systems) are also understaffed.

Considering the complexity and scale of the tax administrations' operations, and the challenges confronting them in a rapidly changing environment, the task of complete digitization of their operations is an onerous one. This, coupled with the need to take the implementation out of the silo-based approach that has constrained the realization of the full potential of ICT hitherto, would indicate that the DG (Systems) as they are currently configured and structured are ill-equipped to meet the future needs effectively. Only a purpose built organization that will take on the full responsibility for ICT implementation, with full operational freedom and flexibility to be run in an independent and professional manner, and yet be under the strategic control of and accountable to the two Boards, can successfully meet the challenge.

### I.3 Conclusions

The critical findings delineated above, when combined, lead to the TARC's overarching conclusion that, if an institution could have spirit, then the current Indian tax administration lacks that spirit. Functioning in a vacuum, it has lost its purpose as revealed in its behaviour, for its stated vision and mission are scarcely observed in its operational style. Its singular objective of protecting revenue without accountability for the quality of tax demands made is commonly believed to have severely affected the investment climate in India and in investment itself. This view reflects strongly the pleas, complaints and anger expressed by high and low taxpayers alike during the TARC's stakeholder consultations. Thus, overall, the Indian tax administration is at its nadir. A fundamental and deep reform is urgently called for. There is no time to lose if investment is to be revived and its full potential reached, and an eventual tax revolt through capital flight or other direct protests is to be averted.

Deconstructing, the conclusions may be summarized as follows:

- A crucial deficiency is a fundamental **lack of customer focus** in the Indian tax administration, which is in stark contrast to modernizing and reforming tax administrations. The randomness and uncertainty in tax demands, the rudeness and abrasiveness in tax officer behaviour towards taxpayers, totally obviating the latter's stakeholder role, the inconsistency in demands made on similar tax matters without accountability, and the often poor quality of show cause notices have combined to project the tax administration in its poorest light in the eyes not only of the taxpayer but of society at large. Yet there is no place for customer focus thus far in the training syllabi of either branch of the tax administration. Indeed, recently, the phrase "tax terrorism" has appeared in the gathering commentary on the Indian tax administration.
- The present **structure of the tax administration** – (i) headed by a non-tax official imported from another public service stream that has no link to taxation, (ii) artificially separating the tax administration into direct and indirect taxes headed by two parallel Boards for common functions, ignoring, for instance, even the functional commonalities in LTUs that were established for the very purpose of reaping benefits from exchange of information between the two tax areas, (iii) living with a selection system into the Boards that has no or little link to the length of tenure, work experience, or specialization, and (iv) risk aversion arising from an externally imposed vigilance over the entire officer structure – has led to a management functioning at a suboptimal quality and below its potential capacity.
- The risk averse behaviour of the tax administration has routinely led to infructuous tax demands on the taxpayer, often with the full knowledge that eventually such demands would not be able to withstand or pass the judicial process. In addition, a contrary view from the CAG on an AO's assessment is directed by the Boards to be assimilated through a 'protective demand' on the taxpayer, despite knowing that it is likely to lead to a dispute. The resultant **number of disputes and the time taken to resolve** these have surpassed heights that are globally incomparable. The rules of appeal by the tax departments that

elongate the process prior to final resolution and a high proportion of cases that end in eventual defeat have led to a miniscule proportion of recovery compared to demand. Yet there is no accountability regarding recovery for the concerned officer. While raising a demand is praised, there is no punishment for infructuous demands. The loser is the taxpayer in terms of time lost, advance payment required of the disputed amount resulting in deleterious effects on the cash flow of business, and the length of staff time and expenses associated with a long drawn-out dispute resolution process.

- The **HRD or people function**, or the approach to handling staff, is grossly inadequate. First, the pressure to meet **exogenously imposed revenue targets**, irrespective of the condition or prospects of the macro economy, has not only made it tough for taxpayers to make business decisions, it has also led to significant worsening in the officers' work environment. Second, the tax administration subjects its staff to an **irrational practice of vigilance** in which anonymous complaints against them are given equal status to direct evidence. Vigilance emanates also from external agencies, which is not common practice in many other tax administrations. The outcome of the vigilance process can linger for years, truncating the possibilities of success in many careers. This fear starts from entry to termination of a career. The result is extreme risk aversion. Thus, an AO is likely to issue an order despite knowing that it would not withstand the judicial process, and higher tax authorities are unlikely to modify it for the same fear of vigilance. The loser is again the taxpayer. Third, the **transfer policy and leave policy are irrational**. They discriminate and tend to work against the good intentions of officers who have acquired rights to leave or have a genuine desire to specialize in a subject. Several officers expressed anguish over their dire need for counselling or psychological support. Such conditions are unheard of in modern tax administrations.

At the same time, accusations of **moral hazard and demand for bribes** cannot be ignored by the TARC. On the one hand, this could be partially explained through the administration operating as a subservient entity to another public service stream so that, despite an evidentiary slide in the morals of the institution, management does not feel directly responsible for it. On the other hand, given that the ultimate sufferer from corruption is the taxpayer – while recognizing that he has to necessarily be at least a passive participant – there is no gainsaying the fact that there is need for the tax administration's management to take extraordinary steps to contain and obviate this institutional disease since it has a direct impact on society, its productivity and on the economy's measured GDP.

The TARC, therefore, concluded that the people function of the Indian tax administration is in a very undesirable state. Even as the staff continue to exhibit competence, if not brilliance, at an individual level, the system tends to defeat them from performing at their full potential. Certainly, it tests them on erroneous premises and subjects them to archaic management practices. This situation demands immediate correction through compulsory training in modern management practices at the Commissioner and higher levels of seniority, who currently are subjected to little or no requirement for continuing management education. It also demands people policies that are designed to recognize and reward high performance, ethical conduct and identify leaders early and groom them for



leadership positions so that they can lead the organisation to high performance. The TARC is, therefore, making recommendations in relation to this function which have transformative potential and which are radically different from the current processes.

The TARC recognizes that the question may be asked whether it is appropriate and feasible that a radically different HR dispensation should be operated in the tax administration *de hors* rest of the government. The TARC is making its recommendations after carefully deliberating over this question. The TARC believes that, with far-going reforms like the Direct Tax Code and the Goods and Services Tax on the anvil, the tax administrations are poised at an inflection point requiring strong leadership and bold action. The need for transforming the tax administrations is so stark that only radical measures can bring about the needed transformations. The measures that the TARC is recommending is based on the principles and practices which are already being operated in other tax administrations, both in developed and developing countries, for long. In India too, these practices exist, *albeit*, largely in the private sector high performing organisations. The TARC is recommending these measures for the two departments because that is what its remit is. However, the TARC fully believes that unless the HR policies in the government at large are also transformed along the lines of its recommendations, the administration in India will continue to remain a severe constraint against its growth and development. Somewhere a beginning must be made and it is the TARC's conviction that the transformed IRS can become a beacon for rest of the civil services.

- The TARC concluded that rapid rationalization of **key internal processes** is called for whether they be in the case of PAN – its generation and termination, or its wider rationalized use for more taxes – consolidated filing of returns for different taxes, harmonization of computerized processing at the CPC with that of the AO, making refunds of direct tax and indirect tax credit, risk-based selection scrutiny using ICT, or consistency checks across direct and indirect taxes in the case of search and seizure, and intelligence and criminal investigation.
- In the case of **ICT**, the TARC concluded that the Boards must commit themselves to full digitization and work towards building comprehensive systems, covering all key processes, in which everyone, from the top leaders to the frontline employees, works in a digital environment. In other words, ICT must get embedded in the DNA of the organization.

There is a clear need to articulate an ICT vision and strategy, derived from business strategy that reflects the departments' vision and mission, which will provide an overarching setting for the design of the ICT architecture. This will provide consistency and coherence across different ICT projects, systems and sub-systems and bring about much greater interoperability, ensuring better customer satisfaction.

There is an equally urgent need to embrace a sound ICT governance framework, along with rigorous adoption of programme and project management methodologies, so that there is deeper business-ICT implementation and effective ICT risk management.

HR policies need to be aligned with ICT requirements. This means they must promote specialization, allow the necessary length of tenures to allow development of the required skills and their application in the relevant areas, and allow personal growth for qualified officers according to their suitability and inclination and organizational needs. HR policies need to cater to the lateral entry of specialists where such skills are not available internally. Further, the policies need to specifically take into account the stages of the project lifecycle while considering transfers of staff who may be engaged with those projects.

In order to enhance business-ICT interaction, the Boards need to adopt structures and process to establish a working relationship between business owners and DG (Systems) officers that will align ICT implementation with business needs and priorities.

To promote better analytical support for policy development as well as operations, a specialist organization, the Knowledge Analysis and Intelligence Centre, needs to be set up for which the ICT function will provide the necessary platform and tools. KAIC will be the repository of highly specialized analytical and other related skills. Its remit will be to address highly complex problems with strategic implications. Good analysis will have to continue to happen within each functional vertical, which the ICT function needs to support through appropriate technological tools.

In short, to be able to shape themselves into a modern 21st century tax administration, the two Boards need to adopt the agenda of a complete digital transformation. The TARC believes that for fulfilling such an ambitious agenda successfully and sustainably, it is essential that a single SPV with operational freedom and flexibility to take quick decisions should be established for servicing the ICT needs of the two Boards. It should be set up as a company with professional management and a sound business model that would make it financially self-reliant.

The SPV can also be tasked to set up the ICT platform for the KAIC and also support it through ICT specialists, who can be seconded from the SPV to the KAIC.

Accordingly, the TARC's main report is organized sequentially, comprising Customer Focus, Organizational Structure, Dispute Resolution, People Function, Other Internal Processes, and Information and Communication Technology (ICT). The recommendations that follow in the next section are also similarly ordered.

#### **I.4 Recommendations**

In what follows, the TARC lists its main recommendations in the full belief that they can be instituted if the willpower exists at the top policy level. Such changes have occurred in other countries including the one that bequeathed India her prevailing bureaucratic structure that has seen its best days and has outlived itself. It is now time to confront what is bad and change it for the better to reflect the expectations of India's new and future generations that have the desire to work and be productive rather than facing and combating high costs of compliance. Only recommendations that are desirable and doable along these lines are listed below. Also, the recommendations should be considered as a package and not on a pick-and-choose mode.



That would not work; it would be better to set aside the recommendations *in toto* and reconsider them at a future date when India may be ultimately ready to make serious changes that are needed but is not up to facing them as of now.

Diagram I.1 gives road-map for implementation of the TARC's main recommendations.

#### I.4.a Customer focus

A taxpayer is the entity that approaches the tax administration and thus comprises the latter's customer. Yet the prevailing treatment of the taxpayer by the tax administration requires much to be improved in reflection of global practice. **Customer Focus** reform therefore is the first need. It comprises **Chapter II** and the first set of recommendations

The TARC recommends that:

- There should be a dedicated organisation for delivery of taxpayer services with customer focus for each of the Boards. There should be an exclusive Member in each Board for the taxpayer services. The taxpayer services vertical under each Board would be headed by an officer of the rank of Principal Chief Commissioner, who would be responsible for delivery of taxpayer services. This implies dedicated resources and personnel for this vertical. (Section II.6.c)
- Taxpayer service delivery will be located under one umbrella for large taxpayers, i.e., the CBDT and CBEC will jointly function for large taxpayers through Principal DG (LBS). For other taxpayers, i.e., medium and small, the operations of the CBDT and CBEC will continue in separate chains. (Section II.6.c)
- Officers and staff at all levels of tax administration should be trained for customer orientation. Further for people posted in this vertical, the training in customer focus need to be more specialized and intensive. This training should be appropriate to the areas in which such officers are deployed such as customer relationship, measurement of customer satisfaction, taxpayer education, etc. (Section II.6.a)
- In line with the international practice of spending 10-15 per cent of the administration's budget, a minimum of 10 per cent of the tax administration's budget must be spent on taxpayer services. At least 10 per cent of the budget for tax administration should be allocated and spent for ICT-based taxpayer services. (Section II.6.a)
- Sufficient funds must be allocated to conduct customer research including, in particular, on customer surveys. (Section II.6.b)
- In redressing taxpayer grievances, the decision of the Ombudsman should be binding on tax officers. To bring independence and effectiveness to the office of the Ombudsman, non-government professionals should also be inducted in the post. (Section II.6.b)

- Pre-filled tax returns should be provided to all individuals. The taxpayer will have the option to accept the tax return as it is or modify it. In either event, the filing process would be completed with the submission of the tax return electronically. (Section II.6.b)
- There is an urgent need to revisit the present citizen's charter to make it more meaningful and customer focused. The citizen's charter should be renamed the taxpayer's charter to focus on all categories of taxpayers. (Section II.6.c)
- There should be a regular stakeholder consultations on the issues of tax disagreements and tax law changes. The Commission recommends a permanent body for stakeholder engagement. The recent experience of the Forum through which many issues were resolved between stakeholders and the tax departments should become a continuing activity. (Section II.6.b)
- There should be a system for online tracking of *dak*/grievances/applications for refund etc. It should be made mandatory to receive all *dak* through a central system generating a unique id. The ASK software implemented by CBDT provides such a mechanism in a limited manner. This needs to be extended to all offices. The functionality to enable the taxpayer to track the status of his application/grievance online should be added to the ASK system. Similar system for online receipt of application should be enabled on the indirect tax side. (Section II.6.c)
- Continuous benchmarking of the tax administration, particularly in relation to delivery of taxpayer services, with that of other tax administrations should be done to highlight the area of focus. (Section II.6.c)

#### I.4.b Structure and Governance

As the customer faces and enters the tax administration, how well s/he is treated and how smoothly his job is accomplished is dependent on the structure and governance of the tax administration. This therefore comprises the second area of reform. For example, TARC found the lack of synergy between the two tax departments even for LTUs despite their establishment in 2006 to be a telling reflection of the administration's lackadaisical approach to installed policy. Structural reform is therefore recommended using LTUs as the anchor for which common functions need to be immediately consolidated for the two tax departments. Many other structure and governance from deep within are also needed if operations are to be rationalized. **Structure and Governance** comprises **Chapter III** and the next set of recommendations.

The TARC recommends that:

- The two Boards must embark on selective convergences immediately to achieve better tax governance, and, in next five years, move towards a unified management structure with a common Board for both direct and indirect taxes, called the Central Board of Direct and Indirect Taxes. For a unified management structure, apart from the common Board, the functions that can easily support the framework would be in the areas of human resource

management and vigilance, finance, ICT, infrastructure and logistics, and compliance verification. (Section III.4.e)

- The convergence can begin for large business segment by setting up of a large business service (LBS) which will be integrated and operated jointly by both the Boards. This will be a taxpayer segmentation by the tax administration, and joining LBS will not at the option of the taxpayer. All the core tax functions will be managed jointly by officers of both the Boards. (Section III.4.b)
- The tax administration needs to have greater functional and financial autonomy and independence from governmental structures, given their special needs. (Section III.7)
- The post of revenue secretary should be abolished. The present functions of the Department of Revenue should be allocated to the two Boards. This would empower the tax departments to carry out their assigned responsibilities efficiently. (Section III.7)
- A Governing Council, headed by chairperson of the two Boards, by rotation, and with participation from outside the Government, should be set up at the apex level to oversee the functioning of the two Boards. (Section III.4.c)
- An Independent Evaluation Office (IEO) should be set up. Its main work would be to monitor the performance of the tax administration, promote accountability, evaluate the impact of tax policies and assess all factors that affect tax administration. IEO will report to the Governing Council so as to ensure its independence. (Section III.4.c)
- A Tax Council should be set up to develop a common tax policy, analysis and legislation for both direct and indirect taxes. The council will be headed by the Chief Economic Adviser of the Ministry of Finance. (Section III.4.d)
- Common Tax Policy and Analysis (TPA) unit comprising tax administrators, economists, and other specialists such as statisticians, tax law experts, operation research specialists and social researchers should be set up for both Boards. The existing TPL in CBDT and TRU in CBEC should be subsumed in the common TPA. TPA will report to the Tax Council through the concerned member of each Board. TPA will be responsible for all three major components of tax policy formulation – policy development, technical analysis, and statutory drafting. (Section III.4.d)
- Each rule, regulation and other tax policy measure such as exemptions should be reviewed periodically to see whether they remain relevant to the contemporary socio-economic conditions and meet the changing requirements. For this, a robust process should be institutionalized. As a first step, a thorough review of the existing rules, regulations and notifications should be undertaken. Going forward, it should be a standard practice to build sunset clause in each rule, regulation and notification. (Section III.4.d)
- The present Boards are not aligned to various needs nor are they geared to respond to emerging and future challenges in an effective and efficacious manner. Keeping that in

mind, the two Boards should be expanded to have ten Members, apart from the Chairperson. (Sections III.5)

- The two Boards would be responsible only for policy dimensions of tax administration, while the directorates under them would be responsible for operations in the field formations. These directorates would have a vertical and horizontal alignment with functions, and would interact with each other in a matrix-like structure of responsibilities and accountability. (Section III.5)
- The field formations are currently organized to handle all key functions in a particular geographic region. In order to bring about a functional orientation, field offices will need to be restructured along the core functions of taxpayer services, compliance, audit, dispute management, enforcement and recovery, etc. (Section III.5)
- A functional orientation would promote specialization in the respective area of tax administration. For these reasons, specialization should be encouraged by selecting suitable officers and providing them sufficient tenures to develop specialized knowledge in key sectors. (Section III.5.d)
- A common approach for developing robust and comprehensive enterprise risk management framework should be adopted by the two Boards. This should be approved by the Governing Council to bring coherence. (Section III.5.a.i)
- There should be one Knowledge, Analysis and Intelligence (KAI) centre for both the Boards and its role should be recognized and used for policy and operational effectiveness. (Section III.6)

#### **I.4.c People Function**

Another area that does not compare internationally is that of HRD or the People function. Staff are not empowered to take independent or correct decisions for fear of retribution and vigilance, the exclusive objective being to “protect the revenue”. They are made to collect revenue irrespective of the condition of the macro-economy that should indicate how much tax may be correctly collected. They therefore tend to make decisions well knowing that a tax demand or dispute will not pass the test of judicial processes. At the same time they are subjected to promotion, training, transfer, and leave policy that are fundamentally non-reflective of global practice. At the same time, senior management is subservient to the top Revenue official who, over the years, is imported from another Union Service that has no direct link to revenue or taxation. The overall outcome is a subdued tax administration that is far from dynamic. Indeed, over recent years it has acquired the notoriety of corruption. Empowering the staff, or **People Function**, comprises **Chapter IV** and TARC makes several significant recommendations towards empowerment.

The TARC recommends that:

- Both the departments should shift all their key operations to the digital platform so that performance can be reliably measured. (Section IV.3.d)
- A system of limited departmental competitive examinations should be introduced by earmarking 33 per cent of the vacancies in the promotions quota in Group B as well as Group A, so that relatively more meritorious and younger officers in the feeder grades can get a fast track in promotions. (Section IV.3.c)
- Recruitment needs to be made on the basis of carefully drawn recruitment plans that balance the short and long term needs and career aspirations of officers. (Section IV.3.c)
- Provision should be made for lateral entry of experts in key roles and specialized areas. While they may be on contract for 5 years, subject to their suitability and willingness they should be able to integrate with the organisation at the end of the contract period. (Section IV.3.c)
- The CBEC needs to develop a human resource management system, as has been done by the CBDT; collaboration and knowledge exchange between the two DGs (HRD) will enable CBEC to get such a system going in shorter time. (Section IV.3.b)
- A comprehensive performance management system needs to be set up for both tax administrations by revisiting and reconstructing the RFD. (Section IV.3.d)
- Key performance indicators, detailing the performance areas, objectives, key initiatives, performance indicators and performance targets, should be arrived at using the Balanced Scorecard methodology. (Section IV.3.d)
- The performance appraisal process needs to be made more wholesome and reliable by making it more open and by introducing a mid-year review. (Section IV.3.d)
- The tax administrations should extend the performance appraisal system to elements of 360° appraisal to include feedback from subordinates. (Section IV.3.d)
- The outcome of discussions during the performance appraisal process should result in the superior taking responsibility for juniors by putting in place an improvement plan to overcome their weaknesses. (Section IV.3.d)
- Performance needs to be recognized through non-pecuniary measures such as giving important assignments in chosen areas of work or specialization. (Section IV.3.d)
- To facilitate renewal of talent and professional growth, officers should be allowed to move outside the departments for defined periods of time. (Section IV.3.d)
- The career of IRS officers should be divided into three phases:
  - The first 9-10 years should be spent rotating through different functional areas to gain familiarity
  - The next 8-9 years should be in two or more specialist areas

- Persons showing the ability for top leadership will go into the third phase and constitute the pool from which selection will be made for top positions (Section IV.3.d)
- A common assessment centre for the two Boards needs to be set up by the people function to make a thorough, all round assessment of officers at the first transition point. (Section IV.3.d)
- In view of a different promotion system being recommended, the UPSC should be consulted for exempting these promotions in the IRS from their purview like some other services, e.g., the Indian Foreign Service, Indian Railway Services and Indian Audit and Accounts Services are exempted. However, if the UPSC is willing to be associated with the altered promotion scheme, that option should be considered. (Section IV.3.d)
- A formal mentorship programme may be set up, with carefully selected mentors. (Section IV.3.d)
- The transfer and posting policy should be recast to promote specialization and accommodation of individuals' choices in professional growth and should bring about predictability, stability and certainty to placements. Personal difficulties of officers should receive due consideration. (Section IV.3.e)
- DGs (HRD) should assist the Boards in transfers and postings and they should be member secretaries of the placement committees. The administration section should have no role to play. (Section IV.3.e)
- Learning and development should occupy a central place in people advancement and all officers must undergo a minimum 10 days of training every year. (Section IV.3.f)
- NADT and NACEN infrastructure should be substantially upgraded and the academies need to keep themselves updated in terms of the contemporariness of course content, pedagogy and use of ICT in training and they should be treated on par with LBSNAA. Their budgets should match the stipulation of the National Training Policy, i.e., 2.5 per cent of the salary budget of the departments should be earmarked for training and should be treated as plan expenditure. (Section IV.3.f)
- More emphasis in training needs to be given on customer focus and value education. (Section IV.3.f)
- A code of ethics needs to be developed, congruent with the values in the vision and mission statement. (Section IV.4.a)
- There should be more proactive approach to preventive vigilance. (Section IV.4.b)
- The provisions of Rule 56(j) of the Fundamental Rules should be effectively utilized for weeding out officers who are inefficient or of doubtful integrity. The criterion for review should be changed to completion of 20 years of service. (Section IV.3.d)
- CVC should have a Member who has been an officer of either of the IRSs and there should be at least one Joint Secretary/Additional Secretary level officer posted in the secretariat of CVC. (Section IV.4)

- No cognizance should be taken of anonymous complaint as laid down in the existing DoPT instruction. (Section IV.4.d)

#### **I.4.d Dispute Management**

The lack of accountability in the system is represented by infructuous demands raised by the tax administration with impunity as well as massive escalation, non-resolution and non-recovery of such demands by global standards. Getting a handle on dispute management is crucial for retrieving stakeholder confidence and for saving much needed staff and financial resources of the tax administration. **Dispute Management** comprises **Chapter V** and includes a set of recommendations.

The TARC recommends that:

- For clarity in law and procedures, a process based on best practices outlined in Section V.4.b should be followed. (Section V.4.b)
- Retrospective amendment should be avoided as a principle. (Section V.3.e)
- Fundamental approach should be collaborative and solution oriented. (Section V.3.d)
- Both the Boards must immediately launch a special drive for review and liquidation of cases currently clogging the system by setting up dedicated task forces for that purpose. The review and liquidation should be completed within one year and the objective should be to decide all cases pending in departmental channels for longer than a year as on the start date of the action plan. (Section V.6)
- Dispute management should be a functionally independent structure with adequate infrastructural support. (Section V.4.a)
- Officers posted in the dispute vertical must receive adequate induction training and on-the-job training on areas. (Section V.4.a)
- To minimize the potential for disputes, clear and lucid interpretative statements on contentious issues should be issued regularly. These would be binding on the tax department. (Section V.4.b)
- The current practice of raising demands irrespective of merits should be discontinued. Call book in CBEC should be abolished. (Section V.4.b)
- The process of pre-dispute consultation before issuing a tax demand notice should be put into practice. (Section V.4.b)
- Disputes must get resolved in time as the time lines as mentioned for decisions in the respective enactments. The law should also prescribe the consequences of not adhering to the time lines, which would be that the case in question would lapse in favour of the taxpayer. (Section V.5)
- Ordinarily appeal should not be filed against appeals of Commissioner (Appeals), except where the orders are ex-facie perverse. (Section V.5)



- The present structure of Commissioner (Appeals) should be changed to two forums, namely, single Commissioner (Appeals) and 3-member Commissioner (Appeals) panel. If the case is not decided within the prescribed time frame, the taxpayer's appeal would be deemed to have been allowed. (Section V.5)
- The DRP in income tax should be made full-time panels. Their mandate should be expanded to include corporate cases of resident cases as well. Same mechanism should be introduced in indirect taxes also, where collegium of three Commissioners would be deciding complex cases involving extended period of limitation, related party transactions and taxability of services. (Section V.4.e)
- ADR processes, Arbitration and Conciliation, should be statutorily introduced in both direct and indirect taxes legislations. (Section V.4.f)
- The jurisdiction of AAR should be made available for domestic cases also. More benches of AAR should be established at Mumbai, Bangalore, Chennai and Kolkata, with the principal bench at Delhi. (Section V.4.c)
- The Settlement Commission should act as part of taxpayer services, and be made available to the taxpayer to settle disputes at any stage. There should also be an increase in the number of benches of the Settlement Commission. It should be manned by serving officers to enhance its accountability. (Section V.5)
- Appeals to high courts and the Supreme Court should only be on a substantial question of law. (Section V.5)
- Authorized representatives from the departments should be carefully selected and given sufficient incentives and necessary infrastructural support to perform their duties effectively. They should also be given specialized training before they are asked to appear for the department. The administration of the DR function should also be in the dispute management vertical. (Section V.5)
- On disposal of a case by Supreme Court/High Court and if the judgment is accepted by the Department, an instruction should be issued to all authorities to withdraw appeal in any pending case involving the same issue. (Section V.6)

#### I.4.e Key Internal Processes

There are several internal processes in the tax administration with respect to management of PAN, consolidated filing of returns of different taxes, assessment, timely refunds, risk-based scrutiny and others that cannot be ignored. Such **Key Internal Processes** comprise **Chapter VI** and associated recommendations are made.

The TARC recommends that:

- **Registration**
  - The present permanent account number (PAN) should be developed as a common business identification number (CBIN), to be used by other government departments



also such as customs, central excise, service tax, DGFT and EPFO. A better regulatory system should be put in place to enhance its robustness and reliability.

- Both central excise and service tax should be covered under a single registration as both the taxes are administered by the same department and cross utilisation of credit is permitted between central excise and service tax under the CENVAT credit rules.
- It is necessary to provide for de-registration, cancellation or surrender of registration numbers and PAN.
- **Tax payments**
  - Banks should be left to authorize their branches to collect taxes, and the present process of selection of banks needs to be purely standards-based and transparent.
  - Payment gateways should be increased for better customer convenience.
- **Filing of tax returns**
  - I-T returns should also include wealth tax return so that the taxpayer need not separately file wealth tax returns. These returns should also be processed together in the CPC at Bengaluru.
  - The disclosures in the return should include a brief mention of the issues on which there has been an on-going litigation between the tax administration and the taxpayer, and should indicate the factual and legal position adopted while computing taxable income for a year. This is to protect taxpayers from allegation of non-disclosure, suppression, escapement of income, etc., which often results in the initiation of penal provisions.
  - Taxpayers should give information on their compliance experience at the time of filing returns; this information should be used to improve taxpayer service bringing in customer focus.
  - Territorial jurisdiction should be dispensed with and industry-based assessment should be introduced in line with recommendations in Chapter III of this report.
  - The CBEC should set up centralized processing units in line with the CPC, Bengaluru, and CPC-TDS at Ghaziabad for processing central excise and service tax returns.
  - There should be a common return for excise and service tax.
  - The CBEC should set up an e-portal and all invoices should be issued from that portal. This portal should be linked and made compatible with SAP ERP systems, which a majority of the companies use for their own invoicing. E-invoice would simplify credit/refund procedures, which would become automatic.

- **Scrutiny in direct taxes and audit in indirect taxes**
  - Hearing in all tax cases by personal presence should be avoided, and data can be sought through an e-system. The taxpayer can upload the data on the e-system. Personal hearing should be sought only in complex cases.
  - There should be specialization in scrutiny/audit work as recommended in Chapters III and IV of the report. Capability should be developed through training and re-training. The two Boards should also develop a standard audit protocol, with clear emphasis that the AOs must follow the principles of natural justice and respect the taxpayer rights to privacy and dignity.
  - Audit Commissionerates in the CBEC should undertake integrated audit covering central excise and service tax together and the onsite customs post clearance audit (OSPCA) in case of accredited clients (ACP), as the records and books to be verified are common to all the taxes administered by the CBEC. In major cities where exclusive Central Excise or Service Tax Commissionerates are functional, the audit function should be assigned to a specific Audit Commissionerate for carrying out integrated audit of customs, central excise and service tax.
  - Joint audits should be undertaken by field formations of the CBDT and the CBEC to shorten the examination processes and reduce costs, both the for tax administration and for taxpayers. This may require a change in procedures for the CBDT as at present, the I-T Act does not have a provision for open audit as is done in indirect taxes.
  - Broad-based selection filters for the risk assessment matrix should be put in place. There is also a need to set up a standard operating procedure which recognizes the iterative method, testing them ex-post, to develop effective and efficacious parameters for the risk assessment matrix.
- **Tax deducted at source**
  - The insistence on manual filing of TDS certificates before AO for verification of refunds claim should be done away with.
  - The tax deductor's duties and obligations in terms of making information compliance and also depositing the deducted amount is onerous and they are not compensated for that. Therefore, some compensation for them should be considered. This can be in terms of a small commission to be deducted as business expenses by them to fulfil their obligations.
  - The CPC-TDS should allow correction in the name of the deductees to avoid multiple submissions of TDS forms. Even a single error requires the deductor to submit the entire return afresh. The process of uploading the entire file for one or two corrections is cumbersome and disproportionate to the gravity of the error. This adversely impacts

taxpayer services. Subject to the required checks and validations, there is a need to widen the scope of online error rectification service.

- A passbook scheme for TDS may be adopted with some safeguards. Once TDS is deducted from a payment, TDS should get credited to the taxpayer's account. This should be like an account with running balance, to be utilized by the taxpayer at his option to set off his tax liabilities.
- To assist small and marginal tax deductors in preparing and filing their TDS returns, either existing tax return preparers or a separate system of TDS return preparers should be initiated with more training and a better remuneration structure than at present.

- **Refunds**

- Refunds should be issued within a strict time frame. There should be a separate budgetary head for refund of direct tax and indirect taxes in the annual budget out of which refunds should be issued so that there is transparency. Adequate allocation should be made by the government under this head.
- Refunds sanctioned should be paid along with the applicable interest automatically as is done in the case of income tax and not on demand by the taxpayers. As in the case of direct taxes and customs duty drawback, the refund and interest payment should be directly credited to the bank account of the taxpayer.
- The rate of interest on refunds should be the same as the interest charged by the tax department. This would ensure equity between the two interests and would not disadvantage the taxpayer unduly.
- Refunds arising after a favourable appeal should be paid in time or the tax payer should be allowed to set-off the advance tax liability or self-assessment tax liability of subsequent years against the refunds due.
- The test to determine whether there is unjust enrichment in indirect taxes should be limited to cases of refunds where there is direct passing on of amounts claimed as refunds. In any other situation, this concept should not be applied.
- Refund claim subjected to pre-audit verification should be issued within a specified time. The post-audit verification of refund claim should be risk-based.
- An easier and simplified scheme should be introduced for service exporters. The entire refund filing and processing mechanism should be online.

- **Foreign tax credit**

- The CBDT should come out with clear FTC guidelines, which should also cover the timing differences between different tax jurisdictions.

- **Tax collections**
  - There should be a separate vertical for tax collection as recommended in Chapter III of this report. To improve the efficiency of debt collection activities, both the Boards should work on setting up risk assessment models to compute risk scores for each new tax debt case that reflects the likelihood of the taxpayer paying their debt based on objective criteria.
  - Stay of demand information should be uploaded electronically on the central server of the departments so that tax collectors can have system generated prior intimations regarding the expiry of stay orders.
  - The power to write off dues should be raised at different levels of the organization and made uniform for both direct and indirect taxes. Full powers should be vested in the respective Principal DGs in charge of recovery in the respective Boards. Write off should be done in concurrence with the CFO at the headquarters level and his nominee at the regional/zonal level.
- **Related party transactions**
  - Both Boards should frame detailed documentation requirements for transfer pricing as well as custom valuation, keeping in view that such documentation should be reasonable, to bring certainty and predictability for the taxpayers.
  - There is a need to align the process in India with global best practices and to do away with the current process. With self-assessment in place, import transactions should only be subjected to post-clearance audit. Valuation risks would be an important component of the risk matrix for audit selection.
- **Trade and business facilitation**
  - As a trade facilitation measure, on-site post clearance audit should be developed fully to enable Indian customs to move closer to international best practices. Intervention in the cargo clearance should be made on the basis of a risk matrix.
  - Documentation requirements for non-resident taxpayers for a certificate under Section 197 of the I-T Act should be well-publicized. The taxpayer should be told a priori the time that will be taken for the issue of the certificate. That time period should be reasonable. A certificate issued in an earlier year from any other tax office in India to an assessee/payer should be attached with other documentation. There should also be a facility for electronic filing of these papers so that the need for the physical presence of the taxpayer is, to the extent possible, obviated.
  - The system of E-invoicing similar to that prevalent in most Latin American countries should be introduced. Using this system a taxpayer should generate an electronic

invoice through the Department's system. Sufficient preparation and consultation with the industry and trade associations should be done before introducing this system.

- **Enforcement Administration**
  - There should be a dedicated structure for prosecution matters for more focused attention to this important area so that the unexploited potential for creating deterrence against tax evasion is realized.
  - The working of the Directorate of Intelligence and Criminal Investigation should be ICT based and should be given a good complement of personnel and other resources to make it realize the potential.
- **Non-profit sector**
  - CBDT needs to put in the public domain a national database of the non-profit sector to bring transparency.
- **Manual of tax departments**
  - Departmental manuals should be annually updated and put up on the website for easy downloading by both taxpayers and tax officers.

#### **I.4.f Information and Communication Technology**

ICT constitutes the backbone of a modern tax administration. India has made progress in this area. Nevertheless there are caveats that have to be recognized and corrected so that the system could meaningfully move forward to enable quicker processes, automatic correction of errors and inconsistencies, upgrading of software and hardware, convergence of ICT functions of the two tax departments. **Information and Communication Technology** and recommendations thereof comprise **Chapter VII**.

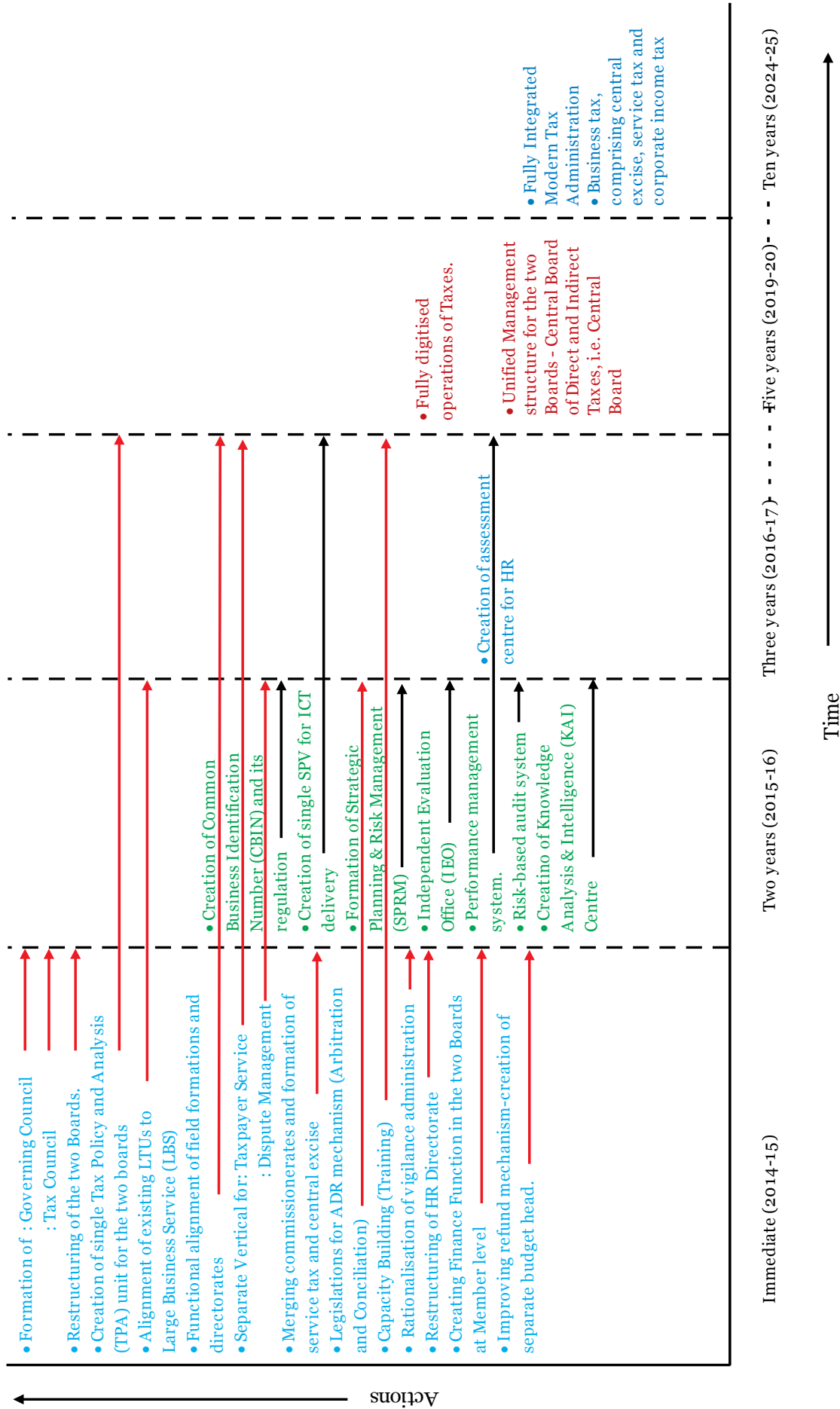
The TARC recommends that:

- For full realization of the potential of ICT, it must get embedded in the DNA of the organization. Both the design of policies and implementation should make full use of ICT (Section VII.3.a)
- The leadership must ensure that where systems are available, employees should not have the option to work in a paper environment (Section VII.3.a)
- Both Boards must commit themselves to achieve a fully digitized environment and work towards comprehensive ICT system(s) in which everyone from the top leader to the last person on the frontline works in a digital environment (Section VII.3.a)
- The Boards must regularly use maturity frameworks to assess their ICT maturity and map out the path towards greater maturity (Section VII.3.a)

- Automation should follow business process re-engineering to avoid the danger of getting trapped in an outdated mode of governance (Section VII.3.a)
- All decisions should be taken with ICT compatibility in mind. Similarly, all legislation should be ICT-compatible (Section VII.3.b)
- The Boards must create structures and processes to enhance working relationships between business owners and DG (Systems) to ensure that ICT initiatives are aligned with business needs, priorities and capabilities (Section VII.3.b and d)
- Boards should adopt a robust ICT governance framework and practices, and rigorous programme and project management frameworks (Section VII.3.b)
- Project planning and approvals must include the required number and quality of human resources (Section VII.1.b)
- Movement of personnel should have a linkage with project implementation and there should be a process of knowledge transfer (Section VII.1.b)
- A service oriented architecture and approach should be adopted to promote integrated systems, greater “value for money” and customer focus (Section VII.3.b)
- HR policies must be aligned with the need for specialization and officers should be allowed to grow in the areas in which they specialize. Routine transfers should be avoided (Section VII.3.d)
- Special training for officers in key areas of ICT should be arranged for officers of DG (Systems) (Section VII.3.e)
- DG (Systems) should ensure proper training for operational staff at the roll out of any new application (Section VII.3.e)
- DG (Systems) should have authority and funding to depute officers for specialized courses, seminars and events and engage with professional networks and academic institutions (Section VII.3.e)
- The discussions for data sharing between CBDT and CBEC should be speeded up and sharing must begin quickly (Section VII.4)
- A shared knowledge, analysis and intelligence centre, headed by an expert professional, should be set up for advanced data analytics and research. The SPV can support it by providing the platform, tools and technologies, and expertise (Section VII.4)
- A common special purpose vehicle (SPV) should be set up for servicing the ICT needs of the Boards (Section VII.5.a)

- It should be incorporated as a company with limited liability under the Companies Act and should have a private ownership of 51 per cent and government ownership of at least 26 per cent. It should have operational independence and institutional flexibility even as government retains strategic control (Section VII.5.c)
- The SPV should preferably have a net worth of around Rs.300 crore. This will ensure that the SPV is well-capitalized, can hire the best people at competitive salaries, and invest adequately in infrastructure to manage large-scale national projects.
- The relationship between the departments and the SPV should be a complementary one. The tax administration would develop an overall strategy with the ICT inputs provided by the DG (Systems). The SPV will develop the ICT strategy within the framework of the overall strategy, which will be approved by the Boards. The DG (Systems) of the two Boards will continue to exist, and will perform more strategic roles and be the Boards' interface with the SPV (Section VII.5.e)
- It should aim to be financially self-sustaining through an appropriate business model (Section VII.5.f)
- It should be operationally aligned and maintain relationships with the concerned entities in DG (Systems) to ensure effective ICT service delivery (Section VII.5.h)
- The Boards, DG (Systems) and the SPV together should work out the plan for the transformation to “digital by default” status. The plan should begin with a visioning exercise to define the end state and should be programme, as opposed to project, oriented.

**Diagram I.1: Road-map for implementation of the TARC’s main recommendations**





The background is a solid yellow color. On the right side, there is a white grid of thin lines that curves and tapers towards the top right corner. Overlaid on this grid are several thick, curved, semi-transparent yellow lines that sweep across the bottom right portion of the page.

# **CHAPTER II**

## **CUSTOMER FOCUS**



# Chapter II

## Customer Focus

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# Chapter II

## Customer Focus

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### II.1 Rationale for Customer Focus

Tax administrations have traditionally been both the regulator and enforcer of tax laws with limited attention to taxpayer service. However, this is rapidly changing worldwide with an increased demand for better services by taxpayers. This has made tax administrations recognize their obligation to offer quality services to taxpayers, who are increasingly perceived as their customers. In an attempt to achieve this, interaction between the taxpayer and tax administration is being made taxpayer-focused, easy, convenient and friendly.

Improving the way in which tax administrations work with taxpayers not only results in better customer service but also has the potential to increase tax revenue. Taxpayers are more likely to comply voluntarily when tax administrations adopt a service-oriented approach towards them. Educating and assisting taxpayers help them meet their obligations comfortably. Taxpayer services, therefore, need to be taken as an integral part of the functions of a responsible and responsive tax administration, and these should, therefore, be institutionalized as an ongoing and continuous process rather than a sporadic one. It is one of the core or basic functions of any tax administration to not only help taxpayers comply with their obligations but also be sufficiently demonstrative to make them feel like “valued customers”.

Tax administrations tend to make a distinction between enforcement tasks and service delivery. However, there is a growing realisation that they are intrinsically linked. The complexity of tax laws often determines the framework of relationship that exists between the tax administration and taxpayer. Although this framework is often based on voluntary compliance, the complexities of tax laws skew it. This gives rise to disputes between the taxpayer and tax administration. It is, therefore, crucial to consider the taxpayer as a client and to follow the logic of providing services to the client. For that, a targeted professional organization, with specialized staff having the right professional skills and attitudes, with a service orientation, is required.

### II.2 Current status

#### II.2.a Approach

At present, there is no dedicated focus on taxpayer service in the Indian tax administration – CBDT or CBEC. It is not considered an identified function. There is no generally accepted definition of “taxpayer service”. Therefore, it has different connotations for different organizations. Many of the taxpayer services are delivered through different wings of the same organization, and while they are bound to be ‘individual-driven’, they fade out with time or staff change. For example, directorates have been established to deal with computerisation.

These initiatives have made tax return processing more efficient, which has led to a considerable increase in compliance, with improved taxpayer satisfaction. But the present stage of computerisation is mostly *in silos* and business processes are not fully re-engineered to effectively utilize information and communication technology (ICT) to bring about the needed taxpayer focus in service delivery.

Similarly, publicity campaigns and advertisements are major means of communication. They are intended to generate awareness about tax laws and compliance procedures. These awareness campaigns largely inform taxpayers about the due dates for filing, tax payment, etc. But there is no structured communication strategy.

The I-T Department's Vision 2020 spells out the vision, mission and values of the department as well as the strategic plan for 2011-15. Among other missions, it strives to make compliance easy, enforce tax laws with fairness and deliver quality services. It notes that promoting voluntary compliance is one of the prime concerns of the department and that when taxpayers find it easy to comply with tax laws, voluntary compliance is automatically enhanced. There is a citizen's charter along with Vision 2020, which communicates service standards for all taxpayers.

The citizen's charter of the CBEC attempts to create a climate for voluntary compliance. It emphasizes dissemination of quality information to trade and taxpayers by establishing guidance units in its offices. These units are supposed to furnish information to trade on issues of specific interest, provide general information about laws and procedures and the admissibility of benefits under various exemption schemes. Seminars, open houses, websites publicity material, audio-visual media, etc., are other means of dissemination of information. The citizen's charter recognizes websites are a faster means of communication. Interactive telephone help-lines and grievance redressal machinery – independent Ombudsman at each customs station and central excise commissionerates – have been identified as other means of taxpayer service delivery. The different means and modes of communication adopted by the two Boards are given in Appendix II.1. Even though there appears to be multiple channels of communication with taxpayers, in practice there is a communication gap between the taxpayer and tax administration.

## **II.2.b Structure**

There is no identified structure in either Board to provide taxpayer services in a comprehensive manner. Field officers are entrusted with the function of providing various services to taxpayers along with their regular functions as assessment officers (AOs). AOs and superior officers sometimes conduct or participate in seminars organized by taxpayer associations, but this is not in every place, nor is it a common practice.

On the direct taxes side, Aayakar Seva Kendras (ASK) have been opened in many offices. This acts as a single point of contact for the taxpayers where their requests, including grievances, are registered and acknowledged. A unique identifier tracks their request and the resolution process.

The Directorates of Public Relations **and** Publicity in the two Boards are responsible for communicating with taxpayers and carrying out advertisement and publicity campaigns for the tax departments. This directorate is also responsible for taxpayer awareness and taxpayer education, while the Directorate of Systems is mainly responsible for electronic delivery of taxpayer services.

### II.3 Weaknesses

Customer focus is simply not regarded as a core function of the tax administration. It does not feature as a crucial component or essential practice. As a result, taxpayer services are diffused in their delivery – spread over many locations within the organization and field offices. Officers provide various taxpayer services in addition to their normal duties. They are normally not able to, or perhaps even expected to, devote sufficient time or adequate importance to taxpayer services. Other tax administration work like tax collection, verification, judicial and audit functions are considered to be their main duty. No proactive clarifications, either on interpretation of law or procedure, are ever given by the officers. Indeed, this is not expected in the absence of specific guidance from the top, which is surprising given that *Sevottam* is the motto of the tax administration. This is in sharp contrast to global practices today. To bring this deep deficiency to focus right at the very beginning, this issue comprises the first chapter of this report.

The citizen's charters of the two Boards lay down service standards and timelines for the delivery of the services mentioned therein. But there is no mention of adherence to these timelines when addressing queries from taxpayers. Besides, there is neither a review mechanism for delivery, nor any impact assessment or metrics to measure the outcomes achieved. Apart from this, there is no clear-cut, structured approach for different segments of taxpayers. There is an urgent need to revisit the present citizen's charter to make it more meaningful and customer focused.

There is no dedicated setup to ascertain the needs of a taxpayer on a continuous basis. There is also no institutional mechanism for receiving feedback with respect to the services provided. While the tax departments often roll out a number of services, most of these are on an *ad-hoc* basis and are not backed by any taxpayer feedback or needs survey. Further, there is a disconnect between different wings within the same department. This sometimes results in different messages reaching taxpayers, leading to confusion. For example, while the publicity wing of the I-T department may simply convey to taxpayers that e-filing leads to quicker refunds, the central processing centre (CPC) may actually issue demand notices instead of the refunds due because there was a TDS (tax deducted at source) mismatch,.

There is also virtually no media policy. While the CBDT recently tried to frame a media policy, it has been based on officers interacting with the media rather than on communication through multiple channels. The policy appears to be too centralised.

In the absence of a coherent framework for taxpayer service delivery, there is a need to design and deliver client-focused taxpayer service programmes through the installation of customer feedback mechanisms, change the attitude of tax officers and build an enhanced relationship

between taxpayers and the tax administration in a mutually beneficial manner with international best practices as the benchmark.

## II.4 Global Best Practices

### II.4.a Taxpayer services: Customer focus

“Taxpayer services” in different tax administrations refer to the manner in which taxpayers are treated, i.e., professionally, with respect and fairness. Taxpayer services are a set of strategic initiatives undertaken by the tax administration to assist taxpayers in complying with tax laws. At a broader level, many tax administrations set up effective taxpayer service programmes, which would include fundamental services like simplification of procedures to facilitate voluntary compliance, providing taxpayers with information to prepare tax returns, or to resolve issues of filing as well as answer questions that may arise before filing tax returns, at the time of filing tax returns and after tax returns have been submitted to the tax administration. Facilitation of tax payment is another limb of taxpayer services. Table 2.1 categorizes various taxpayer services.

**Table 2.1: Categories of taxpayer services**

Service category	Description	Examples of services	Characteristics
<b>Information</b>	Information services and products which are one-way communication and do not result in a change in the account status.	<ul style="list-style-type: none"> <li>• Education</li> <li>• Publications (paper and web)</li> <li>• Campaigns</li> <li>• Mass distribution of different types of information</li> <li>• Instructions</li> </ul>	<ul style="list-style-type: none"> <li>• Timing volume: partly predictable</li> <li>• Size volume: flexible, can be influenced, revenue body initiate</li> <li>• Standardization/automation: possible in many cases</li> </ul>
<b>Interaction</b>	Two-way communication, which in itself does not result in any change in account status.	<ul style="list-style-type: none"> <li>• Enquiry</li> <li>• Audit</li> <li>• Guidance</li> <li>• Debt collection</li> </ul>	<ul style="list-style-type: none"> <li>• Timing volume: partly predictable</li> <li>• Size volume: flexible, can be influenced</li> <li>• Standardization/automation: difficult</li> </ul>
<b>Transaction</b>	Activity or services that result in a change in the account status or account information.	<ul style="list-style-type: none"> <li>• Filing of tax returns, VAT, etc.</li> <li>• Payment/refund</li> </ul>	<ul style="list-style-type: none"> <li>• Timing volume: very predictable</li> <li>• Size volume: can be influenced to a very small degree</li> <li>• Standardization/automation: great potential</li> </ul>

Source: OECD, May 2007



#### **II.4.a.i Dedicated organization for delivery**

Generally, tax administrations carry out reforms to introduce taxpayer services in conjunction with institutional simplification to enable taxpayers to fulfil their responsibilities. Without tax administration reforms, many tax administrations feel that even the most comprehensive services offered to taxpayers would not be effective. As part of the reform process, tax administrations are setting up a separate taxpayer service vertical. Some tax administrations have a “customer segmentation” approach to planning and delivery of taxpayer services. These approaches, however, vary in terms of their scope and intensity. Tax administrations sometimes have dedicated inquiry services for large taxpayers by industry groupings. These act as the first point of inquiry for designated large taxpayers. For new businesses, another separate inquiry service is often set up for specific service/education programmes to ensure that they handle their tax matters correctly from their first dealing itself.

#### **II.4.a.ii Dedicated personnel for taxpayer services**

Many countries have dedicated personnel in their tax administrations for taxpayer services. For this, they identify training needs, develop training plans and undertake efforts to train some of their staff for taxpayer services. They also evaluate those trained to find out whether the training has helped bring about the needed customer focus. The Chilean IRS follows this strategy. For placement of trained staff for taxpayer services, the National Tax Agency of Japan often considers the suitability of staff, based on their ability, aptitude, past performance and personal circumstances, to increase overall efficiency in delivering taxpayer services.

#### **II.4.a.iii Whole-of-government approach**

An OECD report that compares tax administrations in different countries emphasises the ‘whole-of-government’ approach, under which common processes and services across different government agencies are shared to achieve benefits of scale, reduce duplication and eliminate legacy systems. Such an approach also fosters inter-agency collaboration, and debunks the ‘silo’ approach. The ‘whole-of-government’ approach leverages on sharing and collaborating through the use of ICT. One clear area of the ‘whole-of-government’ approach in tax administration is single registration for citizens and businesses.

Several countries have adopted a single unified approach to registration of businesses. The delivery of some government services on a “whole-of-government” basis has seen the emergence of government shop-fronts delivering tax-related services that were previously delivered through local offices.<sup>1</sup> The bottom-line is to make it easier for a taxpayer to comply.

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<sup>1</sup> For example, Australia has introduced a cross-agency co-location strategy, which has seen some ATO customers receiving information and assistance at the shop-front sites of other Australian Government agencies. This has contributed to a downward trend in face-to-face visits to ATO’s own offices. Canada and Sweden also have government service centres providing multiple agency services. The services provided include general tax inquiries and assistance, payment of taxes and internet access to general tax information, personal tax information and records. Chile and Denmark provide internet access to e-services for tax information access in public libraries,

#### II.4.a.iv ICT for effective taxpayer service delivery

Tax administrations have embarked upon making interaction with the taxpayers easy while eliminating direct contact to the extent possible. This has been built on improved public confidence in the tax system. The UK's HMRC has a strategy to not simply move the volume of contact to self-service, but to manage contact through the most efficient channel that meets both the taxpayer's needs and those of the tax administration. This is carried out on the basis of actual analysis – using a statistical technique called Probit – to search for, and find, how customer queries are clustered, and to allocate staff resources accordingly. Service is provided through multiple channels including call centres, websites, e-mails and through the offices of the tax administration. A hierarchy of contact preferences is shown in Table 2.2 below.

**Table 2.2: Hierarchy of contact preference**

Transactions	Interactions	Information
Web	Phone	Web
Phone	Web	Paper
Paper	E-mail	Phone
Face to Face	Paper	E-mail
E-mail not an option	Face to Face	Face to Face

Source: OECD, 2007, *a case of ATO*

#### II.4.a.v E-service delivery

Many tax administrations have taken steps to exploit the use of modern ICT to transform their operations, in particular for tax collection, assessment processes and to provide basic services to the taxpayers. These technologies, if applied effectively, reduce administrative costs for the tax administration as well as for taxpayers. They also deliver faster and more accessible services to taxpayers. Electronic services offered by most tax administrations include providing information about forms, making electronic filing of tax returns possible and providing tax calculations. The provision of e-return filing is almost universal, and a number of countries have made substantial progress in increasing their e-filing usages. This increase has been achieved in a number of countries because e-filing has been made mandatory. Between the tax types, mandatory e-return filing in different countries is more common for corporate income tax (CIT) as compared to personal income tax (PIT).<sup>2,3</sup> Most VAT returns are also being e-filed – in the fiscal year 2009, about 50 per cent of the countries such as Belgium, Finland, Japan, Korea and Mexico had an e-filing facility; this increased to almost 75 per cent by 2011. Brazil

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thereby making the best use available public facilities. Ireland also provides online access for tax information through different government departments' shop-fronts and public libraries.

<sup>2</sup> CIT is tax on corporate income and PIT covers tax on all other entities, such as individuals, trusts, business firms, association of persons (AoP), Hindu Undivided Family (HUF) and artificial juridical person.

<sup>3</sup> OECD report 2010 provides the following increase in e-filing for PIT tax returns – Argentina +82%, Lithuania +73%, South Africa +95% and UK +60%; CIT e-filing of tax return increased as following: Argentina +66%; Ireland +78%; Hungary +96%; Netherlands +100%; South Africa 94%; and Spain +76%.

has 98 per cent of its taxpayers filing electronically. India is attempting to rapidly increase the ratio of electronic filers in the overall taxpayer net by intensifying its ICT orientation in the processing of tax returns.

Tax payments are the *raison d'être* for tax administration, and constitute one of the important interactions between taxpayers and tax administrations. Many tax administrations are increasingly providing electronic payment facilities for all types of tax payments for both individuals and businesses so as to make the payment experience easier and less costly. It is stated that costs involved in providing tax payment facilities reduce significantly when these are made fully electronic. The methods used are often internet banking and direct debit from banks.

ICT has made sharing and collaboration on a real-time basis possible, leading to both efficiency and cost effectiveness. In fact, the OECD report on tax administration also recommends the use of 'social media' to reach out to taxpayers. Further, the report also emphasises SMAC (social, mobile, applications and cloud) to provide stratified personal contact and new forms of communication and interaction with a potentially large and growing numbers of taxpayers. The framework of e-services for taxpayers is summarised in Table 2.3 below.

**Table 2.3: Framework of e-services**

<b>A framework of e-services Category</b>	<b>Description</b>	<b>Confidentiality of data &amp; access considerations</b>
<b>Presence (or 'information')</b>	One-way information flow providing static information about the agency. Includes publications (for example, legislation and policy documents), instructions, and education/ marketing materials. Interaction is limited to inquiry and search functions.	Publicly available/non-confidential data No access restrictions
<b>Interaction</b>	Two-way information flow, which does not alter systems or data. This includes expanded search and filtering capabilities and services such as calculators where all data is entered by users (for example, to assess eligibility for benefits or determine tax payable).	Publicly available/non-confidential data No access restrictions
<b>Transaction</b>	Any exchange, which alters data holdings or provides access to taxpayer data. Includes activities such as enquiries involving taxpayer data, use of calculators, pre-filled with taxpayer data, and filing returns/making payments.	Confidential data Access restricted to specific individuals

<b>A framework of e-services Category</b>	<b>Description</b>	<b>Confidentiality of data &amp; access considerations</b>
<b>Integration/ Transformation</b>	Exchange of information between different government agencies regarding a specific user (individual, business, organization). For example, a change of address advised only once by the user and then shared across relevant agencies.	Confidential data Access restricted to specific individuals

Source: OECD, 2010

#### II.4.a.vi Maturity Model

Many tax administrations base their taxpayer service delivery on the maturity model.<sup>4</sup> The maturity model represents the four stages in e-service delivery with more value to users and represents increasing maturity in a number of dimensions such as from static content to dynamic content, publishing to interaction, generic dialogue to individualised dialogue, simple transactions to complex transactions, inclusion of authenticated transactions, partly-automated processes to fully-automated online processes, agency-aligned delivery to citizen-centric delivery and agency-aligned services to cross-agency services. Stage one is normally the presence of a website that publishes available information about services. Stage two allows users to browse, explore and interact with that data. Thus, the key difference between the two stages is that while in stage one there is static data access, stage two allows interaction with the data/information.

Stage three of the maturity model allows taxpayers to transact on the tax administration's website. This facilitates real-time responses to the service demands of taxpayers. Stage four goes a step further in the transaction process by allowing data-sharing. This level of online transaction normally requires prior user approval/consent and/or a legal framework.

Many tax administrations, at present, operate at stage three of the maturity model, but there is wide variation in services and strategies adopted by them for moving from stage three to stage four.

#### II.4.a.vii Priority areas in e-service delivery

Many tax administrations also consult taxpayers while formulating plans. They make their plans publicly available and inform taxpayers of the progress achieved by them vis-à-vis targets specified or the delivery of e-taxpayer services. Many tax administrations also have a longer perspective plan identifying priority areas for the next three years or so. These priority areas are wide-ranging in scope. A common element in all the priority areas of tax administrations

<sup>4</sup> OECD Report on Good Governance for Development, 2007

is increasing the range and quality of online services to taxpayers, enabling them to self-manage their tax affairs, adoption of whole-of-government approach and increasing usage of e-filing and pre-filing of tax returns. Appendix II.2 gives priority areas of e-service delivery and the targets for e-service delivery in various tax administrations.

#### **II.4.a.viii Evaluation of success of e-services**

A wide range of metrics is used by tax administrations to evaluate the success of their e-services strategy. The most commonly used metrics are timeliness of specific services provided to taxpayers, quality of services delivered as established via survey responses, taxpayer satisfaction established through a survey, trend in the adoption rate of specific services, tax administration cost reduction, etc.

The Canadian CRA used timeliness for specific services, service quality, client satisfaction and availability of e-filing as its metrics to evaluate service delivery. The UK's HMRC uses a standard cost model (SCM) to estimate cost savings from specific initiatives. The Australian ATO uses service standards and benchmarks for reporting performance outcomes of services delivered. New Zealand uses customer satisfaction survey results.

The Singapore IRAS has a taxpayer feedback panel, which serves as a structured and regular communication channel for taxpayers' feedback on tax policies, processes, service and initiatives. The taxpayer feedback channel such as the biennial taxpayer survey reaches out to various segments of taxpayers to understand and meet taxpayers' needs and expectations in an ever changing economic and business environment.

The US IRS periodically conducts surveys to measure the pre-filing and filing burden of individual taxpayers. The sample design for the survey typically balances three objectives. The first is to ensure a sufficient number of respondents within and across strata to meet the needs of the model of compliance burden. The second is that it should be efficient so that the estimates are reliable, and the third is to facilitate comparisons between the current year study and that of the previous year.

#### **II.4.a.ix Ascertaining customer service needs**

Most tax administrations have been placing increased focus on knowing the needs of taxpayers; to do so, they also put in place customer relationship managers (CRMs) for the taxpayers.<sup>5</sup> Through such an arrangement, they cater to each taxpayer's need individually. Some tax administrations also form consultative forums to ascertain taxpayer motivations.<sup>6</sup>

The data so collected from surveys and points of contact are often analysed by advanced tax administrations with the help of data mining techniques to understand the major area of queries. A major tool in these new initiatives is a simulation centre — an in-house usability lab that

<sup>5</sup> UK HMRC, for example, has put in place CRMs for each of the 700 largest UK businesses.

<sup>6</sup> ATO communicates to the taxpayers through consultative forums. In India too, there are central and regional tax advisory committees for direct taxes.

allows the agency to understand the root causes of service demands. It is imperative that similar simulation centres be designed in India, forming perhaps the most crucial aspect of the immediate change needed in re-structuring India's tax administration.

#### **II.4.a.x Quality of taxpayer services**

Linked to the rights and obligations of taxpayers is the quality of taxpayer services. The basic aim of the quality of service is to raise tax awareness and enhance the level of voluntary compliance. This is done by providing taxpayers and tax intermediaries clear, precise and timely information, simplifying tax forms and tax laws, translating the laws into locally understood dialects, ensuring courtesy and considerate treatment, responding expeditiously to every taxpayer's enquiry, complaint or request, and educating taxpayers about their tax obligations and rights. Over the past few years, tax administrations have taken steps to increase transparency and accessibility in this area.

Modern tax administrations need to be committed to transparency, making their performance and activities transparent through the publication of annual reports and official statistics. They should continue to gather evidence from users of their data and other members of the public to assess whether they have met their pledge to deliver effective customer service. They see open data information as a fundamental tool to deliver public services. Most tax administrations are aware of their access to confidential and personal information and of the need to protect the confidentiality of such information. They also ensure that data that could harm their operational capabilities are not placed in the public domain. Care is also exercised to ensure that sensitive information is not made available to those seeking to pervert the tax system so that the administration's ability to hold them to account and maintain fairness is not compromised.

Taxpayer service performance measures generally centre on the level of services provided in terms of timeliness. As the taxpayer service programme progresses through the maturity model, the time expended reduces accordingly. Most of the tax administrations have fixed timelines for delivery of taxpayer services. Once a tax administration has established its timelines, it communicates them to all its stakeholders and puts in place suitable mechanisms to deliver services in a fixed time period.

#### **II.4.a.xi Pre-filled tax returns**

Pre-filled tax returns for personal income tax have been a significant development over the last few years. Technology has aided this process. The OECD survey suggests that many tax administrations have come to realize the significant benefits that can be realized from the use of pre-filing of tax returns.<sup>7</sup> Systems of pre-filled returns are the product of a simple idea with significant consequences. In contrast to the traditional approach of using third party reports to

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<sup>7</sup> In Nordic countries, the tax administrations offer pre-filled returns for almost all their taxpayers. Tax administrations of Denmark, Finland, New Zealand, Norway, Chile and Sweden generate a fully completed tax return for the majority of their taxpayers. Singapore, South Africa, Spain and Turkey achieved this in 2011 for 30-50 per cent of their PIT taxpayers. Substantial use of pre-filing to partially complete tax returns has been reportedly used by the tax administrations of Australia, France, Hong Kong, Italy, Lithuania, etc.



detect unreported income, these reports are used in a pre-filing context to inform taxpayers of the information they require to meet their return filing obligations. In several North Europe countries and the UK, this is done by way of a pre-filled tax return that is sent to each taxpayer. In other words, information is used to assist taxpayers when they need it rather as an enforcement tool after the event. This approach helps reduce the administrative burden.

#### **II.4.b Taxpayer rights and complaints**

The recognition of the 'rights' of the taxpayer is an emerging trend. In a number of countries, such as the Netherlands and Russia, these rights have been codified in tax laws, while in others, for example, in Australia, Ireland, New Zealand, Singapore, and South Africa, they have been elaborated upon in tax administration documents, sometimes referred to as 'taxpayer's charter' or 'service charter'. Appendix II.3 gives international practices of taxpayer rights.

India does not specify what the taxpayer can do if not satisfied, nor is there any indicator of accountability on the part of the tax officer or time limits for responses to categories of taxpayer queries. The tone is set, instead, with respect to the tax officer's voluntary service orientation.

Many tax administrations have special institutional arrangements to deal with taxpayers' complaints. Dedicated bodies like the Ombudsman in Australia, Canada, UK, Brazil, South Africa and tax mediators in Belgium and France look into tax related complaints. These bodies are independent of the tax administration. In many countries, they have been set up under a specific law. The primary purpose of this arrangement is to ensure that taxpayers have an opportunity to raise matters when they feel they have been treated in an unfair manner. India too has set up the office of the Ombudsman at different places. However, by and large, taxpayers appear to be afraid to file formal complaints for fear of retaliation, whether unfounded or not, from the tax administration.

#### **II.4.c Taxpayer Advocate Service (TAS)**

The US IRS has set up the tax advocate service (TAS), which is an independent organization within the US IRS. It helps the taxpayer in resolving problems that he might have with the IRS and recommends changes that can help prevent such problems in the future. The TAS helps taxpayers by ensuring that they are made fully aware of their rights and that they understand them, thereby ensuring fair and just treatment. A taxpayer can approach the TAS at any stage when he is unable to resolve a problem that causes financial difficulties on his own, or he faces an imminent threat of adverse action or has attempted to contact the IRS repeatedly with no response. The TAS helps taxpayers resolve issues with the IRS through its various services and programmes like case advocacy, in which the taxpayer is assigned an advocate to assist him. Basically, TAS offers free services to taxpayers by guiding them through all the complex processes involved in resolving tax problems. A mechanism of this type that guides a taxpayer, step by step, with the support of an advocate is absolutely essential in India.

## II.5 Gap

### II.5.a Lack of focus on taxpayer service

From the survey of global practices, it can be seen that most tax administrations have defined strategies to deliver taxpayer services effectively and that systems are in place to ensure direct facilitation for taxpayer compliance. Improving the delivery of taxpayer services in this manner is the key element in defining the performance standards of any tax administration. A review of taxpayer services in various tax administrations indicates that demand management, taxpayer education, taxpayer assistance, effective issue resolution and a focus on costs and service should form the key performance indicators in taxpayer service.

As part of their strategy to deliver effective taxpayer services, tax administrations often have a dedicated taxpayer service unit as has been already described. The unit acts as an interface between the tax administration and the taxpayers so as to minimize the taxpayers' complaints and, in the process, improves voluntary compliance by taxpayers. For this purpose, the unit carries out tasks to provide workable solutions, replies to taxpayer's letters of a general nature, organizes taxpayer sensitisation seminars and workshops for target groups, assists in simplifying tax returns, holds consultations and advisory meetings with professional taxpayers and ensures availability of tax literature/bulletins explaining the functions of the tax department. All of this is lacking in India. In fact, there is no dedicated taxpayer service structure. Taxpayer services are delivered in a diffused manner.

With the increasing usage of ICT, most tax administrations now use online taxpayer surveys. Even social media is being used for such surveys. Most of these surveys are often paired with behavioural analysis for a proper understanding of the behaviour of the taxpayer to gain useful insights on taxpayers' interests with an economic cost-benefit analysis. Such behavioural analyses are of relevance to the tax administrations for various functions.

No such taxpayer survey has been conducted in India either by the CBDT or the CBEC. The CBDT, however, has recently instituted a study on the compliance cost to taxpayers through a research organization. The results are awaited.

### II.5.b No dedicated personnel for taxpayer services

In the absence of dedicated personnel for taxpayer services at present, the function has devolved on the Commissioners, who find it difficult to focus on taxpayer services because it is one among several functions that they are responsible for. Some odd initiatives taken by them do not really fulfil the objective of taxpayer services. Recently, the CBDT initiated the ASK programme, which aims to set up an ASK at each of its buildings.<sup>8</sup> But there is no trained staff for the kendras, and personnel are posted in a routine manner. Such personnel are often uninterested in and do not have the aptitude or training for providing taxpayer service. The basic recognition that taxpayer services personnel are the public face of the tax administration

<sup>8</sup> Total numbers of ASKs set up till FY 2013-14 is 189. Out of that 56 have been granted IS: 15700 certification by the Bureau of Indian Standards.



is not understood. The staff assigned to the ASKs or even for other taxpayer services lack service orientation, good inter-personal and communication skills, and the desire to assist taxpayers.

#### **II.5.c No taxpayer segmentation**

The organizational structure of different tax administrations has evolved considerably over time. From organizational structures based on tax type, there has been a move to base the functions of the organization on the type of the taxpayer, i.e., small, medium or large. Based on such segmentation, tax administrations have developed customized approaches to meet the needs of each group.

But such taxpayer segmentation has not yet been done in the CBDT or the CBEC. One such move towards taxpayer segmentation started in 2006 and four large taxpayer units (LTUs) were set up by the government as self-contained units to administer both direct as well as indirect taxes. This is in line with the best international practice of organizing tax administration operations around a segment of taxpayers based on their size and risk assessment. But so far, the progress on that has not been very satisfactory. Not many large taxpayers have joined these LTUs. To ensure they do so, the government may have to think in terms of changing the present guidelines to make it mandatory for large taxpayers to join LTUs. At present, it is left to the large taxpayer to decide whether they wish to join an LTU or not. However, the change to making it mandatory for large taxpayers to join LTUs will need to be accompanied by the provision of customized taxpayer services. Increased use of ICT can help provide customization and personalization of services for the taxpayers. Such use of ICT in segmentation has so far not been attempted.

#### **II.5.d Multiple agencies for registration**

In India today, a taxpayer has to approach a number of departments for registration for different activities or functions, and he gets a number of identification numbers. But there is need to have a common registration based on PAN. PAN was earlier adopted as a common business identification number (CBIN) and has been used as a basis for identification numbers by customs, central excise and service tax authorities, and other organizations like the Director General of Foreign Trade and Employees' Provident Fund Organization. It would, thus, be appropriate to think, define and engineer business processes to create a single-window delivery system for registration.

#### **II.5.e Absence of taxpayer surveys**

Tax administrations should determine what type of service taxpayers want by simply asking them via interviews, surveys, focus group discussions, etc. Taxpayer services can also be improved by conducting periodic surveys to monitor taxpayer perceptions about taxpayer service and other compliance issues. The tax administration should also use focus groups, surveys and other feedback methods before implementing new services and procedures. Using information received, strategies could be developed for more cost effective and efficient service

delivery channels. In order to minimize the burden on taxpayers, these should be co-ordinated with other planned activities.

Trends from data collected in-house reflecting type of service demand, volume, etc., should be evaluated to enhance service delivery. Agreed upon feedback should be incorporated into business process improvement initiatives and the tax administrations should determine, in order of priority, which inputs taxpayers provide would most impact revenue, cost, trust or compliance, if performance delivery were to be improved.

#### **II.5.f Inadequate fund allocation**

If we look at the present allocation to the publicity directorates in the two Boards, it can be stated that fund allocation is inadequate. Such low fund allocation for taxpayer services often results in increased cost of compliance. It may be understood that the compliance cost and administrative cost (inclusive of taxpayer service delivery cost) have an inverse relationship, *i.e.*, as administrative resources assigned for taxpayer services increase, compliance cost should go down; a low administrative cost tends to increase the cost of compliance, as also the social cost. Hence, there is an urgent need to make adequate allocation of funds to deliver taxpayer services so that the compliance cost goes down.

### **II.6 Way forward**

#### **II.6.a Desired organization structure and governance**

##### **Dedicated organization**

To bridge the gap between the present structure of taxpayer service delivery in the two Boards – the CBDT and the CBEC – there is a need to have a separate entity responsible for building a strong relationship of mutual trust and confidence with taxpayers so that existing as well as potential taxpayers are treated as customers. This organization should be the link between the tax administration and its customers. It should integrate all customer services, including taxpayer communication and education, and carry out customer feedback, analysis and grievance redressal under one umbrella in a comprehensive manner. The formulation of a strategy with respect to the scope and delivery of customer services would be a key element for this organization. The design and implementation of standards for delivery would be another key performance indicator, with a focus on improving voluntary compliance.

The organization should be responsible for designing customer services as well as delivering them at the field level. It should, thus, not be central in its dispensation but would also need to have regional or field offices with clearly defined responsibilities at each level. Customer feedback should form the basis for evaluating its performance and it should be held accountable for any negative feedback from its customers.

The organization should be structured on a clear understanding of the requirements of different taxpayer segments as the need for services and information differ substantially between segments. Taxpayers need to be segmented based on the common elements in their behaviour.

Such segmentation would include segregating the taxpayer population into smaller groups of customers with similar characteristics to develop and deliver “tailor-made” specific approaches and products for each segment.

For delivery of services, it would be necessary to understand and develop a dedicated organization along with compliance strategies that address taxpayers’ characteristics. A central element of this organization should be a mechanism to ensure that tax officials are accountable to the government as well as to the taxpayers. There should be policies to encourage accountability, consistency and transparency for better and consistent delivery of services to taxpayers.

A taxpayer service strategy should set out the tax administration’s vision, guiding principles, and high-level objectives for taxpayer service and describe its operational delivery plans. It should also explain how the tax administration would measure performance and judge success. Close collaboration between internal stakeholders as well as engagement with external stakeholders in its preparation is necessary.

To accomplish this, there is need to have a vertical dedicated to customer services. This will provide a focused approach to achieving the objectives. The vertical would require to be anchored by a strong headquarters that sets out policy and programme direction, and provides guidance.<sup>9</sup> The main responsibilities of the headquarters should include preparing an annual national work plan specifying expected work volumes, service and enforcement initiatives, staffing levels and expenditure budget requirements. The national plan should also contain parameters for quantity, quality and timeliness of performance. The headquarters would also be responsible for regular monitoring and reporting on performance against the national work plan, explaining variances and recommending corrective action.

The field organization should focus primarily on operations and programme delivery. The nature and size of the field organization can be based on a number of factors, including territorial jurisdiction and the type of taxpayers in that jurisdiction. Efforts should be made to ensure physical presence in almost all offices across the country. It is important to recognize the needs and compliance challenges faced by different segments of taxpayers; the field structure should accordingly be segmented into large, medium or small taxpayers. There can be situations when some functions are required to be shared across taxpayer segments for economies of scale, for example, for receiving returns, processing payments, etc.

The core responsibilities of the field organization would revolve around three basic approaches:

- (a) **Walk-in** – Taxpayers sometimes feel that their problems are best resolved face-to-face; physical presence helps in providing a medium to meet this through walk-ins. Taxpayers could be assisted with tax forms, requirements in preparation of tax returns, or any other

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<sup>9</sup> Principles and their importance in functional structure and governance have been given in detail in Chapter III of this report.

such function. For example, personnel in field formations could assist in replying to queries and dispute resolution.

- (b) **Taxpayer education/outreach** – The delivery of educational and other outreach programmes/products to taxpayers, tax department employees and tax intermediaries such as tax practitioners and industry groups could be done through field offices. The scope of this activity would be to periodically update them on changes in law, policies, and procedures. The delivery could be through face-to-face interaction, online services, telephone, written communication, advertisements and publicity campaigns.
- (c) **Media co-ordination** –The front office should focus on creating a positive perception of the tax department in the minds of the general public by highlighting significant achievements of the tax administration in the area of customer service and clarifying the position of the tax department in respect of any news incorrectly reported.

### **Accessibility of taxpayer services**

Taxpayer service is also a matter of accessibility. The service should not just exist, but should be easily accessible from a taxpayer's point of view. Taxpayer service could be accessed through in-person interaction or through a telephonic information service or through pamphlets, folders, forms, internet service, advertisements in papers and commercials on radio and television. The second equally important aspect is prompt processing of taxpayer applications or complaints.

Taxpayer service is also a matter of attitude towards taxpayers. Effective taxpayer service requires clear commitment on the part of the tax administration to assist the taxpayer, to treat him fairly and have the capacity to understand his concerns and questions and to have the foresight to anticipate his needs. This attitude must permeate all contacts with the taxpayer.

Further, since technology is changing the possibility of accessibility, expectations of taxpayers are also changing. Taxpayers now expect to receive services from the tax administration in a manner similar to that they receive from other service organizations like banks or mobile phone providers. The development of taxpayer services, with robust internal processes for managing them, therefore, is critical.

The international trend is for tax authorities to administer the tax regime in a way that encourages and expects taxpayers to self-assess their tax liability and then remit the relevant amount of tax to the government. Conceptually, this is a sound approach as the taxpayer generally has better information on his sources of income and expenses and it is relatively expensive for the government to assess every taxpayer's return. Through the self-assessment process, tax administrations rely on a system of voluntary compliance, where taxpayers pay what is due, when it is due, and without coercion. However, self-assessment can only work if a majority of taxpayers know their obligations and are able to comply with them. The overall level of compliance also improves if the cost borne by taxpayers in carrying out self-assessment is low. Therefore, an essential element of tax compliance is helping taxpayers understand their

tax obligations and promoting voluntary, timely, accurate and inexpensive reporting of tax liabilities.

### **Personnel for taxpayer services**

The CBDT and CBEC should emulate the initiatives taken by other tax administrations, which have recognised taxpayer service as an important and integral part of its functions and creating a dedicated workforce for its delivery. The staff would require proper training and orientation to deliver taxpayer services.

The attitude of tax officials providing quality taxpayer services is very critical. There can be no place for arrogance, rudeness, impatience, lack of receptivity or boredom. At the same time, they need to be empowered to take initiatives to satisfy the taxpayer. Such empowerment should be clearly defined at each level and appropriate flexibility should be infused to encourage creativity. It is important that back-office personnel communicate with frontline employees so that they have adequate information and support. This support should not only be in terms of technology, information and internal resources to meet the needs of the taxpayer, but also in terms of training.

It should not be assumed that tax personnel know how to treat taxpayers in a friendly, helpful and professional manner. These skills need to be taught to them to ensure that everyone in the organization is on the same page in terms of taxpayer service. Orientation programmes for tax personnel should train them to view taxpayers as customers and as most important to the tax organization.

The training should help improve the listening skills of staff, develop the ability to stay calm when faced with adversity, enable them to evaluate situations and make quick decisions, and develop the ability to organize and handle information/data in a systematic and logical manner, and to work independently in a team environment.

Since the function of rendering taxpayer services is the initial point of contact with taxpayers, the staff should also have a good working knowledge of tax laws, office procedures and tax obligations for different tax types. Tax personnel would often be required to provide information to the taxpayer about his tax liability or other details. The staff needs to be competent to handle such questions accurately, correctly and consistently. Any new tax officer joining the taxpayer service vertical would have to undergo the necessary orientation and motivation training.

Initial training (at the point of entry into the service) with respect to taxpayer rights should be reinforced later through periodic training. Without continuous education on taxpayer rights throughout the career of tax personnel, it would be difficult for them to absorb the change in culture and incorporate a working knowledge of taxpayer rights in their daily activities and interactions with taxpayers. The training courses should also refocus on customer relationship and effective communication, with special emphasis on the segmentation of taxpayers to be dealt with. Repetitive reminders are usually needed to bring this forgotten or overlooked objective back to primary focus.

## **Customer relationship management**

Customer relationship management (CRM) is a well-known concept today in the private sector. There is increasing realization in different agencies to adopt the concept to achieve higher efficiency and improved taxpayer satisfaction. The tax administration also needs to make CRM an integral part of its policies and processes. Strategies for CRM would include developing core services around which customer relationships could be built, customizing the relationship to the individual customer, augmenting the core service with extra benefits and developing strategies to retain them.<sup>10</sup>

## **Accountability**

A proper accountability structure would be required to be put in place so that responses to taxpayers are delivered accurately, consistently, promptly and properly at all times. Tax employees would have to deliver within this accountability framework so that the standards and quality of service delivery are not compromised at any time. The focus of delivery should not be on outputs but on providing accurate, consistent and prompt responses. Difficulty may be experienced in measuring the performance of such outputs as the taxpayer, even with accurate, consistent and prompt responses, may not be satisfied and would rate the performance poor. In such circumstances, iterative improvements would have to be worked out for better performance and creating better accountability to the basic objective of achieving a high degree of taxpayer's satisfaction. The performance and activities can be put in the public domain through the publication of performance outcomes regarding service delivery, customer satisfaction, etc. In this respect, carrying out well-designed and structured taxpayer surveys and gathering data thereon on a regular basis would be an important tool. Such surveys could either be physical or online.

## **Transparency**

Transparency is one of the essential requirements for proper delivery of taxpayer service. This would work best if taxpayers are kept informed of the organization's activities and achievements vis-à-vis the service standards laid down. The taxpayer charter should clearly and in simple language lay down what rights the taxpayers have. This would increase awareness among the taxpayers.

## **Funding of taxpayer services**

Taxpayer services and delivery thereon would get impaired if it is not adequately funded. To ensure that activities such as taxpayer education/outreach programmes, publicity, etc are properly carried out on a regular basis, budgetary provisions are required to be pegged as a fraction of the tax collections or total expenditure of the tax administration so that there is an appropriate in-built escalation clause and adequate funds are available. Advanced tax administrations often have 10-15 per cent of total expenditure allocated to taxpayer services. The taxpayer services vertical, on the same lines, should also have 15 to 20 per cent of the total

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<sup>10</sup> The I-T Department has a large number of stop-filers.



expenditure or 0.10 to 0.15 per cent of average revenue collection of the previous three financial years for taxpayer services. The rationale is that the source of revenue collection is the taxpayer; hence, there are reasonable grounds to expend on them with the objective of garnering revenue from them in a friendly and pro-active manner. At present, the expenditure is only on publicity, and that is about 5 per cent of the total expenditure. To begin with, at least 15 per cent of the total expenditure should be allocated to the taxpayer vertical.

Most tax administrations deliver taxpayer services through ICT, and fund allocations to ICT are often merged with the fund allocations to taxpayer services. In any case, a large part of the ICT budget is allocated to delivery of taxpayer service through electronic channels. In many tax administrations, ICT-related costs alone range between 10 and 15 per cent of the total expenditure. A comparison with other tax administrations in this respect might not be appropriate due to a variety of factors, in particular because in India there has so far been little attention to ICT-based taxpayer services. It is, thus, important to recognise that fund allocation for e-delivery of taxpayer services should not be merged with the fund requirement for taxpayer services and at least 10 per cent of the total expenditure should be allocated for delivering taxpayer services through ICT channels.

### **Quality management**

Tax organizations have been orienting themselves as service providers with an obligation to provide quality services to their customers. Quality taxpayer services aim at ensuring that every taxpayer pays the fair and right amount of tax under law and at the right time, with a view to facilitating widening of the tax-base, attaining high revenue collection efficiency and effectiveness, and creating an overall taxpayer friendly environment in tax administration.

Quality would include timeliness, accuracy of advice, ease of access to information, clarity, promptness, urgency, precision, and adept tax knowledge. These service qualities along with a friendly approach can go a long way in improving quality. Quality addresses the expressed needs of the taxpayer; but it should also include assistance in areas in which the taxpayer might have not realized that compliance could be facilitated through taxpayer service and information.

Quality issues need to be explained to tax personnel and understood by them so as to improve the quality of service delivery. There would be a need to develop statistical profiles of the categories of inquiry and requests for assistance that are made most frequently. A data mining tool would be required to develop a screening and referral system, and to train tax personnel on how to review taxpayer inquiries and to ensure prompt and effective responses.

Services should be monitored, evaluated and reviewed from time to time to assess their effectiveness and efficiency. This could be done through surveys, customer feed-back, impact analysis and use of performance indicators/benchmarks. A wide range of metrics has been used by different tax administrations to evaluate the success of the taxpayer services. These can provide guidance to the CBDT and the CBEC. The most commonly used metrics are quality of service delivered, timeliness of service delivery, and overall customer satisfaction.

## II.6.b Taxpayer service delivery

### Taxpayer surveys

Taxpayer surveys are required as a precursor to the design of any taxpayer service, as a tool to assess the generation of awareness and as a feedback mechanism for the service/initiative itself. They ascertain the needs and requirements of taxpayers as well as their overall satisfaction level. Surveys should be a regular activity for the tax administration. Feedbacks help in fine-tuning taxpayer service and in improving overall customer satisfaction. Surveys and related feedbacks also provide guidance for new services and improvement in structure for good delivery. Findings from customer surveys can also be used to update and reframe Frequently Asked Questions (FAQs). FAQs are an instrument for customer services, which have to be a regular part of the customer services to be put up on the website of the tax administration.

Surveys can be random or have a structure, based on sample designing with *ex-ante* objectives. Surveys can either be in-house or conducted by external agencies. But it is imperative that the findings are independent and professional and the results are respected so that an accountability structure for providing better services could be framed. In fact, there is strong merit in setting up a process of anonymous taxpayer service experience and evaluation, more along the lines of “mystery shopping” that is done very often in the private sector so as to ensure alertness, awareness, courtesy, responsibility and accountability through every layer of the taxpayer service delivery chain.

Customer satisfaction looks at the overall satisfaction as perceived by the customer/taxpayer. One way of incorporating taxpayer rights into this measure is through customer satisfaction survey questionnaires. These could be used to determine whether the Customer Service Directorate is responsive to taxpayer needs, whether they have been heard and treated fairly, whether taxpayers are kept informed and whether officials are effective in communicating the rights of a taxpayer to him. Timeliness, accuracy, fairness and resolution of a problem should also comprise an intrinsic component of the surveys.

It should be remembered that taxpayer surveys are also helpful to gauge the revenue potential from sectors that are likely to reveal their attitude towards tax payments.

Taxpayer surveys should comprise three types – first, a small quarterly survey of, say, 1,000 taxpayers to track changing attitudes to tax payments; the second, an annual survey to cover a wider change in the taxpayer’s attitude and tax administration’s objective to assess the success rate of selected key performance indicators (KPIs) of the tax administration; and the third, a longer-term, three-yearly survey of at least 5,000 taxpayers in a stratified sample to assess structural movements in the maturity of the taxpayer’s behaviour and enablement of taxpayer segmentation. Apart from these surveys, the opportunity to gather information on customer satisfaction when he interfaces with the administration, for example, through suggestion boxes or digitally, should not be lost.



### **Time-bound delivery of service**

There should be a time-frame for delivering every type of service like registration, refund, or rebate. Tax personnel must ensure that every service is delivered to the taxpayer within a fixed time-frame. If there is a delay in delivery of services, there should be an automatic compensation or delay cost, which should be paid to the taxpayer. At the same time, if benefits are given in a timely fashion, then tax personnel should be appreciated and their performance should be appraised accordingly.

### **ICT for effective taxpayer service delivery**

Tax administrations have employed various channels for taxpayer service delivery. Table 2.1 categorizes these taxpayer services under the broad heads of information, interaction and transaction. E-services based on ICT improve service delivery and also provide a means to integrate or transform services as shown in Table 2.2. In many rapidly developing tax administrations, mobile and internet penetration is often comparatively high and this enables them to exploit this infrastructure by introducing ICT-based channels such as internet portals, mobile payment options and ATMs, which serve as powerful levers to improve taxpayer service levels. ICT allows for sharing and collaboration, which leads to efficiency and cost-effectiveness. It offers scope for customization and personalisation because of which target delivery is made possible and remote access allows users to access services 24\*7 from anywhere in the world.

Keeping in mind the steps taken by some tax administrations to in put in place a seamless ‘one-stop-shop’ of digital services, both the CBDT and the CBEC should deploy a similar ICT-based approach in alignment with the whole-of-government approach to allow taxpayers to access taxpayer services. ICT-based taxpayer service channels could include websites, e-mails, call centres, SMT such as Twitter, Facebook, YouTube and SMT-based SMAC. There can be a hierarchy of contact preferences, as adopted by ATO. Online access tax information and delivery of services can also be provided through interactive kiosks in banks and post-offices.

### **Use of social media technologies (SMTs)**

SMTs are the new and personalized face of connectivity. SMT uses channels such as Twitter, Facebook, YouTube, etc. This allows stratified personal contact and new forms of communication and interaction with taxpayers. The CBDT and CBEC need to explore and use these technologies in a variety of ways. SMT deployment would enable tax administrations to communicate tax news, taxpayer information and various timelines for tax compliance as well as to conduct dialogues on proposals requiring large public consultations. Thus, SMTs can help in building a compliance programme with far reaching and widespread participation. ‘Tax apps’ can also be developed in sync with the latest technology trend in SMAC (social media, mobiles, applications and cloud).

Since delivery of SMTs might require a detailed and fast-changing technological base, it is felt that a special purpose vehicle (SPV) or a public-private association could help in its delivery in a more effective and efficient manner. Even private sector firms using SMTs have often

employed an SPV model for effective delivery through SMTs. A similar model could be employed to set up a single-window, multi-channel delivery system for taxpayer services in both the CBDT and CBEC. However, all these might require a strong ownership framework and management participation by CBDT and CBEC officials in the SPV or public-private association so that delivery is focused and in tune with the use of SMTs for taxpayer service delivery.

### **Call centres**

India has a high penetration of telephony.<sup>11</sup> New dimensions of the ongoing digital revolution are evolving continuously, enabling an abundance of information to move faster, cheaper, in more directions and in more intelligible forms. Broadband is going to play a more critical role in making the country a networked and a connected economy. It is thus appropriate for the CBDT and CBEC to consider increasing taxpayer services delivery through different modes of ICT such as websites and automated phone services.

Another important channel for service delivery could be through a national toll-free number for call centres. These call centres could provide information in the local language for the benefit of taxpayers, increasing their accessibility. To reduce demand and taxpayer waiting time, an appointment only model that requires taxpayers to call and schedule an appointment before visiting an in-person tax administration service centre could be considered. This would give the call centre agents or the person in the offices a chance to resolve taxpayer issues before scheduling in-person appointments. Such a facility could provide hands-on guidance and training to taxpayers on different facilities to enable them to access these on their own.

### **Seamless interface and single window delivery**

Each of the above services can be delivered individually and from separate platforms. But there is a strong case for a seamless interface with integrated service delivery. It is imperative that instead of using multiple channels, an integrated, customer-driven process should be developed. This would reduce duplication of effort and would enable delivery to be made through a common platform.

While e-delivery can be the norm, the traditional channels of service delivery through the brick and mortar mode cannot be given up at this juncture. In-person assistance would always be required for certain taxpayers such as low-income ones, rural and semi-urban taxpayers, elderly citizens, etc. Often, the in-person service through brick and mortar offices may be expensive; nonetheless, it is an important means of service delivery. It would be important to concentrate most of the service activities in a few central hubs, may be at the level of the Commissioner's office, and providing limited services in smaller, remote offices.

The strengths and weaknesses of the various channel options are summarized in Table 2.4 below.

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<sup>11</sup> The overall tele-density in India was around 74.5 per cent at the end of January, 2014.

**Table 2.4: Strengths and Weaknesses of Channel Options**

Channel	Description	Strengths	Weaknesses
<b>Electronic</b>			
<b>Internet</b>	<p>Website for one-way <b>information</b> dispersion from one to many</p> <p><b>Interactions</b>, such as the use of online calculators and other tools</p> <p>Web portals that include <b>transactional</b> services with secure log-in options, such as e-filing</p>	<ul style="list-style-type: none"> <li>– Can be accessed 24/7</li> <li>– Low cost per visit. Cost per visit decreases as accessibility increases</li> <li>– Can address small segment needs in a cost effective manner</li> <li>– Can be personalized</li> <li>– Can present complex information in an easy way,</li> <li>– Can push information to the client, either through list service or by placement of account specific information in secure space</li> </ul>	<ul style="list-style-type: none"> <li>– Users actively search the information.</li> <li>– Not all have access to internet</li> <li>– Content may be too general</li> <li>– Can be difficult to find information</li> <li>– May require rigorous security measures</li> <li>– Can trigger more contact with revenue body</li> </ul>
<b>E-mail</b>	<p>Structure: mainly via web forms on the internet</p> <p>Unstructured: free text from an email programme or website.</p> <p><b>Note:</b> Used significantly less than other channels.</p>	<ul style="list-style-type: none"> <li>– Can send e-mail 24/7</li> <li>– Many are familiar with use of e-mail</li> </ul>	<ul style="list-style-type: none"> <li>– Often not a secure solution for sending personal information</li> <li>– Difficult to meet client expectations, they often expect immediate answer (almost as a phone call)</li> <li>– Time sensitive and labour intensive</li> <li>– Can trigger more contact with revenue body</li> </ul>
<b>Interactive Kiosks</b>	<p>Different types of unmanned kiosks.</p> <p>Can be used for information, interaction, or transactions.</p>	<ul style="list-style-type: none"> <li>– Can be available 24/7 if in a public space</li> <li>– Low cost</li> </ul>	<ul style="list-style-type: none"> <li>– Security, vulnerable to hackers</li> <li>– Can be uncomfortable to deal with personal data in a public space</li> </ul>
<b>Telephone</b>			
<b>Telephone-Live representative</b>	<p>Calls to local tax offices or different types of call centres or contact centres (which also includes other channels)</p>	<ul style="list-style-type: none"> <li>– Immediate answer, interactive</li> <li>– Ability to probe effectively</li> <li>– Facilitates channel integration, e.g., co-browsing, click-to-talk</li> </ul>	<ul style="list-style-type: none"> <li>– Can be high cost</li> <li>– Can be challenging to accommodate flexible capacity, in particular for peak periods</li> </ul>

Channel	Description	Strengths	Weaknesses
	Note: Most popular service delivery	web/phone integration and making face-to-face appointments – Often preferred channel by taxpayers, can handle large volumes	
<b>Telephone-Automated</b>	Automated services that can provide both information and interaction services, as well as transactional services, in some cases	– Access 24/7. Independent of time and geography – Easy to use if properly configured – Low cost and flexible popular	– May be limited to a narrow range of services – Low client tolerance for automated system – Poor customer service when poorly configured – IVR can be expensive and difficult to configure – Phone charges can be expensive
<b>SMS</b>	Messaging via mobile phone. Can be used for notification services (outbound) and for filing or ordering forms (inbound)	– Access 24/7. Independent of time and space – Mobile phone readily available – Low cost and easy to use – Appeals to young people	– Limited options, small screen – Security – People changing mobile numbers
<b>Written</b>			
<b>Letter</b>	Outbound letters from the tax administration, or inbound from taxpayers. Increased use of scanning for automation of handling process Note: Downward trend in demand	– Most people are very comfortable with paper products	– Takes time from sender to receiver – Time consuming handling – Expensive to process
<b>Mass Distribution</b>	Distribution of mass-produced written material, like forms and brochures, from the tax administration to target groups or all taxpayers	– Proactive from tax administration perspective (push) – Most people are very comfortable with paper products – Suited for presenting information in a logical way – Easy for taxpayer to study content as many times as needed	– Can be very expensive – Received by users who may not need info – Uncertainty related to recipients level of understanding – Tends to prompt high volume of low-value, inbound contact – Encourages traditional behaviour

Channel	Description	Strengths	Weaknesses
<b>Face-to-face</b>			
<b>Walk-in</b>	Counters at local tax offices, or counters at local public offices shared with several other public agencies Note: One of the primary service delivery channels	<ul style="list-style-type: none"> <li>– Provide direct and personal contact</li> <li>– Allows for assisted self-service to encourage channel migration; if by appointment, eliminates waiting times</li> </ul>	<ul style="list-style-type: none"> <li>– Limited access in time and place.</li> <li>– High cost</li> <li>– Less equitable, limited number of offices mostly in larger urban communities</li> </ul>
<b>Outreach Activities</b>	Tax officers offer face-to-face services in public spaces like shopping malls, libraries, schools, railway stations, airports, place of business, etc.	<ul style="list-style-type: none"> <li>– Can target special user groups. From one to many - meet many at once.</li> <li>– Proactive. Can prevent unnecessary contact</li> </ul>	<ul style="list-style-type: none"> <li>– Time consuming</li> </ul>

Source: Based on USAID Aug 2013

### **Taxpayer education and assistance programmes**

Educating taxpayers is an important component of taxpayer services, raising awareness about rights and obligations, reducing ambiguity and creating trust between the tax administration and its customers. Well-defined and well-executed education and awareness campaigns help ensure that taxpayers understand compliance requirements. Both the CBDT and CBEC would need to enhance their present delivery of taxpayer education. The delivery of programmes can also be done through public-private partnerships (PPP). This can be done by organising education programmes under the guidance of departmental officers. Faculty can include eminent persons or retired persons from the CBDT and CBEC with the requisite skills needed to deliver such programmes.

The website often is an important medium for delivery of education and awareness programmes. Changes in tax laws, notifications and circulars could be put on the website in simple, easily understood language. Explanatory notes giving the reasons for or objectives of changes in laws and procedures proposed in the budget should also be placed on the website. They should invariably be published in local languages for the ease of the taxpayers.

Tax administration should increasingly conduct post-budget presentations and workshops, highlighting the various changes in laws and procedures for all categories of taxpayers, including small taxpayers and pensioners across regions.

## **Communication**

A primary objective of taxpayer services is to inform the taxpayer of their duties and responsibilities under tax laws. Publicity campaigns through radio, newspapers and television informing taxpayers regularly of the results of the tax administration's efforts (for example, increase in the number of registered taxpayers, increase in the tax revenues, and results of scrutiny/audits for improving voluntary compliance) is another dimension of communication.

The segmentation of taxpayers and the messages that need to be communicated to them would comprise an important component of the communication strategy. Understanding the segment that a taxpayer belong to influences communication. The communication plan, therefore, should address three areas – first, convince taxpayers of the benefits of paying taxes; second, educating taxpayers on how to comply; and last, increasing the perception of risk of non-compliance by publicizing improvements in scrutiny/auditing, collection and other controls.

Communication needs to be done at various levels. Therefore, clear lines of responsibility should be established between the central and regional offices, and the responsibilities of officers for communication at each level should be clearly defined.

The communication strategy must be considered as part of the design and implementation of the service and not as a follow-up activity. A series of short videos on specific taxpayer rights could be developed and posted on the websites. The CBEC has done this on the registration procedure.

Posting information on the website in simple language would be a key element of communication. The website could have a tab titled “know your rights as a taxpayer” on the homepage itself.

## **Taxpayer grievance redressal**

Procedures could be established to enable a taxpayer to obtain a prompt and impartial response to any legitimate complaint about the conduct of an individual employee. These complaint response procedures could be organized and operated so as to provide for receipt and processing of such complaints by departmental personnel who have thorough familiarity with the authority, organization, and administrative and operating procedures of the department. This procedure should also be well publicized and made easily accessible to taxpayers.

The procedure should be so structured that the causes of all legitimate complaints about the conduct of individual employees can be easily identified and it can be determined what changes may be necessary in the training, supervision or assignment of service personnel to eliminate causes of legitimate complaints.

## **Ombudsman**

The institution of Ombudsman has been set up to redress the grievances of taxpayers. The decisions of the Ombudsman should be binding on tax officers.

There is no rationale why an independent professional having knowledge of the field/area cannot be appointed Ombudsman. Hence, the Commission is of the view that the office of Ombudsman should be thrown open to both government and non-government professionals.

The office of the Ombudsman should be formed with adequate staff and infrastructure.

### **Specialized taxpayer services**

#### **a) Pre-filled tax returns to taxpayers**

CRM could go a long way if the CBDT can introduce pre-filled tax returns for taxpayers. This service-driven activity would create a positive environment of taxpayer services. Further, it is also an effective tool to increase voluntary compliance by making it easier for taxpayers to comply. Normally, this would only be possible for personal income tax. To start with, this facility should be provided to salaried and interest earning taxpayers. The taxpayer will have the option to accept the tax return as it is or modify it. In either event, the filing process would be completed with the submission of the tax return electronically.

#### **b) Effective issue resolution**

Many tax administrations often resolve close to 90 per cent of the issues at the first point of contact on a phone service channel or within one visit through in-person service channel. This high rate of first-contact resolution reduces the overall demand for issue resolution, since failure to resolve issues typically leads to additional inquiries. The key strategy to achieve a high percentage of early resolution of issues would be effectively identifying issues, making sure they are transferred to the right person for effective resolution and for more complex issues, elevated to more specialized tiers. Clear service timelines could be established. This could even be for complex issues. Both the CBDT and the CBEC should develop a mechanism for such early issue resolution. There should be a dedicated organization with trained personnel to handle this.

#### **c) Access to rulings**

At present, there is no mechanism to provide either product ruling or public ruling on any tax issue. Some initiatives, however, have been taken by the CBDT to provide a departmental view on various issues. But so far, there have been very few departmental views. Many tax administrations provide rulings on important aspects of tax laws, which are made public. The CBDT and CBEC could consider setting up a forum where taxpayers can make requests for interpretative statements, industry-wise interpretations or clarifications of various provisions of tax laws, etc. The issues raised by taxpayers from time-to-time could form a bank of issues on which the respective Boards can issue departmental views.

### **Stakeholder engagement**

There is a strong need to consult stakeholders of tax departments. It not only provides crucial inputs for formulation of policy and processes but is also a source of valuable feedback on the



implementation of existing policies and procedures. Consulting stakeholders, which primarily comprise taxpayers, is a practice very commonly followed in most modern tax administrations.

In India, we do not have a comprehensive and regular process for stakeholder consultations. Although a glimpse of such an engagement is seen at the time of the annual budgetary exercise, the consultation process vanishes as soon as the budget is presented to Parliament, to resurface only at the time of the following year's budget discussions. Stakeholder consultation on both direct and indirect taxes is through two channels – separate central tax advisory committees and the regional tax advisory committees at the level of regional chief commissioners. The central committees were formed for tax policy inputs, but the committees largely focus on administrative issues, and meet occasionally. Regional committees at many places are found to be either not constituted or not functional.

### **Tax Forum**

Recently, another forum for stakeholder engagement, called the Tax Forum under the advisor to the finance minister, was constituted to look into tax-related issues/disputes. This forum provided a platform to hear the views of industry groups and associations. It was also used by the government to clarify its stand on tax related matters. Several long standing issues faced by taxpayers, both in direct and indirect taxes, were taken up and resolved through the meetings of the forum. The outcome of these meetings led to the issue of many clarificatory circulars and notifications. The forum, during its tenure, met representatives from industry groups and associations and covered matters relating to the information technology, manufacturing, infrastructure, services (including financial services), insurance (including reinsurance) and the export sectors, and international taxation. Disputes faced by the taxpayers, both in direct and indirect taxes, were taken up and resolved through these meetings. The process was open. Proposed safe harbour rules were shared with the stakeholders. A final notification was subsequently issued after receiving comments/suggestions. A list of issues taken up in the tax forum is given in Appendix II.4.

Taking note of the strong need for regular stakeholder engagements, the Commission recommends a permanent body for stakeholder engagement on tax related issues/disputes. This has been elaborated upon in Chapter III of this report.

### **II.6.c Proposed Structure**

As stated earlier, a taxpayer should be viewed as a customer. It would be the endeavour of the tax administration to not only “serve” the taxpayer but build a “relationship” of mutual trust and confidence with its customers and provide quality services. The present structure does not address the above objective. To bridge the gap, there is need for a new setup/structure to build a strong relationship with its customers. The effort should be to integrate taxpayer services, taxpayer communication and education, taxpayer feedback and grievance redressal under one umbrella.

Taxpayers should be segmented into large business services (LBS), medium and small taxpayers. All taxpayer services for both direct and indirect taxes will be within the LBS



structure under one delivery mechanism (*i.e.* the same CRM). In this sense, taxpayer service delivery will be located under one umbrella for large taxpayers *i.e.*, the CBDT and CBEC will jointly function for large taxpayers through the Principal DG (LBS).<sup>12</sup>

However, for other taxpayers, *i.e.* medium and small, the operations of the CBDT and CBEC would have to continue in separate chains. A road-map has been provided regarding joint delivery of services for these taxpayers.

### **Taxpayer services**

The customer relations setup should be responsible for building strong relations based on mutual trust and confidence not only with the existing but also with potential future customers. It should be responsible for communication, education, customer service, grievance redressal and customer feedback and analysis in a comprehensive manner. The setup should not only be responsible for designing services (other than those handled in compliance verification and dispute management) but also delivering them at the field level. Customer feedback should form the basis for evaluating its performance and it should be held accountable for any negative feedback. The new setup should also be the nodal point in discharging the responsibilities envisaged in the proposed citizen's charter law.<sup>13</sup> Briefly put, the main functions of the directorate should be:

- Communication, which would include drawing up the communication strategy and media policy, education and outreach (customer relations), internal communication and brand building and standardization
- Technology enablement
- Research, analysis and programme evaluation
- Customer relations support comprising the provision of budgetary support, accounts, personnel, training, and infrastructure and logistics

The structure of the proposed organization is given in Diagram 2.1 and that of a typical regional customer relations office in Diagram 2.2.

### **Proposed Structure**

The new Directorate of taxpayer services would be headed by an officer of the rank of Principal Chief Commissioner. It would primarily comprise two parts:

- i. Headquarters setup headed by a Director General responsible for policy, planning and programme evaluation and

<sup>12</sup> For details on LBS, please refer to Chapter – III of this report.

<sup>13</sup> The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of Their Grievances Bill, 2011, has been introduced in the Lok Sabha.

- ii. Field setup responsible for customer service delivery comprising two verticals headed by:
- (a) Chief Commissioner (Customer Service Delivery – Field) who would be responsible for the implementation of customer relations schemes and programmes, including delivery of customer services and grievance redressal at the central as well as the local level and
  - (b) Chief Commissioner (Customer Service Delivery- Technology Enabled) who would be responsible for the delivery of all technology-enabled customer services such as call centres, websites etc. Since technology enabled customer services are to be delivered centrally through a technology platform, this vertical should be common to both the direct and the indirect tax administrations. For the present, this vertical may have to function separately under the two Boards. In Chapter – VII, a common Special Purpose Vehicle (SPV) has been recommended for both CBDT and CBEC ICT systems, which would have to be developed to meet the final objective.

**Diagram 2.1: Proposed Organizational Structure for Customer Service**

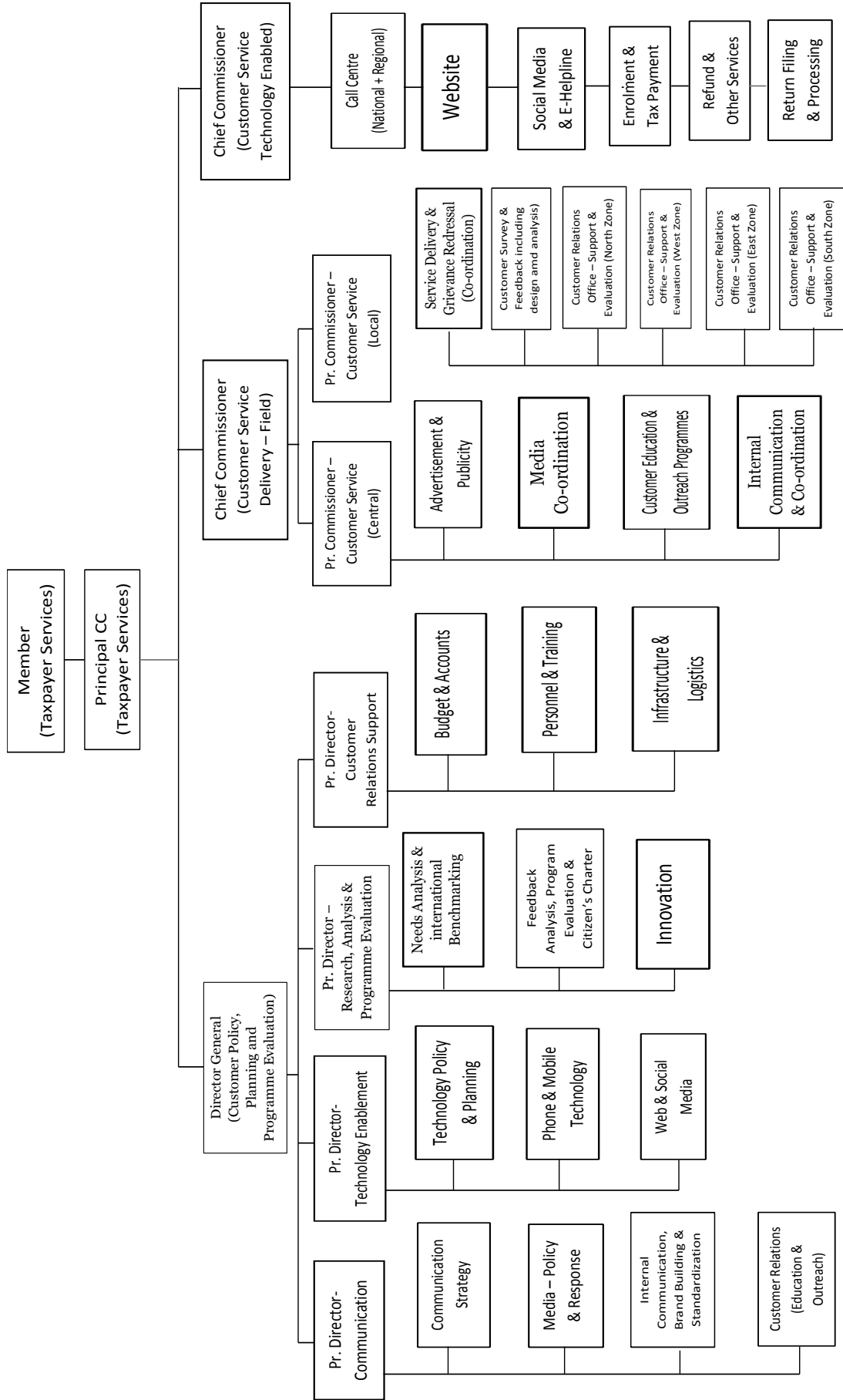
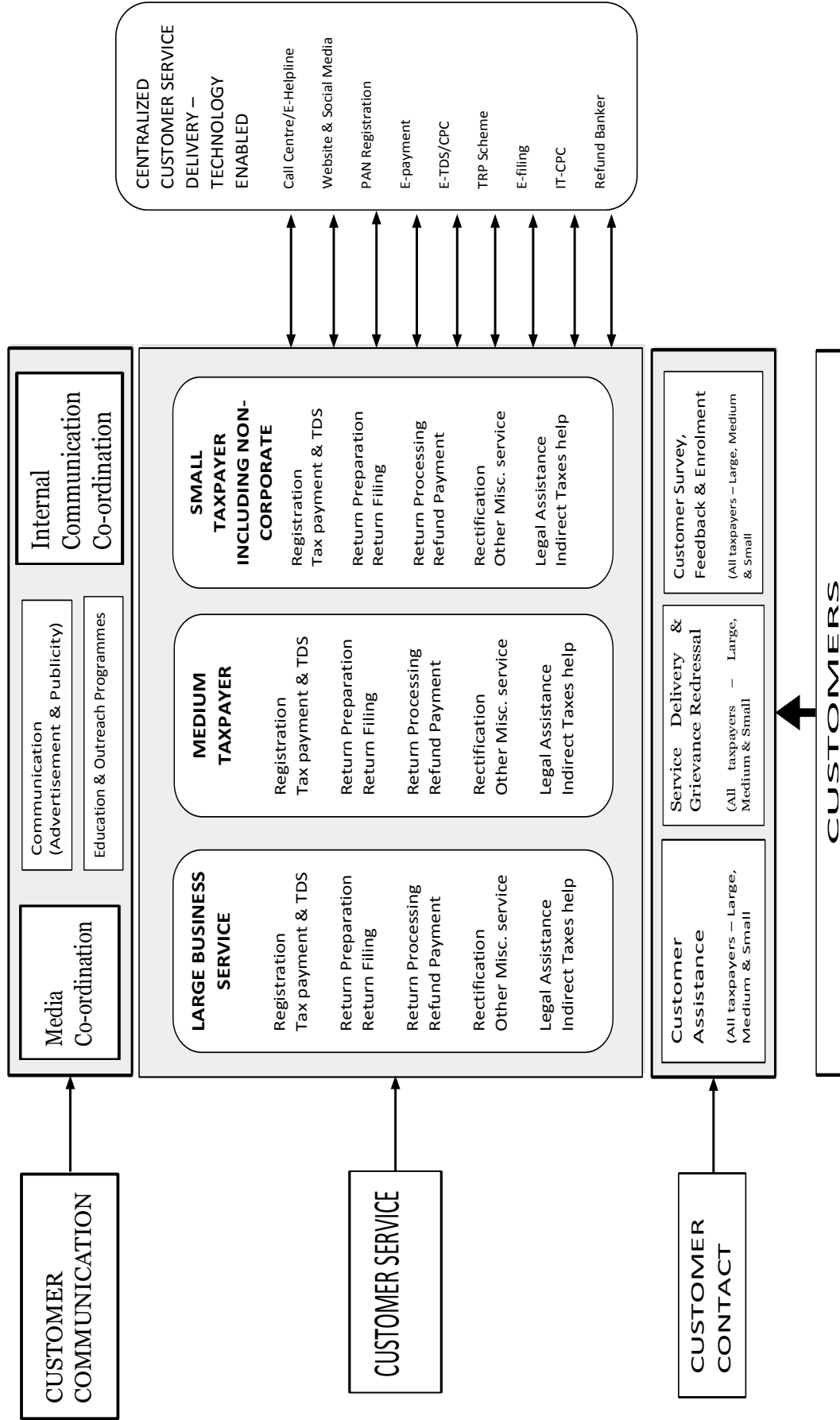


Diagram 2.2: Regional Customer Relations Office



## **Customer-Policy, Planning & Programme Evaluation**

The Directorate General would comprise the Directorate of Communication, Directorate of Technology Enablement, Directorate of Research, Analysis and Programme Evaluation and Directorate of Customer Relations Support. DG (Policy, Planning and Programme Evaluation) would be supported by an Additional Director (Administration), who would be responsible for day-to-day administration of the DG office.

### **The Directorates**

The directorates under the Directorate General would be headed by a Principal Director/Director. Each directorate would have various divisions headed by an Additional/Joint Director. The divisions would comprise various units headed by a Deputy/Assistant Director. The Deputy/Assistant Director would be assisted in his functions by ministerial staff.

#### **i. Directorate of Communication**

The directorate of communications would be primarily responsible for all policy and planning matters related to external as well as internal communication.

##### **(a) Communication Strategy Division**

This division would be responsible for developing the communication strategy for the external customers of the department. The broad policy guidelines developed by this division would be followed by field formations. The development of communication strategy would involve developing responses to questions such as what to communicate, whom to communicate with, how to communicate and when to communicate. The division would be responsible for identifying the objective of communication, that is, what outcome is expected from the communications (for example, the general or overall objective of the communication strategy could be: *To build the image of the tax department as an efficient, professional, responsive and innovative organization*), categorization of customers, who are primarily taxpayers; and strategy focussed on effective dissemination of information.

The identification of customers and the messages that need to be communicated to them should be an important component of the communication strategy. Understanding the customers is important as they may be of different ‘types’, each with their own likes, needs and abilities. The better the tax departments know their customers, the better the chances of being able to influence them would be. Intellectual (e.g., understanding of an issue), cultural (e.g., considering an image as taboo) or access-related (e.g., owning a TV, radio, having internet, telephone etc.) differences would lead to differing customer needs; the greater the understanding of the departments of issues like these, the likelier they are to achieve the desired impact. The bottom line is that if the tax administrations do not see the customers, appreciate them and listen to them, they will never reach them.

For a suitable communication strategy, therefore, segmentation of customers may be important. They can be categorised as existing, potential and future taxpayers and further classified as individual or corporate taxpayers. Further categories could be male/female, senior citizens/young executives, tech savvy or non-tech savvy etc. Each segment of taxpayers would have different needs and all communication will need to be tailored to the differing needs of different categories of taxpayers.

Existing and potential taxpayers can also be classified on the basis of their behavioural features; hence, communication with potential taxpayers could be as follows:

- Willing and informed taxpayer – the communication approach is to encourage; or
- Resistant, uninformed and resigned taxpayer – the communication approach preferred is to persuade, assist, support and educate; or
- Does not participate at all – the only communication approach available is to enforce.

Future taxpayers are primarily young school going children who can be further divided into various age groups. For young school children, communication will primarily be about the ethics of taxation and the need for taxation in civil society (i.e. the right and wrong of taxation). However, for college-going children who will soon become earning individuals, the communication will be on the economic rationale of taxation and will aim to educate them on tax laws and various taxpayer services to promote compliance.

The messages to be communicated to external customers may be categorized as:

- Need to pay taxes including concept and ethics of taxation – future, potential taxpayers;
- Communication for ensuring compliance with tax laws – Existing and potential taxpayers
- Communication for ensuring quality taxpayer services and promoting voluntary compliance – Existing and potential taxpayers
- Communication for transparency and fairness – Existing and potential taxpayers
- Communication regarding administrative actions to ensure transparency and fairness – Existing taxpayers.

The channels of communication appropriate for different kinds of tax services are briefly described below.

- **Information:** Since the dissemination of information is essentially one-way communication, information services can be provided through print advertisements in newspaper, TV commercials, taxpayer information booklets and pamphlets, etc
- **Interaction:** Interaction, being two-way communication between the customer and the tax department, would involve responding to queries of the taxpayers. This can be done through call centres or help desks where customers can get their queries resolved face-to-face.
- **Transaction:** In this mode, the taxpayer can carry out certain transactions such as file online PAN application or return or make tax payment or file grievance application or any other application at ASK or kiosks. Tax payment at ATMs, participation at trade fairs, etc. would also fall in this category.

The type of communication used with a customer would depend upon the message as well as the category of customer involved. For example, educating a future taxpayer on the need to pay taxes would normally fall in the category ‘information’, which is one-way communication with the customers. Similarly, an existing tech savvy customer, could be informed, could interact and transact through the departmental website. Mobile Apps could also be developed for such customers for all three kinds of communication.

The choice of communication channel would depend mainly on the type and content of message or service to be delivered, available resources, and also – most crucially – on how the target group likes to receive the message. Some channels of communication may be more advantageous in terms of its reach to the target group. It may not be prudent to use all the channels for all kinds of messages and services to different categories of customers. Therefore, a channel strategy specifying the preferred channels for communication for different target groups should form an essential part of the overall communication strategy. Such a channel strategy would not only optimize the efforts of the tax department in reaching out to taxpayers but also make the communication more cost-effective.

### **(b) Media – Policy and Response Division**

The division would be responsible for developing the media policy for the department as well as providing the policy response to issues raised in the media. The main components of the media policy should be to lay out clear objectives for interaction with the media and create responsibility centres for media co-ordination at the central and local level. At present, the tax department’s interaction with the media is centralized at the Board level. This results in very limited information being released through the print and electronic media. Moreover, issues of local importance do not find adequate coverage in local media at field stations. The departments need to use this medium of communication more effectively, particularly since it has a vast reach.

Perception management is an aspect that has not been given adequate importance by the tax administration in India. Even though the tax departments have, over the last few years, taken several initiatives using technology to make compliance easy for taxpayers, there is still a negative perception about the tax departments, (for instance, the perception that tax officials are unfriendly and rude; it is very time consuming to interact with the tax departments; no sense of enforcement etc.) in the minds of many taxpayers.

This needs to change, and the media could play an important role in this. The main aim of the media policy should be to create a positive perception of the tax department in the minds of the general public by highlighting significant achievements of the tax administrations, particularly in the area of customer service and by clarifying the position of departments in respect of any news that is incorrect. Besides, taxpayer education as well as wider dissemination of information about taxpayer service initiatives for promoting voluntary compliance could also be the objectives of the media policy. The media policy should maintain a careful balance between different kinds of messages to achieve the overall objective of building the *image of the tax departments as an efficient, professional, responsive and innovative organization*.

Major changes in laws and procedures, including issuance of circulars and notifications of public importance, should necessarily be disseminated to the public through the print and electronic media.

Media monitoring should be one of the primary functions of this division. Media coverage should be categorized topic-wise and analysed to identify areas of achievement as well as deficiencies. When there is adverse publicity regarding deficiencies in the functioning of the tax department, the division should be in a position to issue suitable policy responses that could also serve to correct a negative image. The results of analyses carried out in this division would be shared with the research, analysis programme evaluation directorate, which would then use this result to improve customer services.

The policy guidelines developed by this division for interacting with the media should be followed by the field formations.

### **(c) Customer Relations (Education and Outreach) Division**

This division would primarily be responsible for developing strategies for customer education and outreach programmes, particularly contact-based initiatives carried out by the department. In the beginning of every year, the division should come up with an annual action plan for customer outreach and education, identifying customer segments for targeted education and outreach.

The division should also design specific programmes for customer education that field formations should implement during the year. Setting up tax kiosks at various locations could be one such programme; temporary kiosks could be set up for a day or two in residential areas such as



apartment blocks in association with RWAs, large offices and other central locations in cities. These tax kiosks may be manned by departmental staff/tax return preparers (TRPs), who could, apart from helping taxpayers prepare their tax returns, also handle queries from taxpayers relating to return filing, PAN applications and refund status. Another initiative could be single-window mobile vans to take customer services to the door-step of customers and reduce compliance costs. These mobile vans could be a single-window to clarify all queries by small taxpayers. Home visits by trained TRPs for assistance in preparation and filing of tax returns could also be an outreach programme to help taxpayers and reduce their cost of compliance. Seminars and workshops for educating/interacting with customers, post-budget discussions/seminars for clarification of doubts, participation in trade fairs and other such events, visits to schools, offices and public establishments, etc. could be other customer education and outreach programmes designed by this division for educating existing and potential customers. Communicating with school children to convey the importance of tax payment in nation building could be an important policy initiative. Road-shows and street-plays for conveying specific messages may be another. The programmes could be designed at the central level to maintain uniformity. These programmes could then be carried out at various locations in local languages through the respective customer relationship offices (CROs).

#### **(d) Internal Communication, Brand Building and Standardization Division**

The Internal communication division would be responsible for coming up with an internal communication policy that would ensure promptness, certainty and uniformity in the response of the tax officials to the needs of taxpayers.

Communication with internal customers is as important as that with external customers. For tax departments, internal customers are primarily the employees of the department. Other internal customers could possibly be partner organizations such as NSDL, UTI, Infosys, etc. The internal customers form the link between taxpayers and the tax administration. Therefore, effective communication with internal customers is essential for the vision and mission of tax departments to be conveyed effectively to external customers as well as implemented successfully by the tax departments. Internal communication is also crucial to equip and enable the staff and other partner organizations to meet the expectations of taxpayers and discharge their duties effectively, promptly and honestly.

The channels for internal communication would depend upon the recipient of the communication and the message to be communicated. Some of the channels for internal communication could be dissemination of information through a website including the latest amendments, circulars, notifications etc; a knowledge management portal for making available assessment orders, judicial decisions, best practices and online discussion on these; a learning management system (LMS) having topic-wise training modules and tests for enhancing competence in a desired area; and a forum for online discussions and exchange of ideas on the above. The delivery of messages to the

target audience in the most efficient and cost-effective manner should be an important component of the communication strategy.

Brand building and standardization should also be the responsibility of this division. This would include designing the official logo and coming out with a policy for standardization. The division should also be responsible for standardization of offices and other physical infrastructure so as to maintain a uniform customer experience throughout the country. It should also design a mascot which is in sync with the vision of the tax department. This could be displayed prominently in all tax offices.

## **ii. Directorate of Technology Enablement**

Tax administrations the world over are striving to deliver more and more services to customers electronically. The Indian tax administration has also in the recent past introduced several measures for delivery of taxpayer services through the electronic mode such as electronic filing of tax returns and payment of taxes, processing of income tax and indirect taxes returns at the centralized processing centre (CPC). However, in view of the recent developments in information and communication technologies (ICT), there is still a lot of scope for improving existing e-services and introducing new technology-based taxpayer services. Thus, there is a need to have a separate Directorate of Technology Enablement that would primarily be responsible for all policy and planning matters related to technology-based customer services such as call centres, website, social media, e-filing, e-payment, etc.

Technology has also brought forth channels of instant communication such as social media and mobile phones. Tax departments should keep pace with technology and be prepared to take into its fold many more young customers. At present, the departments neither have any presence on social media nor do they use mobile applications to reach out to taxpayers or provide services to them. Therefore, separate divisions should handle mobile technology and social media and continuously undertake efforts to develop ways and means to use these technologies for improved customer service. The mobile technology division would be responsible for designing mobile apps that could be used by customers to communicate with the departments, particularly for transaction-based communication. For example, on the direct tax side, such apps could be used to view the tax credit statement (26AS), instant payment of tax and, perhaps, preparation and filing of tax returns. The social media division should frame a policy for presence on social media, which should include the requirement to set up a response team that provides quick policy response to issues raised on social media platforms.

In case of further expansion of technology-enabled services, separate divisions may be created for handling matters related to that class of services. Each division would frame policies related to the service falling within its purview.

### iii. Directorate of Research, Analysis and Programme Evaluation (DRAPE)

DRAPE will be responsible for all research related to customer service, analysis of feedback and evaluation of various customer service programmes run by the department. The directorate will be responsible for ascertaining the needs of customers and designing services to fulfil those needs and enhance customer satisfaction to reduce compliance barriers and costs. It will take care of needs analysis, international benchmarking, feedback analysis, programme evaluation, the citizen's charter and development of schemes and programmes for customer services, including modification of existing ones.

#### (a) Needs Analysis and International Benchmarking Division (NAIBD)

The Needs Analysis and International Benchmarking Division would be responsible for ascertaining customer needs (information, interaction as well as transaction), based on inputs from other wings including call centres, websites, grievance redressal, etc. as also the study of internal processes and cross-country best practices. Within this division, a customer feedback and survey office will receive inputs from the results of customer surveys carried out by the CRO. This division would also receive inputs from the Service Delivery and Grievance Redressal (Co-ordination) office.

#### (b) Feedback Analysis, Programme Evaluation and Taxpayer's Charter Division

The Feedback Analysis, Programme Evaluation and Taxpayer's Charter Division would be responsible for analysing feedback received from various sources, including call centres, websites, social media, CROs, etc. on a continuous basis. Based upon the feedback, the division will evaluate the performance of various customer service schemes and programmes and make recommendations therein for improved customer experience. The primary objective of the analysis carried out by this division would be the evaluation of customer service schemes and programmes and making recommendations for improvements therein, recommending changes in the procedures and internal processes for improved customer experience, identifying barriers to compliance and measuring cost of compliance on a continuous basis, making recommendations to remove the barriers and reduce the cost of compliance, carrying out impact analysis of policy decisions on customer compliance cost and making suitable recommendations for changes, if any, in policy decisions to ensure better compliance.

There is an urgent need to re-visit the citizen's charter to focus on the customer, and to reflect the customer's concerns, needs and priorities. The citizen's charter should be renamed the taxpayer's charter to focus on all categories of taxpayers.

This division would also be responsible for designing the taxpayer's charter and evaluating the performance of the department vis-à-vis the timelines committed in the charter. Based upon analysis and feedback, timelines provided for existing services could be amended and more services could be included in the charter. The taxpayer's charter designed here would be implemented by the service delivery and grievance redressal setup in the field formation.

**(c) Innovation Division**

The Innovation Division should be responsible for the development of schemes and programmes for customer services and for modifying existing ones based on inputs from the Needs Analysis and the Feedback Analysis divisions. It would also be responsible for running new schemes at the pilot stage. Once the scheme stabilizes, it will be taken over by the field setup.

Some of the new customer service initiatives/schemes (these are only illustrative) could be:

- Client Executive Programme – where selected officers are nominated as client executives for large taxpayers. These client executives, being the link between the taxpayer and the tax department, should be technically competent to guide taxpayers in legal and procedural matters and should assist them in mitigating tax woes (if any)
- Client Accreditation Programme – Identifying and recognizing honest and compliant taxpayers and offering them special treatment in tax offices/matters
- Self-TDS Correction – Mechanism by which a deductee can make corrections in the TDS statement filed by the deductor

**iv. Directorate of Customer Relations Support**

The Directorate of Customer Relations Support (DCRS) will be responsible for policy and planning in respect of support required by the customer services setup at the headquarter as well as at the field levels. The directorate would comprise the following divisions:

- a) **Budget and Accounts Division** – would be responsible for preparing the budget requirements for the headquarters and the field setup. The division would also be responsible for monitoring expenditures and projecting additional requirement during the year. It will monitor expenditures to ensure effective utilization to meet customer relations objectives and be responsible for co-ordinating with the finance wing to ensure that adequate resources are allocated for customer relations. It will also monitor its effective utilization for better customer relations objectives. Besides, it will be responsible for co-ordinating with the finance wing to get adequate resources allocated for customer relations.
- b) **Personnel and Training Division**- This division will be responsible for identifying training requirements for both the headquarters and the field setup under the Member (Taxpayer Services). The division will seek inputs from all the directorates functioning under Member (Taxpayer Services) in formulating the training policy and plan. It will also be responsible for co-ordinating with the HR directorate as well as the training academies to develop training modules for officers/staff to orient their mind-set towards better customer relations.
- c) **Infrastructure and Logistics Division** - This division will be responsible for preparing infrastructure and logistics requirements of the customer relations setup under Member (Customer) in consultation with the headquarters and field offices functioning under it.

### **Chief Commissioner (Customer Service – Technology Enabled) (CC (CS-TE))**

CC (CS-TE) will be responsible for supervising the delivery of all technology enabled services. There will be separate offices for handling each service. All these services will be run at the national level with regional offices, if needed. These offices will support the customer relations offices located in the field that are expected to interact face-to-face with customers. The Chief Commissionerate will run the following services:

- a) **Call Centres** – This unit would be responsible for managing and monitoring the call centres for the department. The call centre may be run through a public private partnership (PPP) model or a special purpose vehicle (SPV) model. To begin with, there may be one national call centre with four regional centres. While standardization of responses can be taken care of by the national call centre, the regional call centres may operate in regional languages to take care of the needs of local customers. Even though the call centres will be staffed by private agents, it should be supervised by departmental staff.

The call centres will be responsible for analysing customer response and using this to make its own operations more efficient. It will also provide inputs to the Feedback Analysis and Programme Evaluation division which will, based on the inputs, evaluate the performance of the call centre unit and recommend changes in business processes.

- b) **Website** – This unit would be the owner of the website of the tax administration and will be responsible for placing information in the public domain in a customer friendly manner. All information for a particular category of customer is to be made available at one place. The information should be in simple language that is comprehensible by the general public. It will be the responsibility of all wings of the department to provide customer related information to the content management cell of this unit. The tax administration should function on the principle *‘whatever does not exist on the website, does not exist’*. Being the most important channel for communication with customers, the content on the website should be continuously monitored and updated. For this propose, a robust content management policy should be put in place. The website should have separate areas for external customers, that is, taxpayers and the general public, and internal customers, i.e., officers and staff.
- c) **Content Cell** – A separate content cell should be located within the website unit, which would prepare inputs to be presented on the website. It will be responsible for preparing segment wise customer information. It will also act as a repository of information relating to amendments in laws, rules, circular, notification, etc. and will receive such information from various wings of the department on a continuous basis. The cell should also develop FAQs on specific topics and post these on the website. Additionally, this unit would be responsible for collecting information that is to be disseminated to internal customers. It will be a repository of information relating to instructions and circulars, as well as best practices, assessment orders, judicial decisions, etc. The information should be shared within the entire department through the website, which will have a specific segment designed for internal customers. The platform

could also be used for exchange of views on any tax related topic or issue. This would ensure that every staff member is updated with the latest knowledge on instructions, circulars, judicial decisions, etc. and will automatically bring uniformity in decisions taken by officers throughout the country. The platform could also be used for online learning through training modules in specific areas designed by the training wing. The training material should be made available on an LMS platform and users should be able to take any training module depending upon the requirements of their area of work. Such a system would help an officer in effectively discharging his responsibilities in any assignment as he can undergo training in his specific area of work.

- d) The **Social Media and E-Helpline** unit will be responsible for information and interaction-based communication with customers. It will function under the broad guidelines and policy made by the Technology Enablement Directorate under the DG (CP, P&PE). The social media page would be used to convey messages to customers as well as receive feedback from them. The unit will seek inputs from the content cell for posting on the social media page. It will also be responsible for assimilating customer response and feedback and providing inputs for designing FAQs, and for carrying out needs and feedback analysis.
- e) The **Enrolment and Tax Payment** unit will be primarily responsible for technology-based enrolment processes such as the allotment of PAN, TAN and other customer identification numbers, electronic payment of tax including advance tax, self-assessment and regular tax including maintenance of accounts of tax paid by the taxpayers, and payment of TDS/TCS, including allowing credit for taxes paid.
- f) The **Return Filing and Processing unit** would be responsible for electronic preparation and filing of tax returns. Making available pre-filled returns to the taxpayers could also be the responsibility of this unit. The policy and programme for these would, however, be made in the Technology Enablement Directorate. There may be a separate cell for processing of returns and related post-processing rectifications. Refunds and other related services could be carried out by this unit or by a separate unit.

### **Customer services in large business services**

We have recommended in Chapter III of this report that large business service (LBS), to be operated jointly by both the Boards. Customer services for large taxpayers covered by LBS would be delivered within the LBS through the customer relationship managers of the LBS. Customer relationship managers will maintain a close liaison with this vertical. The field structure being elaborated below is in respect on non-LBS segments.



### **Chief Commissioner (Customer Service Delivery - Field) (CC (CSDF))**

The Chief Commissioner (Customer Service Delivery Field) will be responsible for implementation of customer relations schemes and programmes, including delivery of customer services and grievance redressal, at the central level as well as the local level. This setup would have two verticals – one for delivery of services at the central level and the other for service delivery at the local level through the regional customer relations offices. Each vertical would be headed by a principal commissioner.

The **Principal Commissioner (Customer Service-Central) {PC(CS-C)}** will be responsible for running various customer service programmes at the central level like the tax return preparer scheme, communication with a particular customer segment like children and central government agencies, knowledge sharing initiatives that form part of internal communication (Let Us Share), etc. The Commissionerate may have the following units:

- a) The **Advertisement and Publicity unit** will be responsible for all publicity activities carried out at the central level. This would include advertisements through print and electronic media, including television, internet and mobile phones. The publicity would be carried out according to the annual plan laid down by the Communication Directorate. They may also make suggestions regarding the channels of communication, content of communication, etc. to the Communication Directorate for formulating the communication strategy.

At present, the departments face problems in releasing advertisements in the print and electronic media through the DAVP as the release orders by DAVP adhere to their internal media policy and do not fully take into consideration the requirements of the department. Thus, advertisements are often released in small newspapers having low circulation that are not read by the department's target audience. The process of release through DAVP does not give effective control to the departments in terms of the releases and instances occur when the release is not carried by a newspaper despite a release order by the DAVP to the concerned newspaper. Although the department does not make payment in such cases, an opportunity to reach out to stakeholders is lost, more so when an advertisement is intended to publicize a statutory due date. The Advertisement and Publicity unit, therefore, should be responsible for releasing advertisements to the media, for which it should be adequately staffed.

The unit should also act as a link between the customer communication centre in the regional CROs and the Communications Directorate at the central level. The advertising content prepared at the central level should be made available to regional centres to be publicized through various channels at the local level. It may also seek inputs from local offices about the coverage of centrally released advertisement campaigns at the local level. The central unit should also receive inputs and suggestions from the customer communication centre of regional CROs, and consolidate and provide these to the Communications Directorate for policy formulation.

- b) The **Media co-ordination unit** will be responsible for implementing the media policy at the central level. The unit should also act as a two-way link between the customer communication centre in the regional CROs and the Communications Directorate at the central level. The content of media briefs prepared at the central level should be made available to regional centres for distribution to the media to ensure adequate coverage at the local level. The unit may also seek inputs from local offices about media reports of national importance; these should be forwarded to the media division in the Communications Directorate to formulate a policy response. The central unit should also receive inputs and suggestions from local offices for the formulation of media policy.

The unit should be responsible for releasing media briefs on routine matters in accordance with the media policy. It should also be responsible for organizing media interaction with the Chairmen or Board Members of the two boards and other senior officers of the department at the central level on specific issues of importance. At the local level, media briefings on routine matters may be done by the media unit in the regional CRO. Information in respect of all media reports at the local level should be sent by the CRO to the central media co-ordination unit, which will be a repository of media reports at the local level. This may be used by the media division of the Communications Directorate for policy interventions and response.

- c) The **Education and Outreach Programmes unit** should primarily be responsible for organizing and participating in seminars and workshops for educating/interacting with customers at the central level. The programmes may include all contact-based initiatives that need to be designed and co-ordinated at the central level to ensure uniformity and standardization. For initiatives such as setting up help desks or temporary stalls or kiosks in fairs or residential areas to provide customer education or services, the central unit can develop a standard model that can be replicated by regional offices. The division should organize visits to various offices and organizations to educate existing and potential future customers. School visits to convey the importance of tax payment in nation building could be one such programme undertaken by this division for initiating a long-term relationship with future customers. Road shows and street plays could also be designed for conveying specific messages. These programmes can then be carried out at various locations in local languages through the respective CROs.

A separate printing and publication cell may be made in-charge of designing and printing of pamphlets, taxpayer information booklets, books etc. and disseminating these to field offices. The taxpayer education material as well as departmental publications should be designed at the central level to maintain uniformity. The unit will distribute the material to local CROs, which would then be responsible for translation of the same material in local languages. The taxpayer education materials should be readily available in sufficient numbers in all tax offices as well as in major public places such as airports, railway stations, etc.



- d) The **Internal Communication Division** shall be responsible for implementation of the branding and logo policy of the department at the central level. This would include designing of the departmental logo, official stationery, designing and display of mascot along with the vision, mission and citizen's charter prominently in all tax offices. The unit will also carry out co-ordination work and should be a link with other wings of the department for matters related to communication.

### **Principal Commissioner (Customer Service – Local)**

The local field setup for customer relations would be headed by Principal Commissioner (Customer Service – Local) {PC(CS-L)}. The PC (CS-L) shall, through the customer relations office support and evaluation units, supervise the functioning of customer relations offices (CROs) throughout the country. The CRO would be the primary unit of interface with customers for delivery of services and redressal of grievances. Two separate units, Service Delivery and Grievance Redressal (Co-ordination), and Customer Survey and Feedback, will also function under the PC (CS-L) and will carry out headquarter functions of this setup.

- a) **Service Delivery and Grievance Redressal (Co-ordination)** will be primarily responsible for consolidating information received from zonal evaluation offices regarding the performance of various field offices vis-à-vis delivery of services and redressal of grievance within the time lines provided in the citizen's charter. Based on inputs received from the zonal evaluation offices, the unit will provide inputs to the Citizen's Charter division in the Research, Analysis and Programme Evaluation Directorate for the preparation of a performance matrix for service delivery. The performance matrix should be updated by the Citizen's Charter division based on the results achieved and feedback received from customers and the survey results provided by customer survey and the feedback unit.

This unit will shall also be responsible for creating a system for time bound delivery of services to customers through software for managing and monitoring customer requests/applications (similar to the *Sevottam* software of the income tax department). It will provide support to customer contact centres of regional CROs, which should have a node for registering customer requests. MIS for disposal of customer applications and redressal of grievances will be generated by this unit at the central level. It will also be responsible for running a system for online tracking of requests/grievances by the customers.

- b) The **Customer Survey and Feedback unit** will primarily be responsible for obtaining customer feedback from various sources on a continuous basis. It will be responsible for designing customer feedback surveys to assess performance of various customer service schemes and initiatives. The feedback and survey response will be forwarded to the Feedback Analysis Division in the Directorate of Research, Analysis and Programme Evaluation which will then, based on the analysis of this feedback, make recommendations for improvement in

customer services as well as business processes. The unit will also receive feedback from the regional CROs and analyse them for improving customer experience in the CROs.

The survey unit will be responsible for designing and conducting periodic surveys to measure customer satisfaction in various areas such as customer enrolment, tax payment including TDS, return filing, audit (indirect tax)/survey/search, assessment/adjudication, dispute management/resolution, taxpayer education and grievance redressal. The surveys can be carried out centrally or through the regional customer relations offices.

The feedback unit will be responsible for ascertaining customer feedback from various sources. This may include design mechanisms to obtain feedback from customers following any interaction such as a visit to a tax office. It may also develop and monitor a PAN-based/online feedback mechanism just after availing of a service or visiting a tax office through automated touch screen kiosks placed at every customer relations office.

c) There will be four zonal units for **Customer Relations Office (CRO) - Support and Evaluation**.

Each unit will be responsible for providing support to the CRO within its zone as well as evaluating its performances for service delivery and redressal of grievances within the timelines provided in the citizen's charter. The requirement of CROs for support in terms of budget, infrastructure or manpower would be consolidated by the respective zonal units and forwarded to the Customer Relations Support Directorate.

The customer relation functions in the field formation are proposed to be discharged through a separate setup called the CRO. The CROs will be the points of contact of the tax administration with their customers and will be spread throughout the country. A typical CRO at the regional level will comprise customer contact, customer service and customer communication.

Customer contact centres will carry out the front office functions in the CRO. This will be the single point of contact between the tax administration and its customers. This centre will handle all customers and have the following sections:

- Customer assistance - will provide contact-based (face-to-face) assistance to customers through trained customer service agents. The agents will inform customers about their rights and obligations and assist them in making applications for various services. Separate agents may be placed for different taxpayer segments. If the staff of this division is not able to resolve the matter, the matter should be escalated to the concerned unit in the customer service centre.

- Service delivery grievance redressal – will be the window for receiving requests/applications for services as well as grievances (on the model of the present ASK centre in ITD). The requests received will be entered on the system and given a unique number through which the status of the request can be tracked online. The requests will then be classified into different categories and sent to the concerned section in the customer service centre for appropriate action within the specified timeline. The monitoring of delivery of services or redressal of grievances would be done by this section. The customer will also be provided the facility of online viewing of the status of his/her request/application.
- The customer survey, feedback and enrolment unit would be responsible for collecting feedback on customer satisfaction and performance of the CRO on an ongoing basis. Each CRO would be given a score based on customer feedback and the score will be an important parameter for evaluating of that CRO's performance. The section will be responsible for conducting surveys designed by the Customer Feedback and Survey Directorate of the central office. Bringing potential customers to the customer assistance section to get them registered and hence, expanding the customer base will also be the responsibility of the unit.

The customer service centre will be the main service providing section on the CRO and be responsible for the actual delivery of customer services or redressal of their grievances in a time bound manner. All service requests received from customers by the front office will be forwarded to the concerned units in this centre, which would have specific units for various services. The performance of the CRO would largely depend upon the efficient functioning of this section. Segmentation of customers into large, medium and small taxpayers may be done to provide focused services to customers. All aspects of tax administration in which an ordinary customer needs service such as registration, tax payment including TDS, return preparation and filing, return processing and refund payment, rectification and other miscellaneous services, must be dealt with by this section. This section should also be seamlessly connected to various customer service schemes run at the central level such as the e-filing portal, CPC etc. so that grievances related to those could also be handled by the agents at the customer service centre. It would be responsible for co-ordinating with the centralized customer service schemes for resolving grievances. Therefore, the customer should be able to receive all the services and redress all related grievances at this single point of contact with the tax administration. The customer assistance section of the front office may escalate a matter to the concerned section in the customer service centre if the matter could not be resolved at their level.

The customer communication centre will carry out the headquarter functions related to customer communication in the CRO. The centre will be the extended arm of the Directorate of Communication of the central office and the schemes and programmes of the directorate will be

carried out in the field through this office. This centre would carry out the following functions at the local level through separate section:

- Communication (advertisement and publicity), which will be responsible for carrying out publicity at the local level under the supervision of the central office
- Media co-ordination, which will be responsible for implementing the media policy at the local level and providing feedback to the central office
- Education and outreach programmes, which will be responsible for carrying out education and outreach programmes designed by the central office
- Internal communication and co-ordination, which will be responsible for ensuring branding and standardization at the local level as well as communicating with other wings of the department for supply of taxpayer education material and receiving inputs for communication strategy

### **Structure of CROs below the regional level**

The regional CRO would comprise all the three centres. However, at smaller stations, the CRO would comprise only the customer contact and the customer service centres. At very small stations, the CRO would only have the customer contact centre and all customer service functions would be carried out at the Charge CRO under which the Range CRO functions.

In the field, efforts should be made to set-up common front offices for both direct and indirect taxes so that taxpayer convenience is maximised.

### **II.7 Ingraining customer focus in the organisation**

The recommendations made above for a separate functional vertical for taxpayer services is mainly to ensure a structured approach and focus in delivery to the taxpayers with clear accountability. The creation of this vertical should not lead to the impression that it is the responsibility of this vertical alone to maintain customer focus. What needs to be emphasized is that the customer orientation must pervade the entire organisation and all actions, whether in policy or in operations, of the tax administration must reflect that. This is an important cultural attribute that the organisation leadership and people function, as discussed in Chapter IV of this report, must continuously reinforce.

## II.8 Recommendations

The Commission recommends that:

- i) There should be a dedicated organisation for delivery of taxpayer services with customer focus for each of the Boards. There should be an exclusive Member in each Board for the taxpayer services. The taxpayer services vertical under each Board would be headed by an officer of the rank of Principal Chief Commissioner, who would be responsible for delivery of taxpayer services. This implies dedicated resources and personnel for this vertical. (Section II.6.c)
- ii) Taxpayer service delivery will be located under one umbrella for large taxpayers, i.e., the CBDT and CBEC will jointly function for large taxpayers through Principal DG (LBS). For other taxpayers, i.e., medium and small, the operations of the CBDT and CBEC will continue in separate chains. (Section II.6.c)
- iii) Officers and staff at all levels of tax administration should be trained for customer orientation. Further for people posted in this vertical, the training in customer focus need to be more specialized and intensive. This training should be appropriate to the areas in which such officers are deployed such as customer relationship, measurement of customer satisfaction, taxpayer education, etc. (Section II.6.a)
- iv) In line with the international practice of spending 10-15 per cent of the administration's budget, a minimum of 10 per cent of the tax administration's budget must be spent on taxpayer services. At least 10 per cent of the budget for tax administration should be allocated and spent for ICT-based taxpayer services. (Section II.6.a)
- v) Sufficient funds must be allocated to conduct customer research including, in particular, on customer surveys. (Section II.6.b)
- vi) In redressing taxpayer grievances, the decision of the Ombudsman should be binding on tax officers. To bring independence and effectiveness to the office of the Ombudsman, non-government professionals should also be inducted in the post. (Section II.6.b)
- vii) Pre-filled tax returns should be provided to all individuals. The taxpayer will have the option to accept the tax return as it is or modify it. In either event, the filing process would be completed with the submission of the tax return electronically. (Section II.6.b)
- viii) There is an urgent need to revisit the present citizen's charter to make it more meaningful and customer focused. The citizen's charter should be renamed the taxpayer's charter to focus on all categories of taxpayers. (Section II.6.c)

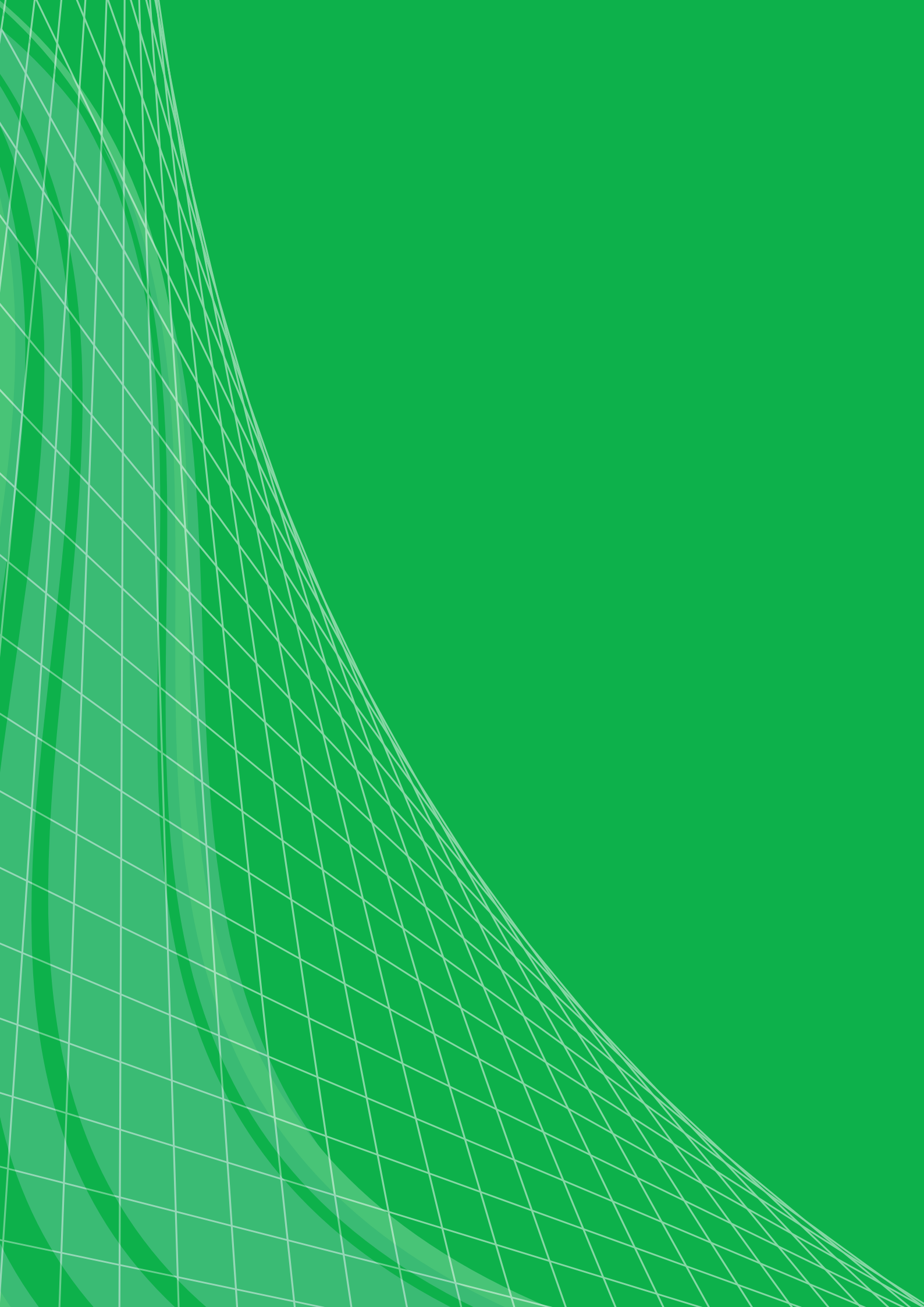
- ix) There should be a regular stakeholder consultations on the issues of tax disagreements and tax law changes. The Commission recommends a permanent body for stakeholder engagement. The recent experience of the Forum through which many issues were resolved between stakeholders and the tax departments should become a continuing activity. (Section II.6.b)
- x) There should be a system for online tracking of *dak*/grievances/applications for refund etc. It should be made mandatory to receive all *dak* through a central system generating a unique ID. The ASK software implemented by CBDT provides such a mechanism in a limited manner. This needs to be extended to all offices. The functionality to enable the taxpayer to track the status of his application/grievance online should be added to the ASK system. Similar system for online receipt of application should be enabled on the indirect tax side. (Section II.6.c)
- xi) Continuous benchmarking of the tax administration, particularly in relation to delivery of taxpayer services, with that of other tax administrations should be done to highlight the area of focus. (Section II.6.c)



# **CHAPTER II**

## **STRUCTURE AND GOVERNANCE**







# Chapter III

## Structure and Governance

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# Chapter III

## Structure and Governance

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### III.1 Existing organizational structure

The Union List and the Concurrent List of the Seventh Schedule of the Constitution of India allow the central government to levy, collect and administer direct and indirect taxes. At present, direct taxes constitute roughly 54.4 per cent and indirect taxes constitute 44.8 per cent of the gross tax revenues of the central government.<sup>14</sup> The Central Board of Direct Taxes (CBDT) and Central Board of Excise and Customs (CBEC) have been set up as apex bodies to administer the levy and collection of taxes under the respective statutes. Each of the two is headed by a Chairperson with six members. The two Boards report to the finance minister through the revenue secretary. The powers and functions of the Boards emanate from the Central Board of Revenue Act, 1963, as well as from the Government of India (Allocation of Business) Rules, 1961.

The administrative set up of the two Boards has been the subject matter of wide comments/critique by various committees from time to time (see below). Unlike other statutory boards like the Postal Board and Railway Board, the CBDT or CBEC has not been declared a separate department. Under the present arrangement, the CBDT and CBEC are part of the Department of Revenue (DoR), even though it is neither its department nor its attached or subordinate office, nor an autonomous organization or a public sector undertaking. According to the Government of India (Allocation of Business) Rules, the role of the DoR is restricted only to dealing with matters concerning the CBDT or CBEC. However, it has no powers to exercise any supervision or control over CBDT or CBEC or any of its attached offices. Similarly, the DoR has no power to administer direct or indirect tax and its functions in respect of these acts are restricted to replying to questions thereof to the Parliament. The DoR has also no role in the administration of the Indian Revenue Service, income tax (I-T) or customs and central excise (C&CE). The power to issue instructions to the I-T authorities rests statutorily with the CBDT, and, in the case of indirect taxes, with the CBEC.

The I-T department, and the C&CE and service tax departments are the field functionaries below the CBDT and CBEC, respectively. The field functions are headed by Chief Commissioners. The core function in the field set-ups is assessment and recovery of taxes. Appeal is another area of importance. In direct taxes, the field functions are primarily territorial but there is tax type segmentation also, particularly in big cities, the typical segmentation being between corporate and other taxpayers. Salary cases are also dealt with separately in many places. In indirect taxes, the three taxes – customs, central excise and service tax – are administered separately.

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<sup>14</sup> Based on Receipts Budget, 2014-15

The two Boards are separately supported by various directorates in their policy work. These directorates work as attached offices of the Boards, and carry out operational functions, support functions and monitoring functions. There are also some variations in the work assigned to these attached directorates between the two Boards. The detailed structure of the field functions, as well as of the directorates of the two Boards, is given in Appendix III.1.

Although the two Boards and the respective departments under them have developed different structures and procedures, a commonality of approach is seen in functions, such as external publicity, computerization or systems, human resource management, logistics, etc. These functions are delivered through attached directorates in both Boards. A comparison between the CBDT and the CBEC is given in Appendix III.2.

Recently, both Boards carried out cadre restructuring. These restructuring exercises were in terms of creating some more posts and levels, partly in view of the enhanced work load and partly to increase the effectiveness of the tax administration. CBDT created 20,751 additional posts; assessment units (AUs) were increased from 3,420 to 4,500, increasing the assessment commissionerates from 228 to 250. Through the restructuring, it was also decided to strengthen the international tax, investigation, and TDS functions and create a separate Directorate for Risk Management. CBEC also created 18,067 additional posts, to create 45 exclusive audit commissionerates and increase service tax commissionerates from 7 to 22. Central excise commissionerates were also increased from 93 to 119 and customs/customs (P) commissionerates from 35 to 60. Appendix III.3 gives the sanctioned strength at various levels, before and after the cadre-restructuring, in the I-T department as well as in CBEC field functions.

While the two Boards and respective departments under them have broadly similar structures and processes for their governance, they work independently of each other. There is almost no synergy between them either in data sharing or carrying out key functions where such synergy would result in value to the departments as well as taxpayers. A common approach and joint working in many areas, such as ICT, infrastructure, analysis, and large taxpayer units could eliminate duplication and result in better value for the investments put in. Co-ordinated efforts in enforcement and audit would certainly result in a much better detection rate and suppression of non-compliance. A similar approach in the domain of taxpayer services would also result in greater customer focus, convenience to the taxpayer, and lower compliance cost. One such step to enhance sharing of data and building a common framework for delivery to taxpayers was taken by setting up Large Taxpayer Units (LTUs). But that has so far not been able to bring any synergy between the two departments even at the level of LTUs. The direct tax and indirect tax departments in the same physical infrastructure of LTUs continue to work in separate channels. There is no data sharing or joint scrutiny. Thus, the basic objective of setting up LTUs has been defeated and the desired change has not been achieved. The primary focus of reform in the administrative structure recommended by TARC begins with the LTUs.

### III.2 Global best practices

There has been a wide movement over the past two decades across the world for reform of tax administrations, motivated by the desire to enhance their efficiencies and effectiveness. This has been part of a wider sweep of administrative reforms undertaken by governments in response to demands from their constituencies, which now have access to extensive and deeper information not only from their own governments but also from governments elsewhere. Therefore, taxpayers demand better and more economical and effective tax services. With increased emphasis on self-assessment as the preferred mode of tax governance, there has been renewed focus on the modernization of tax administrations, in particular, on greater customer orientation and the use of ICT to carry out functions and processes.

Historically, most tax administrations, including India's, have worked as traditional government departments. But increasingly, the trend is towards higher autonomy as it is now widely admitted that tax administrations require specialized skills to implement tax laws, and to design and implement operational policy to deliver taxpayer services more effectively and at a lower cost. Traditional structures and procedures have come to be viewed as too rigid to respond to the rapidly changing needs of taxpayers and the challenges faced by tax administrations in a modern environment. There is growing recognition that, given the range and nature of tax laws to be administered and the large numbers of taxpayers to be serviced, tax administrations require adequate powers and autonomy to perform in an efficient and effective manner. At the same time, since tax collection is a sovereign function, it is also recognized that tax administrations need to operate in a fair and impartial manner, and be subject to a range of checks and balances of parliamentary or legislative control to ensure transparency in their operations and proper accountability for the overall management of the tax system. These characteristics transform the manner of functioning from a typical government department to that of a semi-autonomous or fully autonomous agency, *i.e.*, having a certain degree of freedom to work within an overall framework that defines clear obligations to achieve the stated vision, mission and objectives under a stable legal framework provided by the legislature. This trend has been observed globally in several countries. The tax administration would then have its own structure and powers for effective and efficient operations, adequate resources to carry out tasks within an accountability framework for its operations; the framework, nevertheless, is subject to its control and self-assessment in the form of key performance indicators.

While the above framework runs across the various forms of tax administrations from government department to semi-autonomous agency to a fully autonomous agency, the difference is largely in the degree of control in terms of finance, recruitment and the accountability structure. Increased autonomy could diminish administrative and corporate governance problems, including organizational inefficiencies, and deliver fairer and more effective services to the public. Increased autonomy is often a response to inadequate central government systems for human resources, expenditure management, and general administration, which could result in poor revenue

performance, low rates of compliance, ineffective staff, and corruption. It has been argued that an autonomous tax administration can lead to improvements, including better accountability for results, synergies in administration, and management based on professional skills and isolated from external constraints.

The OECD reports a fairly divergent set of institutional arrangements in terms of autonomy for tax administrations.<sup>15</sup> Increased autonomy is often to ensure better accountability to the government and the citizens they serve. The divergence in arrangements is largely due to underlying differences in the political structures and systems of public sector administration as well as long-standing historical practice. The report states that overall flexibility or autonomy has been fully achieved in 16 out of 52 advanced and emerging economies surveyed. Although these tax administrations have designed their own internal organizational structure, staff remuneration was found to be tied to wider public sector pay scales. Appendix III.4 provides an insight into the range and nature of powers that have been delegated to revenue bodies.

The OECD report also states that 31 out of the 52 surveyed countries have unified their tax administrations into revenue bodies that manage both direct and indirect taxes – separating, in some cases, customs administration from the tax bodies. The motivation has largely been to improve efficiencies by reducing costs and to attain greater synergies, considering that taxpayers for income tax, excise and VAT/GST are often the same. In 11 countries, a formal management/advisory board comprising external representatives has been established as part of the overall governance framework.

Broadly reforms have moved along two main axes – (a) revamping institutional mechanisms for governance and (b) reorganizing the machinery for tax administration.

On the first aspect, as noted above, there have been initiatives in many tax administrations to create institutional mechanisms for governance to provide greater autonomy coupled with a sharper focus on outcomes, accountability, transparency and a greater voice for stakeholders.

This has led to the creation of autonomous/semi-autonomous agencies to manage the business of tax administration. In many cases, a high level institution such as a board or council with representation of key stakeholders is interposed between the tax administration and the finance ministry. Such councils have advisory and oversight responsibilities over the administration. They vet or approve the broad strategic plans of the administration, the setting of priorities and broad organizational performance targets. They also monitor and evaluate the outcomes of the administration's activities and operations.

Such governance structures and practices have the advantage of providing operational freedom while being accountable for the delivery of agreed outcomes. They are characterized by a high

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<sup>15</sup> Tax Administration - comparative information on OECD and other advanced and emerging economies, 2013, OECD

degree of separation of policy from administration. The tax administration also gains by obtaining overall guidance from the council and a degree of insulation from political pressures.

The other axis of reform addresses the organizational structures and processes for tax governance focused on outcomes, with a strong emphasis on improvements in the efficiency and effectiveness of operations. They have moved from tax-type organizational structures to staff being organized along functional groupings. This approach permits better management of and better outcomes from core functions and greater consistency and coherence in the administration's interface with taxpayers. It has permitted better standardization and greater operational efficiency leading to improved organizational performance and productivity. A key driver of such structural reform is the rapid growth of ICT, which is being extensively deployed, enabling radically different ways of doing business and liberating users from the constraints of time and geography. Alongside functional restructuring, the approach also segments taxpayers in order to better target administration policies, services and compliance management activities in reflection of taxpayer needs and behaviours. The OECD survey indicates that 49 out of the 52 surveyed countries had "function" as a key element in their organizational structure.

### III.3 Gap

In 2014, India has been ranked 152 out of 185 countries on ease of "paying taxes" in the World Bank's "Doing Business" indicators. This is a stark indication of the gap between where we are and where we ought to be. The big question is how the tax administration can be transformed to radically improve the ranking if India is to emerge even among the top 50, with a view to improving its ranking steadily thereafter.

To answer this question, we need to assess ourselves against global best practices. A tax administration should define its own objectives and performance horizon within an agreed framework. It should also carry the full responsibility of formulating its own strategies and operational plans so that it can respond rapidly to the changing circumstances resulting from increasing globalization represented by emerging business arrangements and the corresponding needs of the tax administration.

Some of the traditional views or structures need reorientation and change. The preoccupation of "how" to administer has to yield to "why" and "for what". It is for these reasons that modernizing a tax administration changes the existing organizational structure to fit the needs of the time, reorganizing its activities in an effective and efficient way. This could include decisions on the number, size and geographical location of tax offices. Functional autonomy also includes autonomy to design policy on human and material resources, personnel recruitment, their training/development programmes, remuneration of staff (including an incentives policy) and, last but not least, evaluating staff performance.



In literature, the practice of establishing a tax administration removed from the formal internal structure of the ministry of finance and with a broad range of autonomous powers, mirrors a broader development in public sector administration that is described as the “executive agency” model and, in the context of tax administration, it is generally referred to as the “revenue authority model”. To repeat, the rationale for this model relates primarily to the effectiveness and efficiency that an autonomous organization can bring to managing its affairs in a business-like manner, free of political interference and freed from the constraints of the prevailing civil service system.

Unlike the main trend in OECD surveyed countries, the Indian tax administration continues to function in a traditional framework. The two Boards, though statutory, are a part of the DoR in the Ministry of Finance, as mentioned above. The organization of the Boards is largely by the tax-type. In their working, they are subject to the usual governmental procedures of administration, finance and personnel management, including governmental processes in terms of recruitment and financial management. Neither of the tax administrations, the CBDT or the CBEC, has any autonomy, either functional or financial. In fact, they have no financial powers, and are often subject to the general scrutiny and economy instructions applicable to other parts of government. This has impeded the work of the Boards in the context of laying down a structure for customer services and in bringing information technology as a base for tax administration with speed. There have been instances where the tax administration has been subjected to economy instructions, which imposed a ban or near ban on recruitment even when the economy, and trade and investment, were expanding. This created a shortage of manpower and a resource constraint.

The overall mind-set of the staff is administrative – with an emphasis on risk adverse adherence to procedures and rules of business with little attention to outcomes. A large amount of energy and time tends to get consumed in obtaining necessary approvals and sanctions for changing/restructuring of the Board’s functioning as well as that of the field formations, training and implementation of ICT projects etc. This inhibits the ability to respond quickly to emerging needs and challenges. Lack of specific accountability in the operational business model appears to be the main cause of lack of visible positive outcomes. Other main shortcomings in the Indian tax administration are:

- There is inadequate customer focus and a lack of concentrated attention to reducing compliance costs or enhancing the ease of compliance for taxpayers. Even though the stated policy of both the Boards is to promote voluntary compliance, customer services do not receive the effort and attention that is required. Nor does customer focus permeate the spectrum of activities, as is evident from the field and from the overall training and approach to work.
- The traditional civil services structure also means that there are barriers to enhancing professional expertise in areas where such expertise is required.



- The two Boards largely work in silos with no co-ordination between them. In that respect, a huge potential for synergy, both from customer services and enforcement perspectives, lies untapped.
- There is lack of a robust performance management framework. The performance of the tax administration is judged largely by the Board's achieving assigned revenue targets, while other dimensions of performance receive inadequate weightage.
- Against the dominant global trend, the organization of the administration continues to be by tax type and geographical, rather than functional. Thus, there is insufficient consistency in the quality of services, lack of ensured and supervised focus on key common areas, and inadequate monitoring of results other than the revenue target.

Several tax administrations are undergoing major organizational reform to achieve improved outcomes, in particular in areas such as increasing application of customer segmentation approaches (including large taxpayer units), bringing separate verticals for more focused delivery and on expanding the ICT base. It is time the direct and indirect tax administrations in India follow international best practices and the two Boards in India are given more autonomy so that they become at least semi-autonomous.

#### **III.4 Desired Governance Structure**

Globally, tax governance is now based on the principle of self-assessment, and promotion of voluntary compliance is the keystone of tax administrations' strategy. It is so in India as well. Both the CBEC and CBDT have adopted self-assessment and promotion of voluntary compliance as a key element in their strategies. Self-assessment implies a fundamental shift in the relationship between the state and the taxpayer. It implies a tacit compact based on trust in each other and shared responsibility for ensuring compliance with the country's tax laws. In very broad terms, the responsibility of the taxpayer is to exercise diligence in the payment of taxes correctly and that of the tax administration is to create conditions in which the taxpayer is enabled to do so, build the confidence that his rights are protected and apply sanctions effectively where the trust is broken by the taxpayer by violating the law. The shared responsibility is an inevitable consequence of the complexity and scale of challenges faced by the tax administration, which cannot be met by a purely sanctions based regime. There is also a moral dimension to this. Taxation is an important element in the relationship between citizens and the state and a relationship based on a common set of values certainly serves a larger social purpose. Many tax administrations are building trust-based systems as part of their strategic policy framework in the belief that the most productive way to achieve genuine acceptance of, and adherence to, regulations is not by exclusive reliance upon sanctions and legal coercion but through strategies that appeal to a citizen's law abiding self.

### III.4.a Enhanced customer experience

The primary goal of a tax administration ought not to be to meet merely revenue targets but to maximize compliance and reduce/minimize the tax gap. All good tax administrations build their compliance strategies on the foundation of sound risk management and around the promotion of voluntary compliance. At a high level, this means that the object of the strategy is to move the environment towards the compliant end of the compliance spectrum. This is achieved through a mix of appropriate strategies and tactics aimed at different segments of taxpayers in order to induce compliance. For taxpayers inclined towards compliance, the effective tools will lie in the domain of taxpayer services and taxpayer assistance. For taxpayers disinclined towards compliance, such as those who make evasion a part of their business strategy, the response will have to be effective enforcement and deterrence. Underpinning all this is effective communication that makes compliance easy and user friendly and manages to create a credible perception that it pays to comply and does not pay to evade. Success in dealing with such challenges requires the creation and sustenance of specialized technological and human capacities and suitable structures and processes to deploy them effectively.

Simply put, at the root of reform of the tax administration lies the transformation of the taxpayer experience.

For self-assessment and voluntary compliance to give the desired outcomes, the structures and processes of governance have to be founded on some key principles and values. These can be summed up as follows:

- Simplicity, clarity and ease of compliance – Laws must be simple and clear so that the taxpayers should be able to understand and know their rights and responsibilities
- Consistency in application – Laws must be applied consistently across the tax administration and their interpretation should be consistent with legislative intent
- Fairness, reasonableness, judiciousness and transparency – The taxpayer should perceive that the administration acts fairly and judiciously and respects taxpayers' rights and that transparency and openness informs all the actions of the administration
- Trust-based approach, enablement and empowerment – The administration's approach is based on trust and focused on enabling, clarifying and helping the taxpayer to comply with his obligations. It should seek to reduce complexity and enhance simplicity.
- Customer focus – Taxpayers' interests and concerns should be central to the efforts of the administration and they should have a voice in the design of policies and processes. The overall objective should be to enhance taxpayer convenience and reduce taxpayer costs. The process of interaction with the administration should be simple and convenient.

- Integrity, courtesy and professionalism – The administration must ensure that employees act with integrity and possess the required professional knowledge, skills and competencies for their functions
- Accountability – The tax administration must be accountable to people. The accountability framework should travel beyond the traditional financial accountability to the parliament and should encompass accountability at the organizational as well as employee level.

Further, in terms of processes, the following broad principles can be regarded as best practices in good governance:

- Consistency –
  - Functioning should be driven by clear standard operating procedures (SOPs) binding on officers, in the form of manuals which are regularly updated.
  - ICT should be used for sharing, collaboration and provision of guidance to officers to ensure that for given situations, the organizational responses are consistent across offices.
- Transparency –
  - All information relevant to the taxpayer should be in the public domain and the information asymmetry between the tax administration and the taxpayer should be minimized. The same compliance related information, such as manuals, instructions etc., should be available to both taxpayers and administrators.
  - Adoption of the principle “whatever is not on the website does not exist” – regulations, instructions, manuals etc., should not be effective until these are published on the website.
  - The objectives, purpose and goals of every policy initiative and legislation/regulation should invariably be clarified. And this should be a part of the document itself.
  - There should be a quality check for clarity and simplicity and user friendliness. Plain language should be preferred.
- Consultation –
  - There should be a consultative process in the development of SOPs, changes in processes or new processes, which should include stakeholder consultation.
  - The process should be transparent and inputs from customers/officers should be suitably published on the website.
- Certainty and stability –
  - Barring crises or exceptional situations, changes should be effective from a future date that gives time for preparation.

- Retrospective amendments in tax laws should be avoided as a principle.
- There should be regular updating of manuals and instructions based on judicial/legal changes etc. They should in any event require review at prescribed intervals. One way to ensure this is to mandate sunset clauses that force such reviews.

Traditional tax administrations are driven primarily by the revenue maximization motive. However, if the tax administration is to be customer focused and based on self-assessment and voluntary compliance, it must adopt other goals and performance measures that promote the achievement of multiple goals. Revenue, it must be realized, is an outcome of correct actions and cannot be the goal itself. The focus of attention, therefore, must shift to strategies and actions that promote sustained growth of revenue. Such objectives can be measures to reduce the tax gap, increase customer satisfaction (which in turn enhances voluntary compliance), minimize disputes and provide faster resolution of disputes, reduce transaction costs as well as administrative costs, etc. To attain these objectives, the administration has to focus on achieving greater integration of people, process and technology and its internal and external environment. It must strive, by effective use of technology and human skills, to get smarter in serving its customers as well as in enforcing compliance.

Performance management and accountability frameworks must be built around such indices for effective and efficient revenue administration.

For the tax administration to be able to do so, it needs the requisite degree of autonomy, which is not usually available in traditional government structures. Naturally, as a concomitant to such autonomy, it must bind itself to accountability in terms of outcomes that the government and other stakeholders expect from the tax administration. It necessitates that a more broad-based governance with the interests of external stakeholders also adequately represented.

Another dimension is people. Currently, all tasks in the administration are carried out by career IRS officers. This is fully consistent with the general administrative structure of the government in which the management of the various departments is entrusted to career civil servants and the higher layers of the civil services comprise either the All-India Services or the Group 'A' Central Civil Services like the IRS. Although the latter are constituted for specialist functions, their career paths, culture and attitudes, and HR policies are largely governed by considerations that are valid for a generalist administrative service. In many ways, a modern tax administration demands a unique set of skills, which normally do not reside in the civil service structure. These have to be nurtured and on occasion acquired from outside. Hence, the organization needs greater freedom to develop and operate HR policies congruent with its requirements. It also needs to reorient its policies to promote the growth of specialization and professionalism. Chapter IV of the report discusses HR issues in detail.

### III.4.b Synergy between direct taxes and indirect taxes

An important consideration in the governance of tax administrations in India is the achievement of a much higher level of synergy between direct and indirect taxes. This is driven by two important considerations. A common database between them will lead to great gains both in terms of enforcement and taxpayer services. It is often the same taxpayer who has to deal with direct taxes and indirect taxes separately. Despite large commonalities in key structures and functions between the two Boards, there are a number of differences that seem to exist largely because they operate separately and in silos. There is an almost complete absence of synergy between them whether in the matter of sharing data or resources or in the matter of doing things jointly to achieve greater efficiencies. Due to their silo functioning, each Board gets a fragmented view of the taxpayer. From the compliant taxpayer's perspective, therefore, enhanced integration between the CBEC and CBDT would result in a more harmonious and convenient taxpayer experience. At the same time, greater sharing of information between them would reduce opportunities for fraud. An important element of reform in many countries has been the unification of tax administration to provide integrated management for both direct and indirect taxes. Although that may not be achievable in India immediately considering the sheer size and complexity of the two organizations, it is desirable that in key dimensions of governance, policy making and operations, a much higher degree of integration is achieved between the CBDT and CBEC at the earliest and a roadmap is laid down for achieving complete integration.

One effort that was made to achieve a greater degree of integration was to set up LTUs to promote sharing of data and to build a common framework for delivery of services to taxpayers. However, that experience has been far from satisfactory. The two departments continue to operate in silos and there is little sharing of data. The taxpayer experience has also not been uniformly satisfactory as evidenced by the unwillingness of a large number of eligible taxpayers to opt in and the desire of some of the LTU clients to move out. Overall, there is little evidence to suggest that there has been realization of the potential benefits of the LTUs either for the tax administrations or for the taxpayers. Apart from some convenient facilities on the indirect tax side, little has been achieved beyond co-location of the two departments under the same roof. The current model of LTUs, therefore, has failed to deliver the intended results.

This is a pity, for LTUs have the potential to incubate the eventual integration of the tax administrations that is so clearly desirable. TARC believes that with proper design, this potential can still be realized.

There are two main factors that affect their working currently. The first is the continued operation of the two administrations in silos even inside LTUs, and the second is the fact that the regime is optional for taxpayers. The former prevents a "whole of taxpayer focus" while the latter prevents a level playing field among similarly placed taxpayers. Internationally, separate handling of large taxpayers is primarily a matter of taxpayer segmentation and is driven by the uniqueness and

dimensions of their compliance risks and the complexity of their operations. It is not a matter of choice for the taxpayer whether he wishes to be covered by the large taxpayer operation.

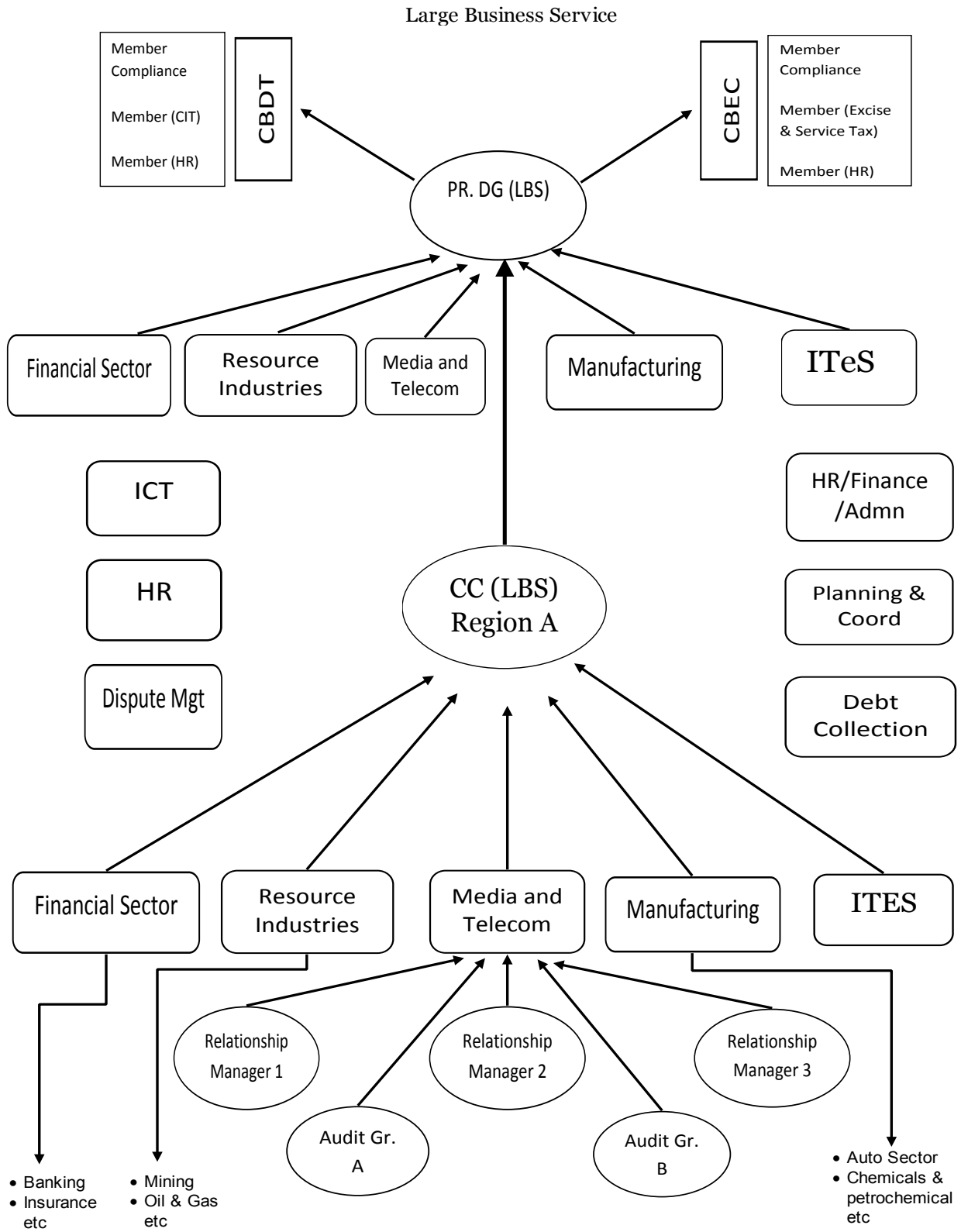
If these two factors are addressed and suitable structures and processes put in place to ensure a “whole taxpayer view” across direct and indirect taxes, TARC is of the view that the first major step would be taken in the direction of integration, which will pave the way for much greater synergy. To promote joint working between the two Boards in the large taxpayer operations, we believe that the current regime of LTUs needs to be transformed into a large business service as given in Diagram 3.1 below.

To bring synergy between direct and indirect taxes, services and operations need to be handled by joint teams of officers from the two administrations so that the clients are handled on the basis of an account management concept. Each client would have a relationship manager (RM) with adequate support from direct and indirect tax specialists. He would be the single point of contact and would interface with internal divisions of the LBS for attend to customer needs. The RM will also supervise compliance and service teams; the audit teams could be separate, although their interface with the taxpayer would be through the RM. The choice of RM should be made carefully, having regard to subject matter expertise, broad cross tax knowledge and inter-personal skills.

All core functions of LBS, namely, taxpayer services, compliance verification, dispute management, recovery and tax debt collection should be managed within this service. Audits should also be jointly conducted by multidisciplinary audit teams. Segmentation can be made only for different businesses, such as financial sector, resource industries, media and telecom, manufacturing, ITeS, etc. and not on the basis of taxes. Such synergy would usher in better tax governance.

The reasons why we began the discussion on synergy in functions with LBS was that this was an area that had been initiated as a pilot case for co-operation between the two departments. Our conclusion is this area remains the critical area in which not only co-operation, but actual functioning, have to be integrated by the two departments.

Diagram 3.1: Large Business Service



The structure of LBS referred to in Diagram 3.1 is discussed later in this chapter. What we are recommending goes far beyond that. We are proposing convergence of the management of the two tax administrations while keeping the two revenue services on parallel tracks for some time to come. How the management is to be converged is described next.

### III.4.c High Level Governance

As noted earlier, as tax administrations move to acquire greater autonomy and independence from governmental structures, often as a concomitant to delegation, a high level body in the form of a board or council is interposed between the administration and the ministry of finance. Such bodies commonly have the mandate for oversight of the administration, providing it guidance and advice and approving its strategic priorities and plans. Key stakeholder interests, such as the government, industry, and taxpayers are represented in the composition of these bodies. Such boards/councils, however, do not deal with the day-to-day operational aspects of the administration so that it is not accountable for such matters to the ministry of finance.

We have given the reasons why India needs to close the gap with international practices and provide greater autonomy to the two Boards. Concomitantly, there is a need to provide a proper accountability and governance framework. This should be in the form of a Governing Council above the Boards and an independent evaluation office reporting directly to the council. These are discussed below.

#### **Governing Council**

A Governing Council should be set up at the apex level to oversee the functioning of the two Boards. Broadly, its mandate would include the following:

- Approving the broad strategies to be adopted. This will include vision, mission and strategic plans and annual action plans that reflect organizational priorities and the risk management framework.
- Approving major projects and programmes.
- Approving performance management frameworks and strategic performance goals.
- Reviewing the performance of the tax administration in key areas including taxpayer services, dispute resolution and tax collections and accordingly, providing guidance and advice.
- Advising the administration on emerging areas of challenge and opportunity.
- Publishing the results of performance reviews through the independent evaluation office.



The composition of the council shall be as follows:

- **Chairman:** The Chairman would be the Chairperson CBEC/CBDT at the rank of secretary, and not special secretary. The post may rotate between the two for alternate terms of 3 years each.
- **Members**
  - Chief Economic Advisor of the Ministry of Finance (MoF).
  - 3 members each from the CBEC and CBDT – to be functionally determined
  - Nominee of the Finance Secretary of the rank of Additional Secretary
  - Chief Economist of the tax department(s).
  - 1 management/customer service specialist
  - 1 external public finance specialist/fiscal economist

The council should have the power to invite specialists as it may consider appropriate for its deliberations. It can be assisted by executive committees comprising representatives of the two Boards and invited experts in specific areas such as ICT, infrastructure, HR, finance, or others.

The council should meet as often as necessary but should meet at least six times a year.

The terms of the external members of the council could be similar to those of independent directors on company boards.

The council should be serviced by an independent evaluation office which will provide it secretariat support.

The recommendations of the council, where government's approval is necessary, can be submitted by the Chairperson of the concerned Board to the Finance Minister. Where matters need the approval of the cabinet, the required processes shall be handled by the concerned Board.

The council can also be an effective forum for obtaining the views of trade and industry. Currently, consultation with industry is through mechanisms such as trade facilitation committees, central and regional tax advisory committees, etc. The issues they deal with largely concern the day-to-day working of the tax administration.

The government had also set up Tax Forum for resolution of issues on which there were disputes. The Tax Forum provided an opportunity to industry associations and chambers to explain their stand on tax matters. The exercise was found to be mutually beneficial, and a number of instructions and circulars were the outcome of that exercise. Chapter II of this report elaborates on that.

Keeping in view the usefulness of these committees and the Tax Forum for stakeholder's engagement, it would be appropriate that the Central Tax Advisory Committees as well as the regional committees continue to meet, though more often. The Tax Forum, so far working under the Advisor to the Finance Minister, can meet under the chairman of the Governing Council and the chairman of the other Board, along with the officers of the two Boards who are connected with the issues being taken up in the Tax Forum meetings. The Tax Forum can meet at least twice a month.

### **Independent Evaluation Office**

The present framework of accountability in the government is based on ministerial accountability to Parliament and the scrutiny of departments by the Comptroller and Auditor General of India (CAG), who reports to the Public Accounts Committee (PAC) of Parliament. While this is a crucial pillar of democratic governance to ensure correct administrative and interpretative actions on law and revenue, another mechanism for evaluating the performance of the tax administration against its stated goals and objective is needed. Such a mechanism is needed to monitor the performance of the tax administration, promote accountability and evaluate the impact of policy. For those purposes, an independent evaluation office (IEO) should be instituted. The IEO will report to the Governing Council and through it, to the Finance Minister and to people at large.

Evaluation provides a basis for accountability by assessing the factors that affect the tax administration's ability to reduce the tax gap and improve voluntary compliance or to achieve the objectives of Vision 2020 of the CBDT and the Vision and Mission of the CBEC. It is expected to bring out the truth about successes and shortcomings, i.e., "to tell it the way it is". This feedback can help the tax administration to improve its performance, and bring accountability. If followed through, this can also deepen the tax administration's engagement with its stakeholders. The tax administration can then assess its policies and programmes to develop better instruments and policies to achieve its objectives. Thus, in a nutshell, the role of the IEO is to be the evaluator and conscience keeper of the tax administration for its various responsibilities and duties in matters of both tax administration and tax policy.

Many tax administrations have similar IEOs. The US IRS has an IRS Oversight Board, created as part of the IRS reforms in 1998. It was designed to allow the IRS to better serve the public and meet the needs of taxpayers. The IRS Oversight Board is a nine-member independent body, charged to oversee the IRS in its administration, management, conduct, direction, and supervision of the execution and application of internal revenue laws and to provide experience, independence, and stability to the IRS so that it may move forward in a cogent, focused direction.

A similar body was created in 2003 in the Australian Tax office, the Office of the Inspector General of Taxation. It was established as an independent statutory office to review systematic tax administration issues and to report to the government, in the interests of taxpayers, on recommendations that would improve the fairness, efficiency and integrity of the tax system. The

office identifies topics of taxpayer concerns, and presents its critical review with a focus on improving its working on a continuous and regular basis. The Inspector-General's reports to government are required to be made public. The role of the Inspector General is not to review the tax policy, and is only on matters of tax administration. What we are recommending, however, is to include the review of tax policy impact as one of the responsibilities of the IEO.

The Table in Appendix III.5 lists a selection of performance indicators employed by representative tax administrations. The key performance indicators compared here are: registration and filing, taxpayer services and education, returns processing and payments, arrears collection, audit and investigations, appeals, organizational goals, and personnel goals. As may be seen from the Table, different tax administrations employ different measurement indicators for common performance indicators, and understandably so. The basic objective criteria remain the same though there is some difference in detail.

The Prime Minister approved the outline of a "Performance Monitoring and Evaluation System (PMES) for Government Departments".<sup>16</sup> Under PMES, each department is required to prepare a results-framework document (RFD). An RFD provides a summary of the most important results that a department/ministry expects to achieve during the financial year. This document has two main purposes: (a) move the focus of the department from process-orientation to result-orientation, and (b) provide an objective and fair basis to evaluate a department's overall performance at the end of the year. The RFD seeks to address three basic questions:

- a) What are a ministry/department's main objectives for the year?
- b) What actions are proposed by the department to achieve these objectives?
- c) How would someone know at the end of the year the degree of progress made in implementing these actions?

In short, what are the relevant success indicators and their targets, which can be monitored?

Both Boards have been following this process. However, owing to two principal factors, there are severe limitations to the effectiveness of monitoring through this process. First, the focus is largely internal and the areas chosen, such as tax collection, compliance and enforcement, human resource and capacity building, are not those which are important from the taxpayers' point of view; as such they do not reflect outcomes that are relevant for taxpayers. Secondly, the scope has not been fully extended to field formations where the bulk of the interface exists. Nevertheless, it does furnish a framework that could be adopted and upgraded by the IEO.

Setting up an IEO has to be beyond the concept of goal setting and monitoring achievement towards those goals. In the tax administration, it may not be sufficient to say that a number of

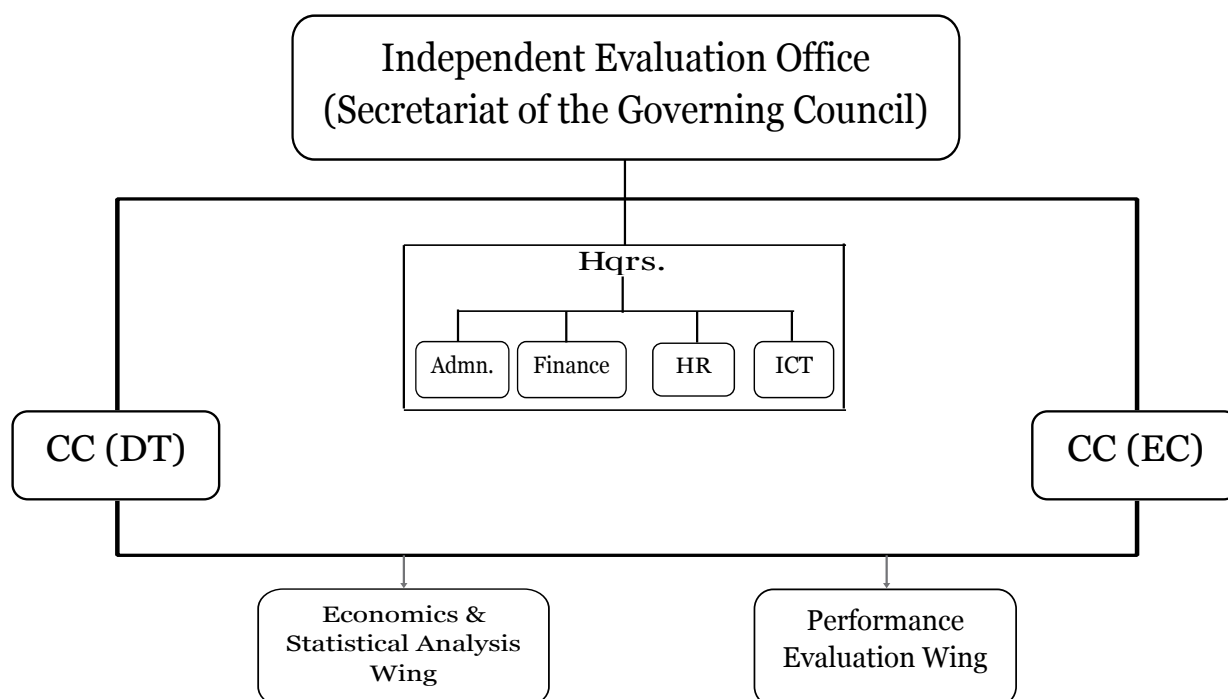
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<sup>16</sup>Reference, PMO I.D. No. 1331721/PMO/2009-Pol, dated 11.9.2009

audits were completed in time, which in any case is done due to statutory time limitations. But what is required is to see how well these functions were performed, what the quality was of that delivery; also what the response of the taxpayer to the delivery of services was, and whether the activity eventually led to the fulfilment or to moving closer to the vision statement of the tax administration.

It is for such reasons of close monitoring and reviewing tax administration issues and to guard the interests of taxpayers in a systematic manner that some advanced tax administrations have set up oversight boards so that there is continuous improvement in the fairness, efficiency and integrity of the tax system. Since matters of taxation are important for the development of the economy with a large impact on trade and investment, it is all the more important to set up an IEO in the tax administration. The IEO is to be a single entity and would report directly to the Governing Council, of which it would be the secretariat. Its reports will be independent, covering a wider aspect of tax administration, which until now has received insufficient attention. It will look at the functions of the two Boards and their eventual impact on the stakeholders in an independent and comprehensive manner. Among other things, the IEO will be required to publish its evaluation reports so that the public at large are aware of the performance of the tax administration in key areas. The difference between the oversight entities in the US IRS and ATO and the proposed IEO is that, in a way, the proposed IEO is embedded in the larger tax administration structure. Yet, at the same time, it does not report to the two Boards and has an independent structure with a large role to itself. The structure of the Independent Evaluation Office is given in Diagram 3.2 below.

**Diagram 3.2: Structure of the Independent Evaluation Office**



#### III.4.d Common Tax Policy, Analysis and Legislation Unit

Another dimension that needs to be addressed at the structural level is about the handling of tax policy and related legislation. Currently, this is handled in the two Boards, independently in the Tax Research Unit (TRU) and Tax Policy and Legislation (TPL) wings. These work in silos. The proposals of the Boards reach the finance minister in separate channels. This cannot be considered to be a consistent and coherent approach to issues of tax policy. Very often, they are also short on adequate research, analysis of data and multidisciplinary inputs. Currently, TPL and TRU have become virtual legal repositories devoid of careful analysis, market surveys or use of macro-fiscal models. The task of twenty or so staff of TPL or TRU is performed in UK HMRC by the head of department of Knowledge, Analysis and Intelligence (KAI), which has approximately 400 staff members, thus allowing a wide array of essential analysis, completely ignored in the Indian tax administration. In India, these aspects of analysis are urgently needed.

The drafting of tax laws, acts, rules and regulations needs to be approached in an interdisciplinary manner. A variety of areas of knowledge needs to be brought to bear on the drafting; economists to analyse the economic effects of different policy initiatives and alternatives, as well as their revenue effect; tax law experts to develop detailed designs of the proposed rules and regulations, with reference to global practices, and tax lawyers with drafting experience to work on the actual legislative language.<sup>17</sup> If the proposed tax laws impact accounting rules and practices, accounting institutes (the Institute of Chartered Accountants of India and the Institute of Cost and Works Accountants of India) are also required to be consulted. The role of tax administrators is largely restricted to policy development, evaluating economic alternatives with revenue effects, and to provide guidance on possible administrative problems that may arise from proposed rules and regulations and suggest alternatives based on relevant experience (again, with comparative knowledge of practice of different countries wherever relevant).

Keeping in view the above, a Tax Council supported by a common tax policy, analysis and legislation unit should be established to cater to the needs of both direct and indirect taxes. The unit would be responsible for all three major components of tax policy formulation – policy development, technical analysis, and statutory drafting.<sup>18</sup>

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<sup>17</sup> In the United Kingdom and Australia, the task lies with the Office of Parliamentary Counsel, in the US, the House Legislative Counsel and the Senate Legislative Counsel. In Canada, tax legislation is drafted by the Tax Counsel Division of the Department of Finance.

<sup>18</sup> This is not the practice at present. The CBDT and CBEC carry out policy development and technical analysis and provide statutory drafts to the Ministry of Law and Justice (MoL&J), which vets these drafts and gives it legal framework. The vetting by MoL&J is normally almost towards the end of the process.

## Tax Council

The remit of the Tax Council would primarily be in the area of handling of tax policy and related legislation. The council will have the following composition:

- **Chairman:** Chief Economic Adviser of the Ministry of Finance
- **Members:**
  - Chairman, CBEC
  - Chairman, CBDT
  - Member (CBEC)
  - Member (CBDT)
  - Chief Economist, tax department(s)
  - Additional Secretary (Budget), Ministry of Finance

It is important that the Tax Council is headed by a person having an understanding of public finance. Only such a person would be able to understand the cross-sectional implications of proposed tax laws on industry, trade and investments and thus, be able to bring out more sharply the objective of the tax laws without hurting the other sectors of the economy. It is unlikely that generalists, even if they have worked in a particular post and gained considerable experience, would have the required understanding. It is for these reasons that we recommend that the Tax Council be headed by the Chief Economic Adviser of the Ministry of Finance.

The other members of this Tax Council would be the chairmen/chairpersons of the two Boards, members of the two Boards responsible for tax policy and legislation, and also the two economists associated with the two Boards. The Additional Secretary (Budget), Ministry of Finance, should also be a member of this council, and his role in the Tax Council would be to make sure all the deadlines of budget making are adhered to while formulating tax laws. This role is also due to the fact that the Additional Secretary (Budget) is responsible for implementing and monitoring the targets set in the Fiscal Responsibility and Budget Management (FRBM) Act, 2003.

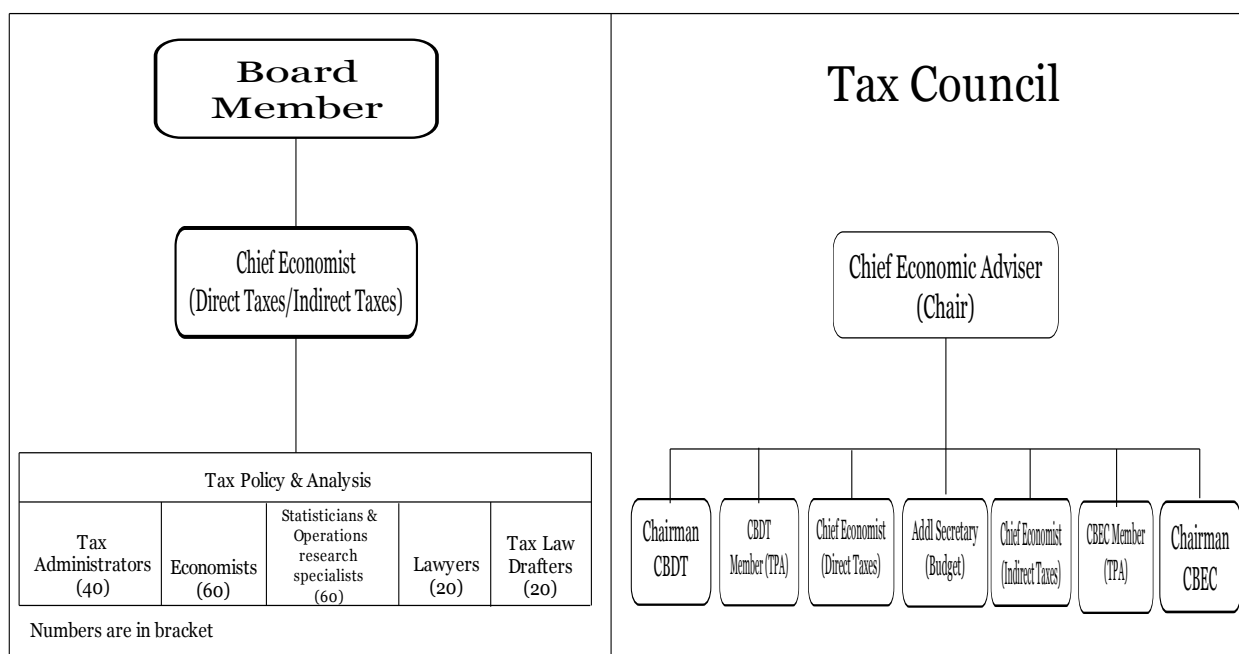
The Tax Council would be supported by the chief economists of the Tax Policy and Analysis wing in each Board. Each of these economists should be in the rank of Principal Chief Commissioner. The chief economists in the two Boards can be appointed from either the government system or outside on contract basis as is done regularly in the Ministry of Finance. Appendix III.6 elucidates the role of chief economist in the tax department. The objective is quality assurance of the administration's analytical output. The reason it should be headed by an economist rather than any other profession is the centrality of economics in tax analysis and tax policy. Other professions would provide background support in carrying out surveys and statistical and systems modelling. The TPA for its analytical work must carry out statistical modelling such as GDP-based

forecasting, long-term as well as short-term, micro-simulations along with discretionary change models so that decisions are based on sound analyses, and are data and evidence driven. The Commission will expand on this aspect later when it submits its recommendations on another segment of its terms of reference, namely, “to review the existing mechanism and recommend appropriate means including staff resources for forecasting, analysis and monitoring revenue targets”.<sup>19</sup> Such a significant expansion and deepening of analysis improve the processes of policy development.

The development of policy options should be accompanied by detailed impact assessments, *ex ante* as well as *ex post*. The revenue projections of any new policy option would be based on careful data analysis and revisited periodically in the context of changes in economic trends. The terms of reference also requires the Commission to “recommend capacity building measures for preparing impact assessment statements.” This will be taken up by the Commission in a subsequent report.

The Tax Council will deliberate on the proposals put forth by the joint Tax Policy and Analysis (TPA) wing of the two Boards and firm up its recommendations for the consideration of the Finance Minister. Recommendations on tax matters will be submitted on file to the FM by the Chairman of the Tax Council. The structure of the Tax Council as well as of the TPA with chief economist is given in Diagram 3.3.

**Diagram 3.3: Structure of TPA and Tax Council**



<sup>19</sup> Please see the Terms of Reference of the Commission at Para 3(j) of the Notification dated August 21, 2013.



The existing TPL and TRU wings of the CBEC and CBDT can be subsumed in the TPA, which can be expanded to include specialists such as economists, tax law experts, statisticians, operations researchers and social researchers so as to form a multidisciplinary team. These specialists should be supported by a large complement of analysts, with adequate skills to undertake advanced data analytics. It could begin with 200 staff members (Diagram 3.3), increasing to 400 over 5 years as management of the two Boards converges (explained in Section III.4.e), reflecting the functional areas that it covers. For example, tax law experts and drafters should possess specialized knowledge and have drafting experience if they work on actual legislative language. These lawyers and tax law experts could be hired either from outside or from the existing cadre of government lawyers. Similarly, social researchers, such as behavioural scientists, will help in assessing behavioural impact of different policies options and help choose options that will maximize complaint behaviours among taxpayers. Care has to be taken that only those adept and having specialized knowledge are selected for these jobs on a fixed-term assignment, which can be extended if their performance is satisfactory. Other specialists should have similar specialized knowledge.

While drafting legislation, it is vital that a high degree of precision is achieved in translating legislative intent into law so that ambiguity and consequent confusion are avoided and the potential for disputes minimized.<sup>20</sup> The current practice of initial drafting being done by IRS officers posted in TPL/TRU and then the draft being vetted by the legislative branch of the Ministry of Law and Justice (MoL&J), almost towards the end of the process, is certainly not an ideal practice. While the responsibility for final vetting of legislation or subordinate legislation would rest with the MoL&J, that Ministry cannot be expected to be completely familiar with nuances of complex tax legislation. Legal drafting is a specialized skill requiring a deep knowledge and understanding of law, rules of judicial interpretation, precedents in the given area and sharp linguistic skills, and these attributes may not be with the tax officer or an economist. Taxation law is a highly specialized and dynamic field with ever increasing complexity because of the growing complexity of business, and officers in the MoL&J may have up to date knowledge of development. There is thus a gap. This adversely affects the design of legislation. As earlier noted, drafting of tax laws, rules and regulations, therefore, needs to be approached in an interdisciplinary manner.

It is recommended that the TPA staff working on legal drafting would need to have a legal background with appropriate training in legal drafting. Some would come from within government departments. But there should be no bar on lateral and external recruitment.

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<sup>20</sup> It is important to point out here that a large number of disputes owe their existence to ambiguity in language and lack of clarity of expression. Chapter V of this report elaborates on that.



Keeping in view the above, it is also recommended that the following practices/guidelines should be followed in the process of framing laws, rules and regulations:

- **Initiation:** The rationale for the proposed law, regulation or change in regulation should be clearly explained in economic terms with background technical analysis, demonstrating the need and justification for the proposed change and its nexus with the objectives sought to be achieved. Proper cost-benefit and impact analyses in quantitative terms, both in relation to taxpayers and the tax administration, should be undertaken, before the decision is taken to frame the regulation.
- **Statement of Objects and Reasons:** A clear and detailed statement of objects and reasons should invariably accompany any new regulation or amendment to regulation. This should state what the object sought to be achieved is and how the proposed regulation will achieve it.
- **Drafting:** The regulation should be clear and should use plain, precise language and, as far as possible, be free from jargon. Taxonomy of terms and expressions common to various tax as well as regulatory legislations should be adopted to impart greater clarity and consistency. This practice would promote uniformity in the understanding and interpretation of terms and statutory provisions, and would be a healthy contribution to bringing down disputes due to lack of clarity in law. This will also ensure uniformity of interpretation and understanding across tax and regulatory agencies.
- **Public consultation:** All proposed legislation and regulation should be put up on the website for public consultation and comments should be captured and duly considered while taking a final decision. A summary of the comments and their consideration should also be published when the regulations are finally published. A summary of the cost-benefit analysis should invariably accompany the publication of the regulation. Perhaps the only area where prior consultation may not be essential is in the exclusive case of a rate change since such a change does not carry with it multiple ramifications that a more complex change tends to bring.

Another key reform would be to make the legislation ICT-compatible to the extent possible. This means that business rules required to meet compliance requirements should, as far as possible, be capable of being translated into an algorithm. This would ensure embedding compliance to the law in the relevant ICT system itself. This would also imply that relevant ICT experts are brought into the loop from the early stages of decision making itself.

An equally important aspect of tax governance is to ensure that laws, rules, regulations and other tax policy measures such as exemptions are reviewed periodically to see whether they retain their relevance to contemporary socio-economic conditions and meet changing requirements well. For this, a robust process needs to be institutionalised. As a starting point, a thorough review of existing rules, regulations and notifications should be undertaken. Going forward, it should be standard practice to insert a sunset clause in each rule, regulation and notification. This will ensure regular

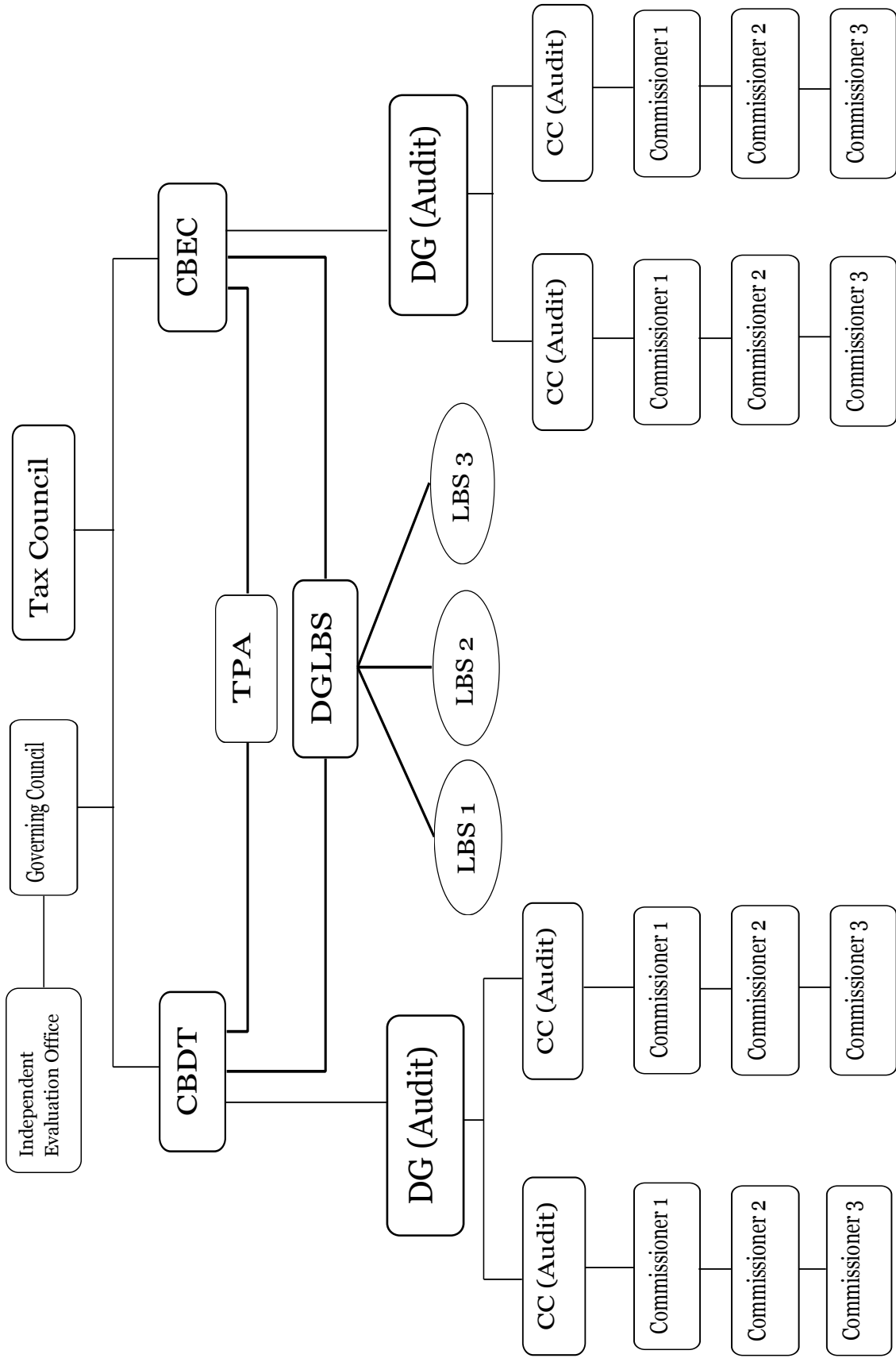
review to keep governance updated and contemporaneous. These reviews must necessarily involve wide public consultations.

Diagram 3.4 below shows the overall structure that would bring the desired governance structure, comprising the Governing Council, Tax Council, LBS, IEO, and other field functions for compliance verification. But as we will see, as part of the desired governance structures, other important functions, such as dispute management, taxpayer services, quality assurance, etc would also be required to converge across the two Boards.

#### **III.4.e           Towards a modern and fully integrated tax administration**

We have so far discussed convergence in governance, vision, mission and the strategy of the two Boards (through a Governing Council), synergistic approach to tax policy formulation and drafting of tax laws, and convergence in operations for large businesses through LBS. But this is not, by any reckoning, enough. Such selective convergence, instead of amalgamation, remedies only to an extent the present static, established culture and departmental interests. This in no way is moving towards a fully integrated tax administration. Many modern tax administrations have over the last few years moved towards that. In a fully integrated tax administration, corporate tax, excise and service tax are clubbed together as business taxes to provide better taxpayer convenience to businesses. Staff and officers are organized principally by functional groupings such as registration, information processing, audit, collection, appeals, etc and generally work across taxes. This approach to organizing tax work allows more standardization for work processes across taxes, thereby simplifying computerization and arrangements for taxpayers and contributes to improving operational efficiency. But such a unified and fully integrated structure may require some more time as it would need more open dialogue between the two Boards to arrive at a common ground to initiate the process. Such higher and purposeful movement can be achieved by the two Boards through cross-functional committees at various levels.

Diagram 3.4: Desired governance structure



Given the present level of preparedness of the two Boards, TARC has recommended, as described above, selective convergences to achieve better tax governance, unified ICT-based delivery (Chapter VII), and a single customer relations officer (Chapter II), but that is a movement only towards an integrated management structure and not an integrated tax administration. It, therefore, is fitting that a timeline be drawn to achieve the eventual goal of a totally unified management structure with not only a common tax council but also a common Board for both direct and indirect taxes that can be called the Central Board of Direct and Indirect Taxes. TARC recommends that this should be achieved in the next five years. This transition is schematically depicted in Diagram 3.5.<sup>21</sup>

For a unified management structure, apart from the common Board, the functions which can easily support the framework would be in the areas of human resource management and vigilance, finance, infrastructure and logistics, and compliance verification. If these were to be operated as common services, meaning that only one directorate comprising direct and indirect taxes would service the Boards, it would result in greater synergies than is possible under the present scheme where common functions are carried out separately under each Board. The prevailing arrangement only implies accommodation of fractured interests. Special fields such as international taxation, MAPs, APAs, transfer pricing etc. on the direct tax side and international co-operation, valuation in related party transactions, customs border control functions etc on the indirect tax side could, however, continue as separate functions.

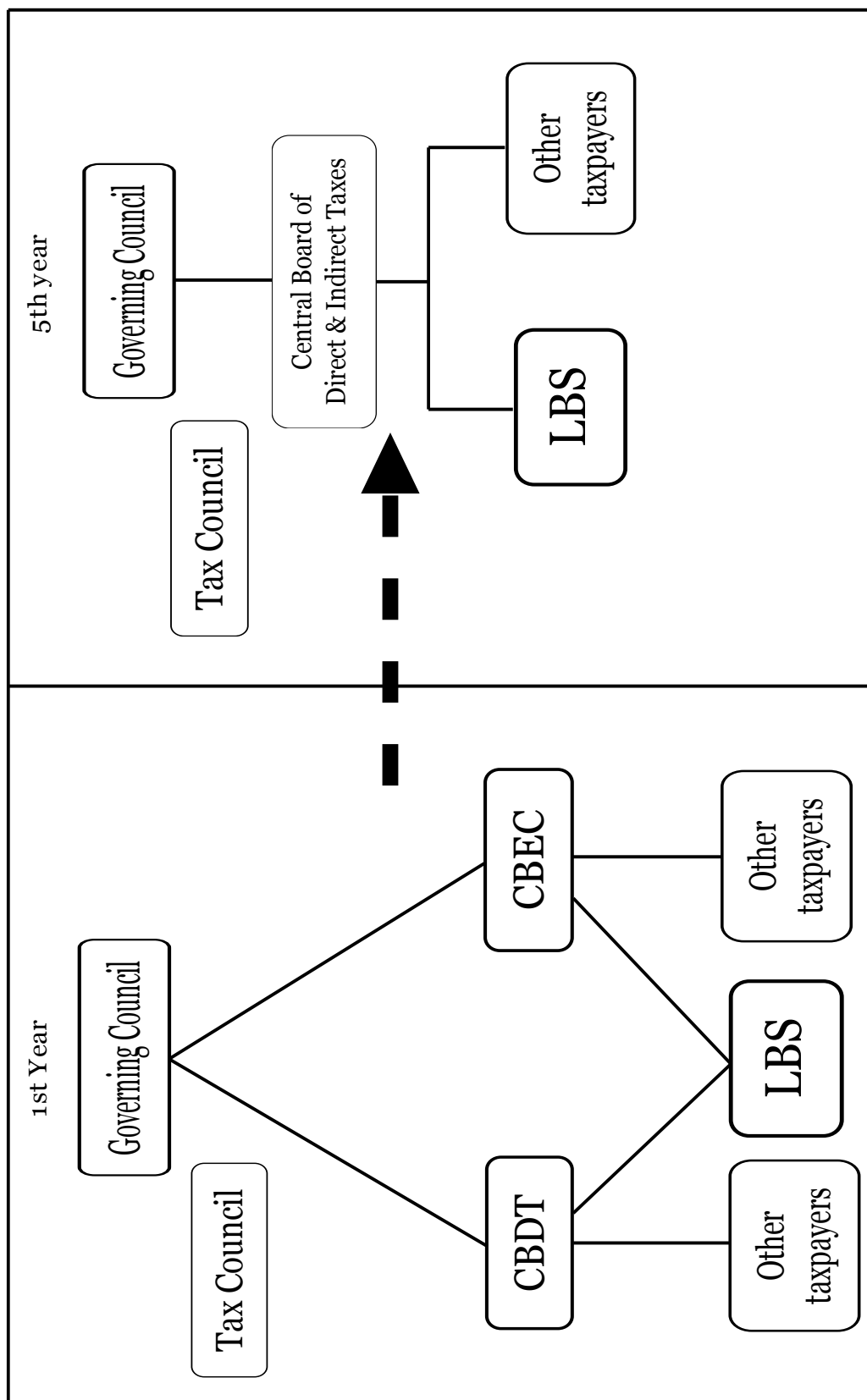
The question one may ask is whether there are other options. One option would be to identify more commonalities and fuse these functions, currently being performed separately by the two Boards, and let the two Boards function independently in areas that are *unique* in their respective functions. The Railway Board could be a model that could be considered for adoption. In the railways, there are multiple services that merge into one Board. Based on that model, the approach could be along the following lines:

- (a) Identify positions in the two Boards and at the Principal DG level that could be “open line”. These could be Member (TPA), Member (Compliance), Member (HR) etc. These positions, and that of the Chairperson, could be filled by officers of either service, with selection being on merit and ability.
- (b) The other positions could remain with the respective services. Examples could be Member (Customs), Member (Excise and Service Tax or GST), Member (Corporate Income Tax), and Member (Personal Income Tax).

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<sup>21</sup> Note that such a movement to a unified management structure is not the same as an integrated tax administration that would integrate even the staff of the two revenue services.

Diagram 3.5: Towards a unified management structure in 5 years



- (c) For selection of competent officers, identification must happen early enough. This has been discussed in Chapter IV of this report.

A large number of other steps will be needed to achieve an eventual integration of the two departments, where, not just the management, but even the staff would be amalgamated. For example, during the first five-year preparation period, dynamism in the CBDT and CBEC would be needed to ensure full preparedness using ICT, deepening of training and continuous rationalization of posts to respond to changing needs. The next five years would be to integrate the services as a common service to taxpayers with no distinction whether they are approaching the tax department for direct tax or indirect tax. The administration would thus be common; delivery to the taxpayer would also be common.

It may be kept sight of that the railways have a long history of managing multiple services converging into the Board and their experience has been garnered through challenges and continuance of some inter-service tensions. The same may have to be encountered in the two tax departments. The success of the effort depends on how dynamically they can think and act towards a sea-change in their mode of conducting business. It is up to them to take on the challenge and steer the change through strong leadership. Preoccupation about which service should occupy which posts could be obviated if the senior leadership focuses on the highest efficiency and productivity of both. Trust and fairness would be the fulcrum on which the initial transition to a unified management structure in five years would move ahead.

### **III.5 Board structure and field functions**

In the foregoing paragraph, we have recommended that the two Boards should move towards a more synergistic relationship through a governing council and a common tax council for the present. But as stated, this is only the first step and is only in view of the present structure of the two Boards, with a requirement to align it with the needs in the current context and with a view to respond to emerging and future challenges to satisfy its stakeholders. The two Boards can then converge in the next five years to a more unified management structure, and in the following five years, to a fully integrated tax administration as many modern tax administrations are. One of the main reasons for this desired movement is India's deepening integration with the global economy, increasing global competition, a rapidly changing taxation landscape driven by new and emerging economic paradigms such as the digital economy, e-commerce, and the need to deal with such issues. Tax-base erosion because of the development of highly complex structures for transactions by multinationals, aimed at minimizing their tax burden, is another reason. In addition, businesses are increasingly adopting seamless methods, helped by technological advancements, for online and cross-border transactions. The current structures and processes, we feel, are not sufficient and the thinking processes have also not been a step ahead.

The integration of the two Boards has been recommended also in the context of the unprecedented potential and power that ICT provides for radically enhancing the efficiency and effectiveness

dimension of an organization by sharing of information and knowledge, providing opportunities for greater creativity and innovation resulting in newer ways of doing work that are far more productive and rich. The power of data analytics is another tool that can significantly enhance the quality of policy and programme design as well as effectiveness of implementation.

It is in the above context that we look at the organizational structure of the two Boards for the present. As noted earlier, international best practices have distinctly moved towards the adoption of a “function” based structure for effective management of tax administration. It is noteworthy that out of 52 tax administrations surveyed by the OECD, covering both OECD and non-OECD countries all, barring 5, have, to varying degrees, adopted a functional structure. Such a function-based organization is usually anchored by a strong headquarters organization that sets policy and programme direction and guidance. The main responsibilities of the headquarters can be:

- Preparing an annual national work plan specifying expected work volumes, service and enforcement initiatives, and staffing levels and expenditure requirements
- The national plan would contain quantity, quality, and timeliness performance measures
- Regular monitoring and reporting on national performance against the national work plan, explaining variances, and recommending corrective action
- Designing and maintaining standardized processes and policies, producing related documentation (manuals, circulars, etc.)
- Assuming “ownership” of business processes and assessing ICT requirements related to those processes
- Providing advice and guidance to field operational units as required

Under the overall direction and guidance of the headquarters, field organization deliver on the programmes, being directly responsible for it. Field functions are also aligned to core tax administration processes such as taxpayer services, audit, dispute resolution, enforcement etc. Although these field functions often mirror the structure of the headquarters, the difference primarily is that the focus is exclusively on operations and service delivery.

Functional verticals are supported by a set of “horizontals” such as ICT, human resources (HR), finance, infrastructure and logistics. Overall, therefore, a matrix type organization would develop in which employees typically may have two lines of responsibility – one to the superior within their structure and the other for the delivery of their specialization in the given area of operations. The advantages of this function based structure are the following.

- It provides a strong link between policy design and service delivery, thus improving the coherence and consistency between the two.
- It promotes uniformity and specialization.

- By aligning specialization and activities within a defined functional domain, it provides better performance.
- It enables better monitoring of key functions and ensures more effective interventions by management when needed.
- It improves productivity by providing better management control on the core processes of administration.

The current structure in both the CBDT and CBEC, as seen in Appendix III.1, is not aligned on a functional basis, unlike in most modern tax administrations. Consequently, it does not promote specialization in key functions in the core areas of policy and operations. While some degree of specialization is assured through the directorates, there is only a feeble link between policy and implementation as the directorates have little role in overseeing the implementation of the programmes and processes they design. They operate primarily as staff adjuncts of the Board. Hence, implementation is marked by lack of uniformity, unevenness of quality and variability of performance. For example, in the CBEC, the Directorate of Audit is responsible for the design of the audit programme in terms of development of audit procedures, manuals etc. However, the delivery is left entirely to the field formations headed by Chief Commissioners and Commissioners. The staff, in turn, is subject to the usual rotation. Consequently, there is little coherent control over the delivery of the programmes and its quality and effectiveness remain variable and inconsistent.

The present structure also does not recognize that different areas of work require different capacities and capabilities, skills and mind-sets, and these need to be developed for fulfilling organizational goals. As functions and responsibilities in the existing structure are mixed up, there are also no clear lines of accountability that could enable proper performance management and consequently performance improvement. On account of fuzzy responsibilities and the absence of a proper structure behind them, key functions get performed sub-optimally. For example, there is no single organizational pillar that is responsible for taxpayer services and the responsibility is diffused across various field formations and directorates. Consequently, there is neither coherent design nor delivery of the whole range of taxpayer services nor are there clear lines of responsibility or accountability for performance.

Although the implementation of ICT in both the CBDT and CBEC has the potential to release them from the constraints of geography, this has remained under-realized as the structures, processes and attitudes remain embedded, to varying degrees, in the traditional territorial and paper-based approach to working.

To overcome these weaknesses, and in the light of international experience, it is necessary to introduce a functional structure in the organization so that



- proper focus could be brought to bear on key functions and conditions created for development of the required specializations and expertise
- proper accountability and responsibility framework could be developed and implemented
- the quality of decision making could be improved by ensuring the above
- an improved taxpayer experience could be engendered to enhance public credibility of the departments and promote voluntary compliance
- a sharper edge can be given to compliance promotion and enforcement efforts by using the power of information and nurturing the required skills and capacities
- a culture of data driven and evidence led decision making is promoted

All these, as already discussed above, would require the tax administrations – direct and indirect taxes – to start exploring synergies to drastically improve both compliance management as well as taxpayer services and not function, as at present, in separate silos as that limits the opportunities that can be exploited. This is a vital issue that needs to be addressed. One such example in this context is as given for LBS.

Keeping in view the required synergy between direct and indirect taxes, organizational restructuring on the basis of headquarters and field functions, with a matrix of accountability and responsibility for overall performance, we recommend restructuring of the two Boards, their directorates and field formations. While recommending restructuring along functional lines, we are also recommending a layered approach towards greater integration of the direct and indirect tax administrations. Briefly, it is as follows:

- A common Governing Council to ensure a much higher degree of cohesion in the strategy and operations of the Boards as well as performance management (already discussed in Section III.4.c above)
- A common tax policy and analysis unit to bring more cohesion and coherence in tax policies (already discussed Section III.4.d above)
- Moving towards a modern and fully integrated tax administration (discussed in Section III.4.e)
- A common risk management framework to ensure a broad coherence in approach and a higher degree of uniformity in treatment of common risks (discussed in Section III.5.a of this chapter)
- Some of the shared services, such as a common knowledge, analysis and intelligence (KAI) centre, a common SPV for servicing ICT needs and a common database to promote data sharing across direct and indirect taxes to improve the management of both (discussed in Chapter VII of this report)

- Co-location of front offices to enable taxpayers to access services of both the departments at one place (discussed in Chapter II of this report)
- Cross-organizational and cross-functional committees with representatives of both Boards to ensure much needed co-ordination (Section III.5)

While for the large business segment, we have already recommended in Para III.4.b of this chapter and shown in Diagram 3.1 how the two Boards would act jointly and how all core functions would be integrated in LBS, for medium and small taxpayer segments, efficiencies would be achieved through better customer focus to make compliance easy, and through more effective and timely dispute resolution so that this segment of taxpayers are not deterred from tax compliance. This is based on the principle that different taxpayers have different needs and so they need to be serviced accordingly. While the medium and small taxpayer segments need to be increasingly brought into the tax-fold and nurtured for better compliance, large business have more complex requirements. They also contribute a major chunk of revenue. The complete integration of the direct and indirect tax administrations for this segment would enable the tax administrations to harness the synergetic dividend and address the needs of large taxpayers more coherently.

Keeping in view the above principles of delivery to the taxpayers, the following organizing principles are recommended:

- Functional reorientation to be blended with appropriate taxpayer segmentation
- Non-duplication of functions be to achieved to the extent possible
- Risk management-based approach to be embedded across all key functions of the enterprise
- Complete operational responsibility to be devolved to field organizations
- Strategic management, policy formulation and high-level performance monitoring to be vested largely with the Boards
- Providing a link to the field, more active monitoring of delivery of projects and programmes in the field and support to the Boards to fulfil their functions to be the responsibility of the directorates

While setting out these principles, we would like to emphasize that structures should not be regarded as being cast in stone. There is need for dynamic administrations that are continuously look at the need for and possibility of change to achieve a good fit with the dynamic environment in which they operate.

It is also necessary to ensure that charges entrusted to members of the Board should be along functional lines as far as possible. To some extent, this alignment already exists, but it needs to be further accentuated. With this alignment, the relevant Principal Chief Commissioners/Director

Generals will report to the respective member and chairman of the respective Board. This arrangement will be applicable only to medium and small taxpayer segments. For LBS, fuller integration has been recommended with both Boards operating jointly and in a unified manner. The head of LBS, whose performance will be monitored by both chairmen jointly, will co-ordinate with the concerned members of the Boards as required.

Another area of synergy that needs immediate attention is in the case of central excise and service tax. Both these taxes are consumption taxes, excise tax being applicable on goods at the time of their production and service tax being on services rendered. But in the CBEC, there are, at present, separate members for central excise and service tax and separate commissionerates being set up for the two taxes. One reason often given for the development is that service tax is new, and there is a separate act to administer it that. However, it is important to note that service tax has matured and developed, and it is time to administer both taxes together, particularly since GST is on the horizon. Keeping this in view, we recommend that there should be one member entrusted with both the taxes. Further, Section 3 of the Central Excise Act, 1944, states that the duty of excise shall be called central value added tax (CENVAT). Hence, the practice of referring to this duty as duty of excise should cease and it should be referred to as CENVAT.

For the CBDT, since personal income tax (includes taxes on all persons, except corporates) has different concerns, processes and priorities than corporate taxes, we recommend that there should be separate members for personal income tax (PIT) and corporate income tax (CIT).

Further, increased co-ordination between the two Boards would be required to be achieved through the mechanisms of cross-organizational and cross-functional committees to ensure broad consistency in areas such as strategic planning, common risk management framework, customer services, compliance verification and enforcement strategies, etc. These committees can be joint bodies of members and other officers from both Boards bringing even better synergy in operations. These committees will also provide a forum to share best practices in the two Boards and an opportunity to learn from each other to achieve the common goals of improving customer experience and enhance tax collections.

Both the Boards need to have a separate chief financial officer (CFO) at the level of a Member, unlike at present when the financial adviser is an outsider to the tax administration. The CFO would primarily be responsible for financial planning of the tax administration, making inter-se allocation between the different requirements of the tax administration and reporting to higher management. The role of the CFO in tax administration is particularly important as it is recommended that the two tax administrations would institute a number of taxpayer focused programmes and enhance ICT linkage in the organization. All these may not be possible as long as the financial adviser continues to be an outsider to the tax administration, often making a contribution only at the far end of the process of examining proposals. The contribution of the financial adviser in this structure, thus, remains minimal and is often limited to attempts to reduce

expenditure. No guidance of the sort that an internal person would give is received on matters of strategies and tactics as they relate to project conceptualization and development, budget management, cost benefit analysis, forecasting needs and securing new funding.

There should also be a member in each Board to bring about business excellence. The responsibility of this member would be to see that the principles of quality assurance are applied in the tax administration to improve performance, based on the principles of customer focus, stakeholder value, and process management. The responsibility of the member would also be to see that key practices in business excellence are applied across functional areas and if there is need to make some changes, suggest them to the management so that the organization carries out continuous and breakthrough improvement.

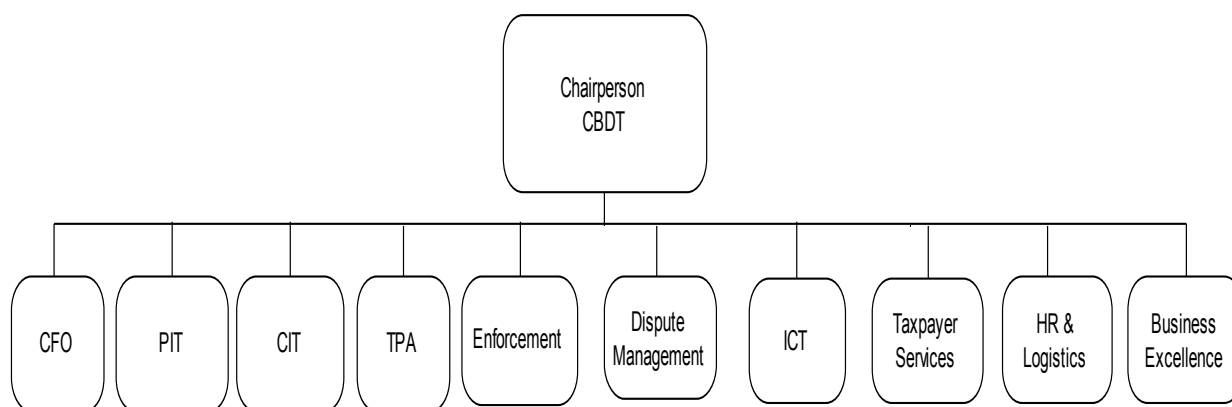
Based on the above requirement, there should be ten members in each Board and a Chairperson. The structures of the CBDT and CBEC are given in Diagrams 3.6 and 3.7, respectively. The work allocation for each of the members and the chairman in each Board is given below.

#### a) CBDT

- Chairman – responsible for vigilance, administration, organizational strategic planning and risk management, and tax treaties
- Member (Tax Policy and Analysis) – responsible for tax analysis and policy making and for tax legislation drafting
- CFO - responsible for financial planning, fund allocation, financial advice and internal controls
- Member (HR and Logistics) – responsible for people function (HR development and training) and logistics development
- Member (PIT Compliance) – responsible for compliance verification of all entities other than corporates, programmes on compliance by medium and small taxpayers, issuing interpretative statements and other pre-filing arrangements, recovery of taxes, monitoring exemptions
- Member (CIT Compliance) – responsible for compliance verification of corporates, LBS, issuing interpretative statements and other pre-filing arrangements, recovery of taxes
- Member (Disputes Management) – responsible for dispute management functions
- Member (Taxpayer Services) – responsible for taxpayer services with customer focus
- Member (Business Excellence) – responsible for quality assurance and continuous improvement
- Member (ICT) – responsible for delivery of ICT strategy and implementation

- Member (Enforcement) – responsible for all enforcement functions including carrying out compliance functions in cases where search and seizures have taken place

**Diagram 3.6: Structure of CBDT**

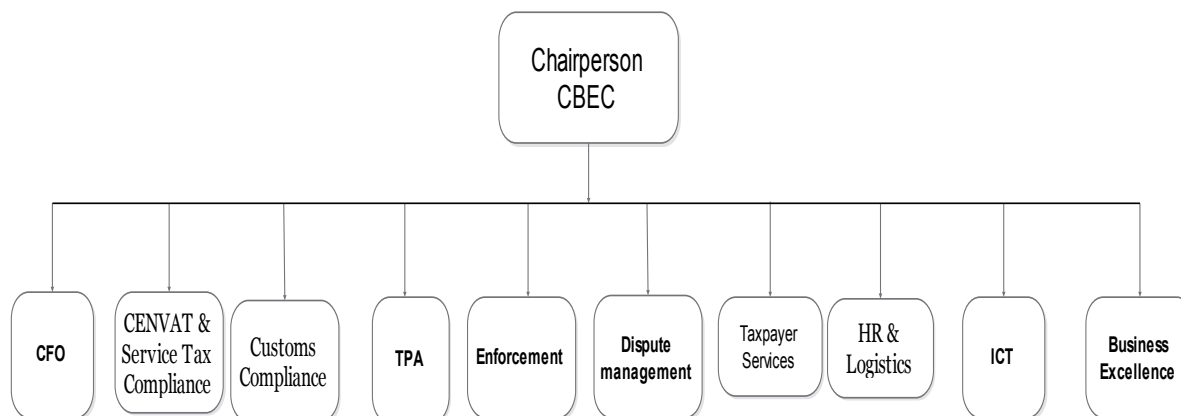


**b) CBEC**

- Chairman – responsible for administration of vigilance functions, organizational strategic planning and risk management, and international co-operation
- Member (Tax Policy and Analysis) – responsible for tax analysis and policy making and for tax legislation drafting
- CFO – responsible for financial planning, fund allocation, financial advice and internal controls
- Member (HR and Logistics) – responsible for people function (HR development and training) and logistics development
- Member (CENVAT and Service Tax Compliance) – responsible for compliance verification of all entities, bringing synergy between CENVAT and service taxes, LBS, issuing interpretative statements and other pre-assessment arrangements, recovery of taxes, monitoring exemptions
- Member (Customs Compliance) – responsible for compliance verification, issuing interpretative statements and other pre-filing arrangements, work relating to World Customs Organization and trade treaties and trade facilitation, recovery of taxes
- Member (Disputes Management) – responsible for dispute management functions
- Member (Taxpayer Services) – responsible for taxpayer services with customer focus
- Member (Business Excellence) – responsible for quality assurance and continuous improvements
- Member (ICT) – responsible for delivery of ICT strategy and implementation

- Member (Enforcement) – responsible for all enforcement functions in indirect taxes

**Diagram 3.7: Structure of CBEC**



Both the Boards will be involved only in policy design; programme implementation would be the work of the directorates.

### III.5.a Structure, role and functions of Directorates in key areas

At present, the directorates under them assist the two Boards in the discharge of their functions. There is already a degree of functional orientation in the directorates. They broadly fall into two categories. Some of them have field operations in their domain while others mainly act as attached offices of the Boards, functioning primarily as headquarters organizations and assist the Boards in developing policies and programmes in the functional areas assigned to them. Examples of the former are DG (DRI), DG (CEI) in the case of CBEC, and DG (Exemptions), DG (Intelligence and Criminal Investigation), DG (International Taxation) and DG (Investigation) in the case of CBDT. These are already specialized organizations and no major structural change in their configuration appears warranted. However, some changes to improve their output have been suggested in Chapter VI of this report for DG (Investigation), and DG (Intelligence and Criminal Investigation). In respect of DG (Export Promotion), DG (Safeguards) and DG (Valuation) in the CBEC, no change appears warranted. Action in relation to them is needed more in terms improving performance by infusion of technology, HR policies designed to promote specialization and augmentation of skills in emerging areas of risk, which aspects are also dealt with in Chapter VI of this report.

Against this background, we recommend the setting up/restructuring of the following directorates, which are concerned with the core processes of tax administration, as functional verticals separately under each Board:

- Strategic Planning and Risk Management, Communication and co-ordination
- Taxpayer services, Taxpayer Education and Communication

- Compliance Verification including Audit (Scrutiny in DT)
- Dispute Management
- Quality Assurance and Continuous improvement
- Inspection
- Tax Debt Recovery
- Enforcement

These functional verticals would be supported by the following directorates, which perform enabling functions – the “horizontal” support layers in the organization.

- DG (ICT) and Chief Information Officer
- DG (HR)
- DG (Infrastructure and Logistics)
- DG (Finance and Accounts)

These directorates will perform the headquarters functions, such as the development of manuals, framing of policies etc., and monitor the delivery of services and performance of the field formations that report to them. Each of the directorates will be headed by an officer of the rank of Principal Chief Commissioner.

The structure would follow the matrix form. The officers working in each of the directorates will perform the functions within the vertical and will report to their superiors and will have a reporting relationship to other relevant functions to ensure that policies, instructions etc., are properly carried out and the specific needs of the respective verticals are communicated to the support function. This is intended to achieve a closer integration between the functional verticals and the enabling horizontal functions. Each of the directorates would be embedded with the support functions of ICT, HR, administration and finance. This is to recognize that each of the verticals have separate ICT, HR and finance requirements and so these functions are required to be embedded in the vertical itself and then work in a matrix like reporting to the specialized ICT, HR and finance verticals.

Another salient feature of the recommendation connected with the above matrix-like approach of functioning is that the placement of people in various functions should be, as far as possible, on the basis of careful selection based on their aptitudes, attitudes and inclinations. And once placed, they should have reasonable tenures unless they are required to be shifted for reasons related to performance or the special need of the officer concerned. This will make for growth of expertise and overall stability in the administration. More on this has been dealt within Chapter IV of this report.

A brief outline of the respective roles and functions of the directorates is given below. We first describe the vertical functions and then horizontal functions.

### *i)* **Vertical Functions**

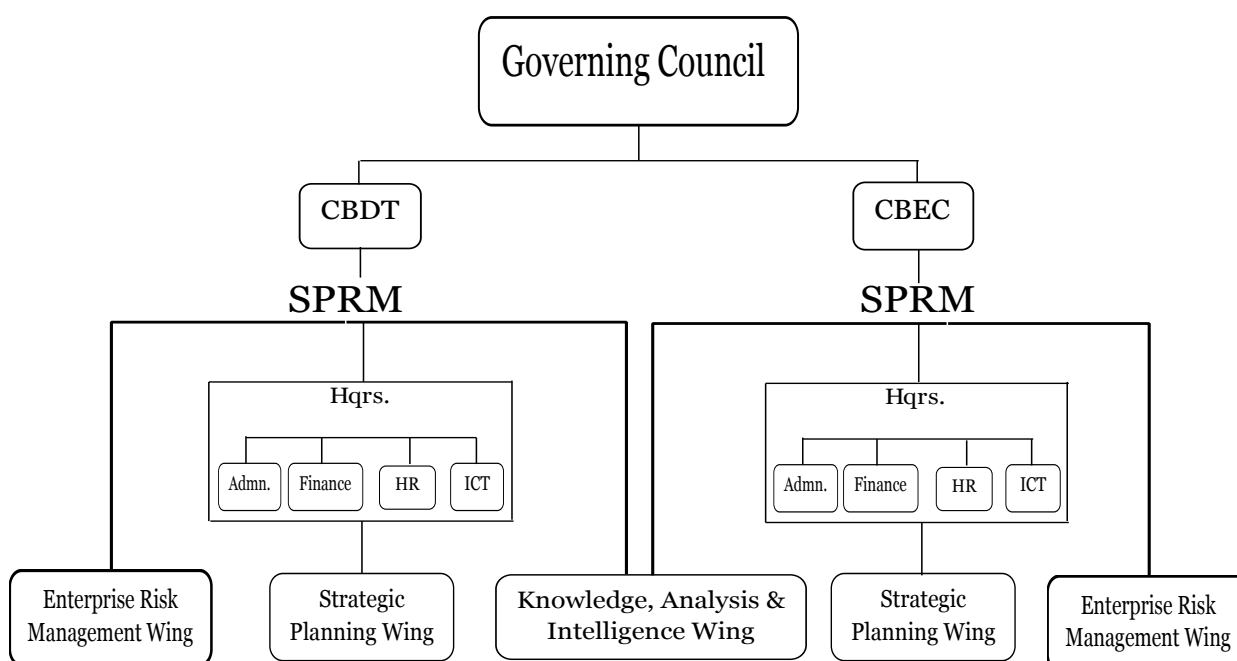
#### **Strategic Planning and Risk Management, Communication and Co-ordination**

The primary task of this vertical would be to institute rigorous a entries-wide risk management framework to promote effective tax governance. Its main functions would be:

- **Strategic Planning** –The directorate would be responsible for developing the organization’s vision and mission in accordance with the approved priorities and develop strategic plans for the near, medium and long-term. It will also be responsible for developing annual action plans that are congruent with the above.
- **Enterprise Risk Management** – At present, neither of the Boards has an organization to deal with enterprise risk management. While a risk based approach is adopted in different areas, risks are not being dealt with at the organizational level in the context of a cohesive risk management plan. DG (Risk Management), as the Chief Risk Officer, will fill this critical gap and will be responsible for tracking strategic risks and opportunities and support the Board in managing them. DG (Risk Management) will also be responsible for developing and maintaining an enterprise wide risk management framework and ensuring coherence across risk management activities across different functional areas.
- **Internal co-ordination** – The directorate would be responsible for co-ordination across different functional verticals to ensure that their operations are congruent with agreed priorities and plans.
- **External co-ordination** – In collaboration with relevant subject area teams and officers of the DG (Systems), the directorate will explore opportunities for data exchanges with other organizations and develop the instrumentalities such as agreements/MOUs etc., to facilitate such exchanges. For indirect taxes, an additional dimension could be the need to co-ordinate activities with state governments in view of the impending GST implementation.

The structure of the proposed directaorte and its reporting channel are given in Diagram 3.8 below. It may be mentioned that the DG, an officer of the rank of Principal Chief Commissioner, of this directoarte would report to respective chairman of the Board, and through them to the Governing Council so that the Governing Council can take a more synergistic approach on various matters for the Boards together with uniform application.



**Diagram 3.8: Strategic Planning and Risk Management Directorate**

It is equally important to note that while risk management might differ in details between the CBEC and CBDT, both face similar, if not the same, risks. Hence, while there may be differences in operational aspects, they must evolve a common risk management framework, which is why we have recommended that it must be approved by the Governing Council. A brief note on enterprise risk management is in Appendix III.7.

### **Taxpayer services, Taxpayer Education and Communication**

The responsibility, work delivery, and overall structure of this directorate have been dealt in detail in Chapter II. However, the only point to be emphasized here is that a number of customer facing functions, which are currently dispersed across different parts of the organization, will be handled in this vertical to ensure customer focus in taxpayer services. This vertical, to be headed by an officer of the rank of Principal Chief Commissioner, will take responsibility for customer services other than those handled in compliance verification and dispute management. It would have its own field organization spread across the country for delivery of taxpayer services. Its main functions would be:

- Communication – Communication and media policy, brand building and standardization, channel strategy, customer relations (education and outreach)
- Technology enablement, technology policy and planning, phone and mobile technology, web and social media

- Research, analysis and and programme evaluation, needs analysis and international benchmarking, feedback analysis and programme evaluation, innovation
- Customer relations support, budget accounts, personnel and training

In the field, efforts should be made to set up common front offices for direct as well as indirect taxes so that taxpayer convenience is maximized.

### **Large Business Service**

Based on appropriate criteria such as revenue, turnover etc., large businesses (including their subsidiaries, associated companies etc.), say the top 1,000 taxpayers, would be serviced in this vertical. The organization, the criteria etc., should be a matter of taxpayer segmentation by the tax administration and the inclusion or exclusion of a business in this should not be a matter of option for the taxpayer as it is under the current scheme of LTUs. The coverage will extend to all taxes – direct and indirect, except customs.

To achieve this, the two Boards need to be given greater autonomy in their functioning, while being made more accountable for higher levels of performance. The exact nature of autonomy needed is discussed a little later. The paragraphs that follow deal with structures for high level governance and policy making, and then deal with the restructuring of the organizations under the two Boards to make for better co-ordination and integration between the two to ensure greater efficiency and effectiveness in order to take the Indian tax administration closer to international best practices.

Bringing customs within the fold of this service, however, needs careful examination by the Boards. Internationally, only a minority of tax administrations have brought customs within their large taxpayer operations. Admittedly, there are difficulties in bringing customs within such operations, having regard to the differing nature of customs operations. However, there appears to be no reason why operations such as post-clearance audit, where there are obvious advantages to be gained from having a multidisciplinary approach, should not be covered here.

The LBS would have its headquarters headed by an officer of the rank of Principal Chief Commissioner from either service of IRS – direct taxes or indirect taxes, to be selected jointly by the two boards. The Principal Chief Commissioner heading the LBS function would be assisted by the required number of officers of the rank of Chief Commissioners and below from both the services. It would also have officers specializing in specific areas such as identified industry clusters (such as financial sector, manufacturing, ICT-enabled services, etc.), specific areas of taxation (such as international taxation, taxation of services, transfer pricing, etc.) depending on client profiles and the significance of specific areas. The LBS functional vertical would also have support functions, such as ICT, HR, and finance embedded within it. These officers would have reporting in a matrix type structure with direct reporting to the line superiors in the LBS, and functional reporting to the respective functional vertical. For example, an Additional

Commissioner would report for all purposes to his superior, i.e. the Commissioner, but can report to the transfer pricing vertical in case he is required to do so. Similarly, if there is a transfer pricing officer working in the LBS, the officer functions would work under the Commissioner for all functions but guidance on work performance or fulfilling data requirements can be done through the DG (International Taxation) vertical to ensure access to updated information on the subject.

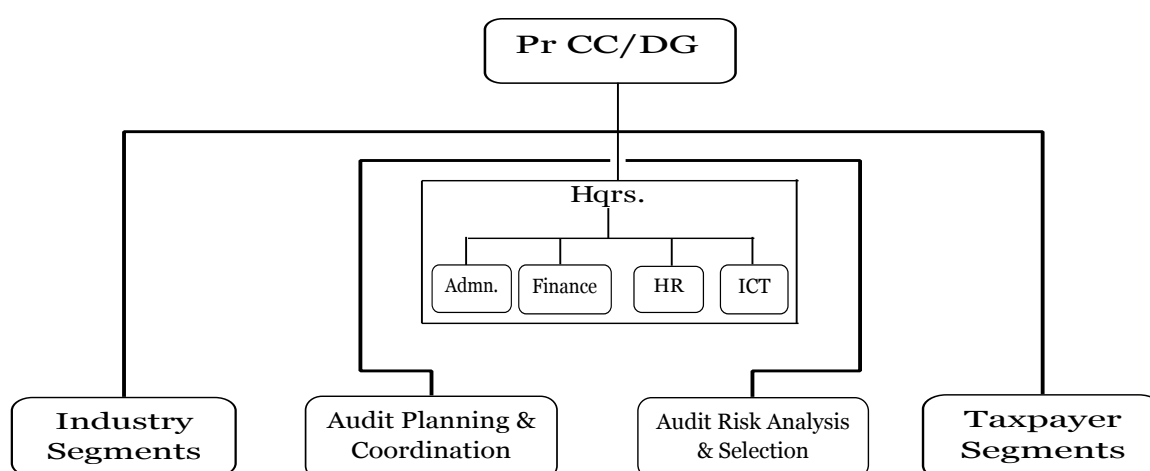
The headquarters should primarily be responsible for developing programmes and policies, and monitoring the performance of field units. The Principal DG would report to both the Boards and co-ordinate with the concerned members in the Boards. The two Chairpersons would jointly monitor his performance.

The delivery of LBS can be through Large Taxpayer Units located in major cities headed by Chief Commissioners from either service, and assisted by Commissioners and officers below them.

### Compliance Verification including Audit (Scrutiny in direct taxes)

This vertical, separate under each Board, would look after the entire spectrum of compliance verification activities, which would include scrutiny of assessments and audit of taxpayers. The headquarters will be responsible for audit policy and risk management. It would also be responsible for developing audit strategies and for co-ordination of audit activities. The plans and priorities for audit for each year, based on emerging issues, will be developed in this compliance verification vertical. DG (Compliance Verification), an officer of the rank of Principal Chief Commissioner, will also monitor the performance of audits, which will be conducted through the field units. The vertical will comprise units as shown in Diagram 3.9 below.

**Diagram 3.9: Compliance Verification Directorate**



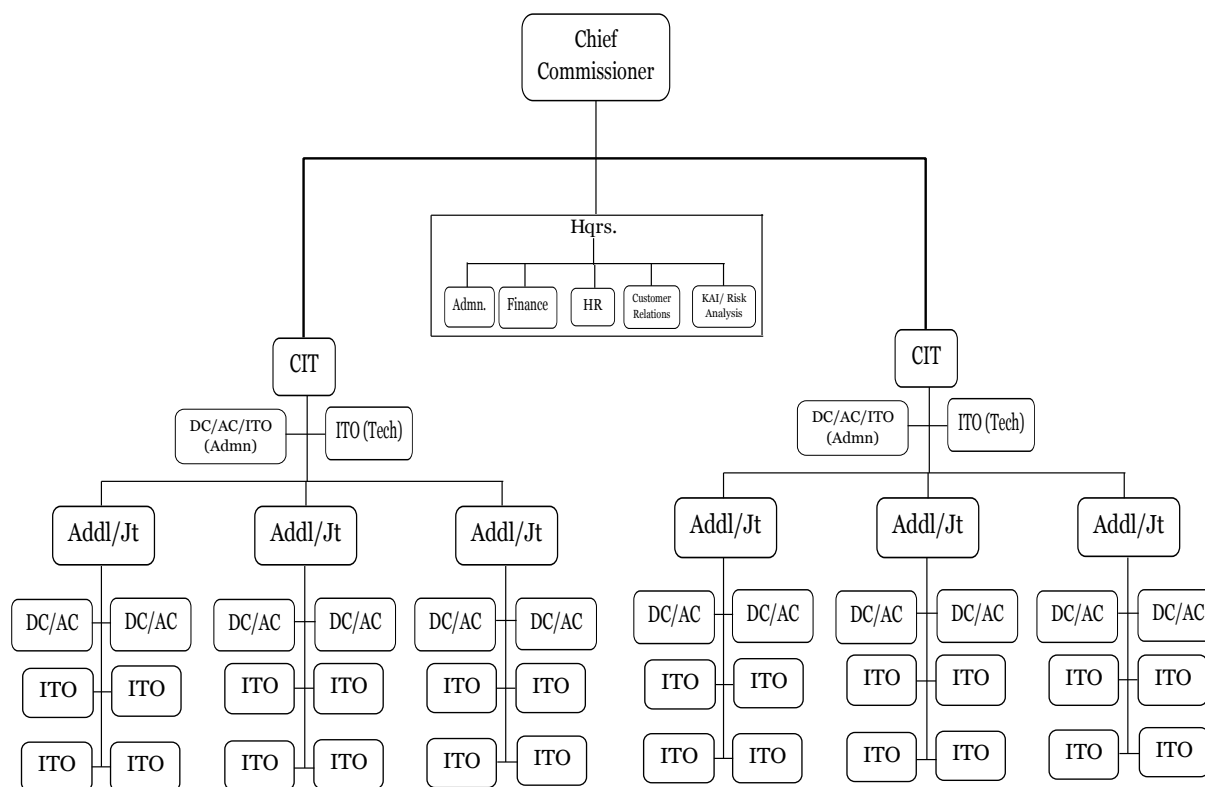
The functions of this directorate will be as follows:

- Processes – This group would be responsible for maintaining and updating audit processes according to changing needs, and developing and updating SOPs for audit and audit manuals. Relevant industry collaboration would help them in developing and maintaining manuals for identified industry segments and taxpayer segments.
- Audit standards - This team would liaise with the bodies responsible for developing audit and reporting standards in order to keep the administration abreast of emerging trends in this area and to promote the interest of tax compliance. In co-ordination with ICT specialists, it will also be tasked with developing the capacity for systems audits and the related certification programmes.
- Audit risk assessment, planning and co-ordination – Laying down priorities for audit and developing audit plans will be the key area of responsibility of this team. It will be responsible for risk assessment for audit selection, make impact assessments, ex ante as well as ex post, and improve on the risk assessment matrix. Development or acquisition of relevant audit tools for the purpose will be done by this team, interacting for that purpose with the policy, strategic planning, litigation, risk management and taxpayer service verticals, so that the overall objectives of the organization are achieved.
- HR and capacity building – In collaboration with the training academies and DG (Systems), it will develop training packages and ICT based tools for specialized training in the area of audit.
- Industry Groups – These teams would comprise officers who have developed expertise in specific industry groups identified on the basis of their size, complexity, uniqueness and current and future significance for revenue.
- Key service sector groups – These teams will comprise officers who have developed expertise in specific industry service sector groups identified on the basis of their size, complexity, uniqueness and current and future significance for revenue.
- Co-ordination with CAG – It will be the responsibility of this team to deal with and co-ordinate with CAG for their reports on draft audit paras and PAC reports. The group will also finalize the Board’s views on important audit objections and communicate them to the field units so that unnecessary demands and disputes are not generated.

The delivery of the audit programme of this directorate will be through field units under Chief Commissioners reporting to DG (Audit). There will be regional units of the directorate in major cities for co-ordination and liaison with the Chief Commissioners in the field. A typical structure of the field function is given in Diagram 3.10. This structure is the same as exists at present, except

that the headquarters functions of the Chief Commissioner has been augmented considerably for greater focus on delivery and co-ordination.

**Diagram 3.10: Field structure for compliance verification**

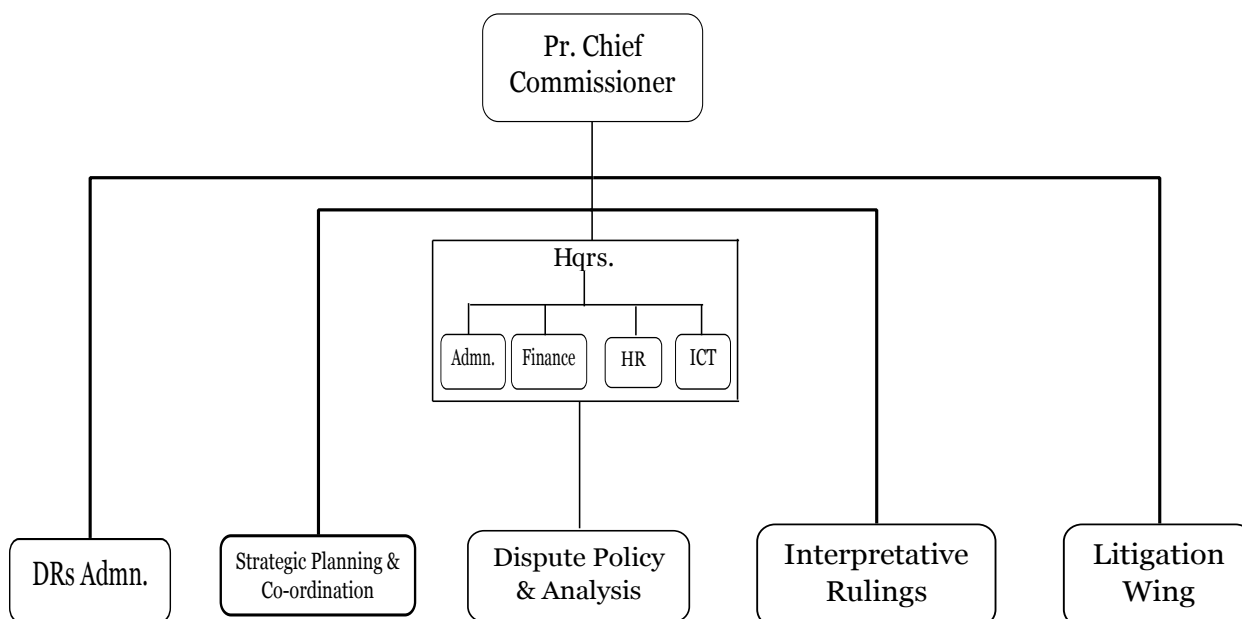


A similar structure will exist for the CBEC.

**Dispute Management**

This vertical (separate under each Board), to be headed by an officer of the rank of Principal Chief Commissioner, will have the exclusive responsibility for dispute management that covers policies and measures aimed at dispute prevention, the processes and machinery for alternative dispute resolution and normal dispute resolution through litigation. All related functions will reside in this vertical and will be performed independently of other functions. This has been dealt in an exhaustive manner in Chapter V of this report.

The headquarters of this directorate, as given in Diagram 3.11, will have the following units to perform the main functions:

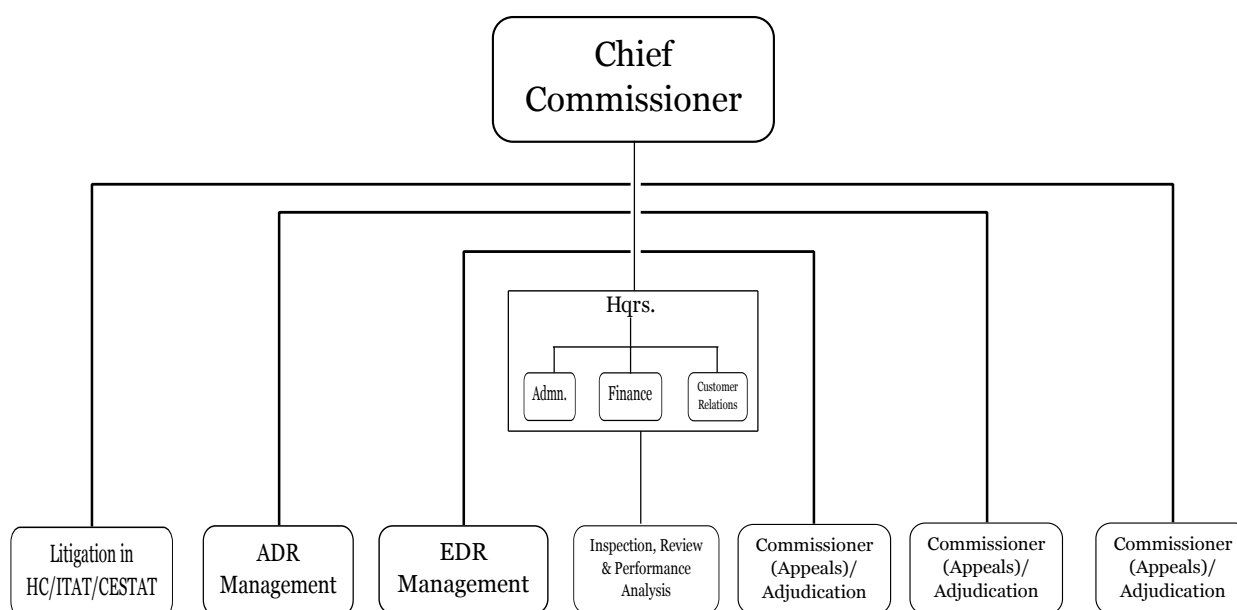
**Diagram 3.11: Dispute Management Directorate**

- Dispute Policy and Analysis – This group will be responsible for the development and management of the department’s dispute management and litigation policies. Its responsibility will also be to periodically evaluate the success of these policies and consider appropriate revisions in the light of changing needs, and set performance targets.
- Interpretative ruling and communication – In order to prevent avoidable disputes, it is important to issue interpretative circulars or instructions that are binding on departmental officers. This group, in collaboration with the relevant policy sections will develop and articulate the department’s views on contentious or ambiguous matters that are likely to cause divergence of practices in a proactive manner so that they do not develop into disputes.
- Knowledge management – In collaboration with the policy wings and DG (Systems), the group will build and sustain a knowledge bank of decided cases (within the departmental mechanisms), case law comprising decisions of tribunals and courts, interpretative circulars etc. The data bank should include external information critical for high quality decision making.
- Strategic planning and co-ordination – The group will interface with policy, strategic planning, litigation, risk management, taxpayer service.
- DRs Administration - The administration of the departmental representatives would also be the responsibility of this vertical.
- Litigation – This unit deal with all matters of litigation, including liaison with the central agency section of the MoL&J. The vertical will take decisions on filing of appeals before the

Supreme Court, and thereafter, will follow up on the litigation process and handle the appointment of counsels, including special counsels, to represent the case.

There will be regional Chief Commissioners in the field. Their structure is given in Diagram 3.12.

**Diagram 3.12: Field structure of Dispute Management**



It should be noted that the Chief Commissioner would also be responsible for Alternate Dispute Resolution (ADR) and Early Dispute Resolution (EDR) management. In ADR management, this would mean the appointment of arbitrators, including third party arbitrators, and making sure that timelines are adhered to by the arbitrators. Inspection, review and performance analysis will be another dimension of the work of the Chief Commissioner. Performance analysis would not only mean review for HR purposes, but also to make the process meaningful for taxpayers. The administration of the TDRC (discussed in Chapter V of this report) will also be the responsibility of the Chief Commissioner.

### **Business Excellence**

This function will be headed by Member in each Board, with two directorates headed by Principal Chief Commissioners. One directorate will be Business Excellence and Continuous Improvement and the other will be Inspection.

### **Business Excellence and Continuous improvement**

Customer focus and continuous pursuit of excellence have been identified as key foundational values for the tax administration. All high-performing organizations regard continuous

improvement and business excellence as critical values. This requires the capability not only to craft effective strategy but also to continuously refine it, based on changing external conditions. These organizations work in an integrated fashion so that their internal processes and people development plans enable them to delight the customers. Proof of the effective functioning of an organization is provided by results. Chapter IV discusses performance management in detail.

The business excellence function is charged with evaluating overall organizational effectiveness, formulating plans to overcome deficiencies and continuously improving performance quality. It looks at the process of preparing robust strategic and operational plans, capability enhancements to meet customer service goals and assess the tools and approaches for performance review. It will also be responsible for the quality assurance function, building internal capability to continuously improve the efficiency, and for benchmarking the organization against global best practices. Along with the people function, it will have a key role in the process of institution building, such as how leaders are selected and developed and so on. The business excellence function will be responsible for continuously updating the Balanced Scorecard and helping each function in reviewing its performance through the use of this tool. It will thus be the custodian of the Balanced Scorecard.

Monitoring the effectiveness of the organization structure and the efficiency of the organization will also be part of this function. To achieve this, it will regularly review business processes and ICT capability to continuously improve service capability, analyse quality issues for improvement, review annual performance to incorporate learning into improving the system and benchmark with global best practices.

### **Inspection**

Inspection is an internal control, and provides an opportunity to make policy corrections in the overall delivery of programmes and helps in minimizing operational mistakes to ensure orderly, ethical, economical, efficient and effective operations. Such controls are designed to fulfil accountability obligations and safeguard resources against loss, misuse and damage. An inspection determines whether the services are of desired level and in conformity with policy objectives.

This vertical will prepare guidelines and SOPs for inspection. The existing DG (Inspection) on the CBEC side and DIT (Inspection) on the CBDT side can be transformed to be the respective inspection directorates of the two Boards. These directorates will need to be completely revamped to achieve the overall goal. It will be responsible for carrying out administrative and technical inspections of the field formations. It will also have regional offices for co-ordination with field units and to carry out inspections and studies in their regions.

The vertical will be responsible for residual processes, such as compilation of residual manuals, SOPs etc., which do not fall within the domain of any other vertical. The responsibility for statutory forms, however, will be with the respective legislation/policy vertical but with ICT, taxpayer services and quality assurance inputs.



## Collections/Debt Recovery

This process has been dealt with in detail in Chapter VI of this report. At present, this function is being largely handled by the AOs in the case of direct taxes and officers designated as tax recovery officers (TROs) on the indirect taxes side. TROs on the direct tax side are responsible for collections only in those cases that have been certified to them by the AOs. The nodal agencies, namely the Directorate of Recovery in CBDT and Chief Commissioner (Tax Arrears Recovery) in the CBEC, have a largely monitoring role.

There is urgent need to have a separate vertical in each Board so that the key recovery policy as well its implementation is carried out in a coherent manner. The tax collection vertical would also be responsible for managing the central database so that all relevant information on taxpayers is available at one place. Records of tax arrears should also be maintained in this directorate and its field units, along with the database of tax defaulters for enforced recovery. This database should be shared on a regular and seamless basis between the CBDT and the CBEC. Co-ordination with other government departments like the Ministry of Corporate Affairs, SEBI, IRDA etc., will also be carried out by this directorate and its field units. The Principal Chief Commissioner/DG should be allowed to take the help of recovery agents like financial institutions in India are.<sup>22</sup>

In the above context, it is important to mention that the process of enforced debt collection is a highly time-sensitive function and requires fast access to accurate information concerning all aspects of a taxpayer's affairs, including complete information on tax debts and outstanding tax returns and other information (*e.g.*, asset data) that can be utilized to assist enforcement of the law. ICT systems can facilitate these activities by providing a number of tools that would improve the efficiency and effectiveness of collection enforcement activities. These would include the following:

- single, complete overview of taxpayers' affairs in general and their tax liabilities in particular
- automated issue of reminders at pre-determined points of time
- automated identification of risks
- automated case identification and management
- automated imposition of penalties and sanctions

Another area of work that can bring a differentiated approach to recovery work would be to develop a risk-oriented approach towards taxpayers. Coercive collection measures can be adopted on that basis to reach all tax debtors (equality before the law). This risk-oriented approach would make a distinction between good, not-so-good and bad taxpayers. The objective database can be

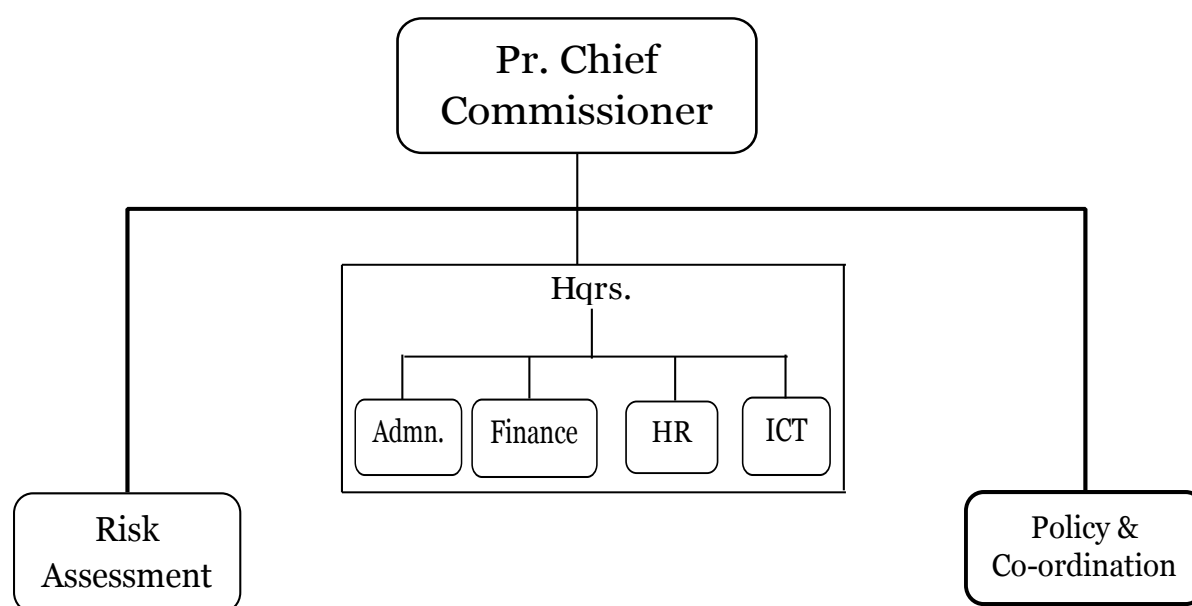
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<sup>22</sup> This could be on the lines of the Debt Collection Improvement Act, 1996, in the US.

used to develop a scorecard methodology and give a “score” to each debtor, indicating the likelihood of tax debts being settled within the stipulated time period. The choice of measure to collect tax debt can also be based on that “score”. As a result, taxpayers will receive differentiated treatment based on fixed and objective risk profiles.

Many tax administrations have set up models for tax debt analysis, such as discrete event simulation and system dynamics.<sup>23</sup> Both are simulation techniques. These models allow debt movement through the system, and allow the tax administration to take a proactive approach. The directorate should move towards that level of exactitude.

**Diagram 3.13: Tax Recovery Directorate**

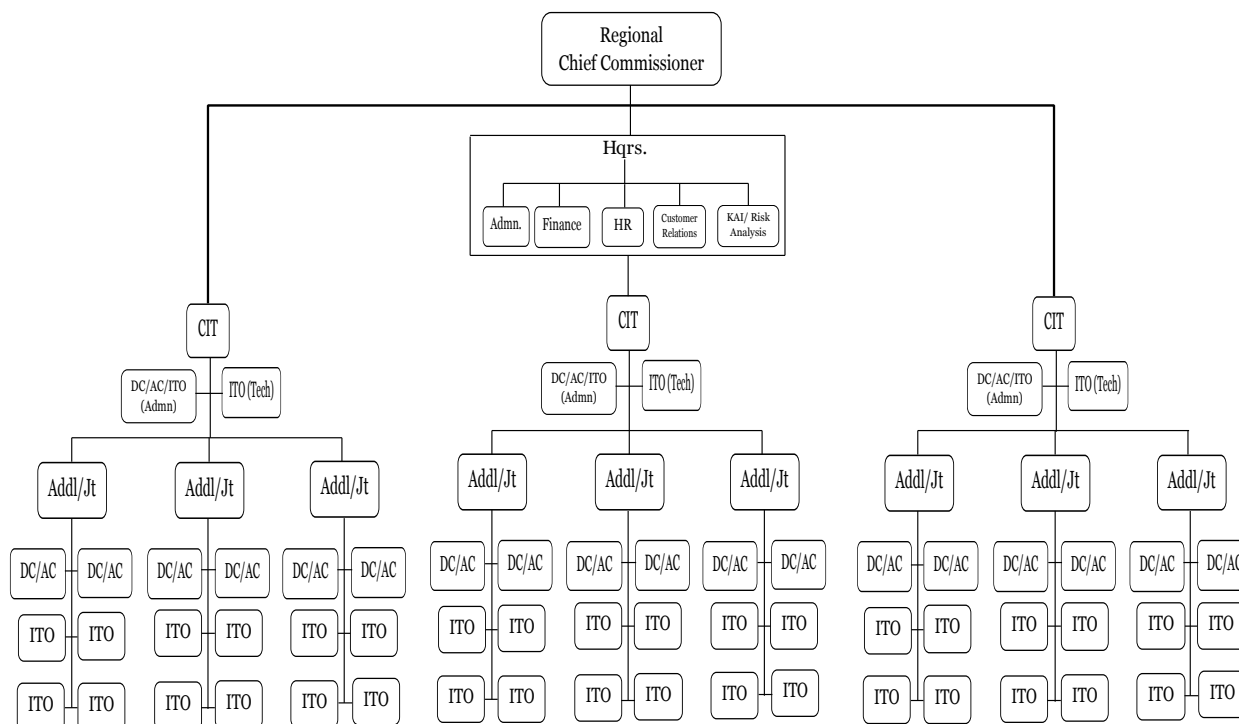


In its functions, the Principal DG will be supported by centralized facilities like a call centre and have its own field organization to undertake its tasks on a full time basis. The DG should have full powers of duty deferment and write offs, which should be appropriately delegated to field officers below him. The structure of the directorate is given in Diagram 3.13.

Regional Chief Commissioners will deliver the recovery functions in the field under a separate structure as shown in Diagram 3.14.

<sup>23</sup> Discrete event simulation and system dynamics are two different approaches to simulation modelling. System dynamics is essentially deterministic, whereas discrete event simulation is stochastic. Discrete event simulation models systems as networks of queues and activities, where state changes in the system occur at discrete points of time. The objects in the system are distinct individuals, each possessing characteristics that determine what happens to that individual, and the activity durations are sampled for each individual from probability distributions. On the other hand, system dynamics models a system as a series of stocks and flows, in which the state changes are continuous. A system dynamics model views “entities” as a continuous quantity

**Diagram 3.14: Field Tax Recovery Unit**



The CBEC will also have a similar structure. In the CBEC, there will be no separate field units for excise, service tax or customs.

**Enforcement**

Voluntary compliance is the most effective and efficient way of collecting taxes, but not all taxpayers comply voluntarily with their tax obligations. It is for these non-compliant taxpayers that enforcement activities need to be launched. Non-compliance can be for different reasons. Some taxpayers may be willing to comply but fail to do so because either they make a mistake or they do not know their obligations or they do not understand what they are supposed to do. But there is another category of taxpayers that commits fraud deliberately and sometimes consistently. Enforcement activity is for such taxpayers.

Currently, the enforcement functions in the CBEC and CBDT are handled through DG (Revenue Intelligence), DG (Central Excise Intelligence) and DG (Investigation), respectively. These directorates are already specialized in their functions and do not require any change. However, much greater co-ordination is needed in terms of greater use of ICT and extensive sharing of information between them, both at the headquarters and field level. There is also need for adoption of HR policies that are conducive to the development of specialization.

While DGs in the present role are field functionaries, there is need to have a directorate, to be headed by an officer of the rank of Principal Chief Commissioner, who would have the

responsibility to co-ordinate and develop programmes in the CBDT, as seen in other verticals. This directorate should co-ordinate tax information and identify the modus operandi in cases of tax frauds. The directorate should be responsible for integrity, expertise and effectiveness of the enforcement wing. This directorate will also be responsible for the working of the Directorate of Prosecution.

In the CBEC, each commissionerate has an in-house preventive and intelligence wing. With functional restructuring, these wings can be brought under the respective DGs, namely DG (RI) or DG (CEI). Under the CBDT, the DGs (Investigation) already function along these lines.

In Chapter VI, we have also recommended that a Directorate of Prosecution be set up under each Board to supervise prosecution. At present prosecutions are launched locally under the respective Chief Commissioners. While there is a prosecution policy to guide field officers, there is a need to apply it consistently and on the basis of expert examination of cases. This can be the mandate of the directorate of prosecution, which can be manned by people with skills, experience and background in criminal trial (including criminal lawyers) so that prosecutions are launched on a consistent basis, with due application of mind, and are effective. While prosecution may continue to be carried out in the field, launching prosecution may be on the advice of the Directorate of Prosecution.

### **International Co-operation in CBEC**

A number of initiatives are being undertaken in the area international customs co-operation under the auspices of the World Customs Organization and under different multilateral forums. It is desirable that India participates and takes a leadership position in its areas of strength and also gains from international co-operation. Currently, only a small cell in the CBEC handles this work. In view of the increasing volume of work and the increasing importance of international co-operation, it is recommended that a separate directorate with adequate resources is established to fulfil this role effectively. Most customs organizations have such set ups. This will be exclusively a headquarters-based set up to assist the Board.

#### **ii) Horizontal or support layers**

### **Information and Communication Technology**

Information technology is the key underpinning of all modernization efforts and although it has to be positioned as a support function, it necessarily has to be seen as more than just that. To enable the achievement of its potential, it needs to be seen very strategically as a potent value lever for the organization. Far more resources, therefore, need to be dedicated to this function and its importance should be reflected in the strategic thinking of the Boards. This has been discussed in detail in Chapter VII of the Report. However, the key point to be emphasized is that ICT coverage must be comprehensive in that it must extend to all processes across all functional domains so that

manual processes are eliminated. Further, where there are multiple systems, they must be interlinked or integrated so that the required information is available to officers on their desktops. Considering the size and complexity of the organizations under the two Boards, this is a huge task and both organizations are woefully under resourced. Compared to the total staff strength of the CBDT of 78,500 after the recent cadre-restructuring, the sanctioned staff strength of the Directorate of Systems is stated to be around 630; while the sanctioned staff strength is 84,875 in the CBEC, the Directorate of Systems has a strength of only around 200. Therefore, the two DG (Systems) need to be substantially strengthened.

Among other things, we have recommended the creation of a special purpose vehicle (SPV) for robust ICT implementation in Chapter VII of this report. Notwithstanding the creation of such an SPV, a strong ICT team is still required in-house for both the CBEC and the CBDT. This directorate would be the interface of the respective Board with the SPV. The DG (ICT), in the rank of Principal Chief Commissioner, should be the Chief Information Officer (CIO) of the Board and should be involved in key business decisions. This position is required in each Board. The main domains and critical functions that will have to be managed in this directorate are discussed below.

- **Co-ordination**

As mentioned earlier, in each key vertical, there would be an ICT team embedded, which would give support to that vertical. They will ensure adherence to norms, standards etc., laid down by DG (ICT), co-ordinate training and development efforts, change management efforts etc on behalf of the CIO. Their responsibility will also be communicating feedback, requests, etc., from the field to the CIO. Besides, this function will handle co-ordination with field functionaries.

- **ICT Strategy**

The CIO should provide thought-leadership in technology adoption and promote a high level of business-ICT integration so that it gets embedded in both decision making and business processes. It will have to develop the ICT strategy for the respective organizations including decisions on overall technology architecture, outsourcing and technology support for advanced analytics, data mining and data warehousing technologies. Such ICT strategies should be a subset of the overall business strategy.

Experience shows that one of the gaps most difficult to bridge is the one between business leaders and ICT specialists. There is an acute scarcity of senior leaders who have an understanding of the potential of ICT and key aspects of ICT governance and this is a serious constraint in achieving business-ICT integration. A key function of the DG (ICT)/CIO should be that of a “translator” between technology and business leaders to bridge this gap and, therefore, it is necessary that he is involved in important decisions relating to business strategy.

- **Operations**

This deals with management of operational systems and covers aspects like

- Maintenance of hardware, software, networks etc.
- Service management (management of service level agreements)
- External and internal customer support - call centre / helpdesk management
- Performance management, systems performance and control
- Technology refresh
- Vendor management

- **Business Applications**

Behind each critical business application, a team is needed to support key functions, some of which are

- Application maintenance
- Internal and external customer support
- SLA management
- Change management

- **Security and business continuity**

This is a highly critical function considering the confidentiality and sensitivity of data held by the two departments. This has to be an independent function separate from the other ICT teams. The chief information security officer will also act as the Chief Risk Officer for ICT. The main functions would be

- Development and maintenance of security policies and standards
- Development and maintenance of ICT risk management and business continuity plans
- Ensure adherence to security policies and standards
- Periodic security audits
- Forensics

- **Research and Development**

This will deal with the development of proof of concept to try out futuristic out-of-the-box ideas. It will involve continuing research on emerging trends and technological developments and close interaction with academic institutions and product and service firms to gain insights into the potential for new development.

- **HR, Capacity building, Competency development**

This is another critical area in which the CIO will play a key role. It hardly needs emphasis that effective ICT implementation needs a wide range of skills. ICT skills, in terms of using business applications, will be a basic requirement for all staff. More advanced skills are needed for senior officers in terms of using the various reporting tools etc., and officers posted in the ICT wing would need highly specialized training in specific technical areas. Participation in technical seminars and events will be essential since this adds to the knowledge base of officers. Besides, every new roll out of application or a major change needs to be accompanied by a robust training effort. CIO/DG (ICT) will have to closely interact with DG (HR) and the respective training institutions to ensure that these needs are met.

- **Legal/contracts/finance**

This is an important, though often neglected, area. ICT contracts are extremely complex contracts and unless experience and skills of contract management are available in the organizations, projects suffer.

If an SPV is set up, as we have recommended, many of the functions would be performed in the SPV. However, the crucial aspects of strategic control, technology architecture, and decisions on new developments, security and data policies and service management would still need to be performed within the DG (ICT).

### **Human Resource Management**

Traditionally, in the government context, this has been largely an administrative function focused on personnel management in terms of compliance with relevant rules and procedures. Even though the DGs (HRD) or the Chief Human Capital Officer (CHCO), an officer of the rank of Principal Chief Commissioner, have been given a little wider mandate, they seem to lack adequate support and infrastructure and the organizational context in which to fulfil the wider mandate.

We have dealt with the “People” function separately in Chapter IV of this report. Hence, here we touch only on the salience of the function and its critical role in the context of the governance framework that we are recommending.

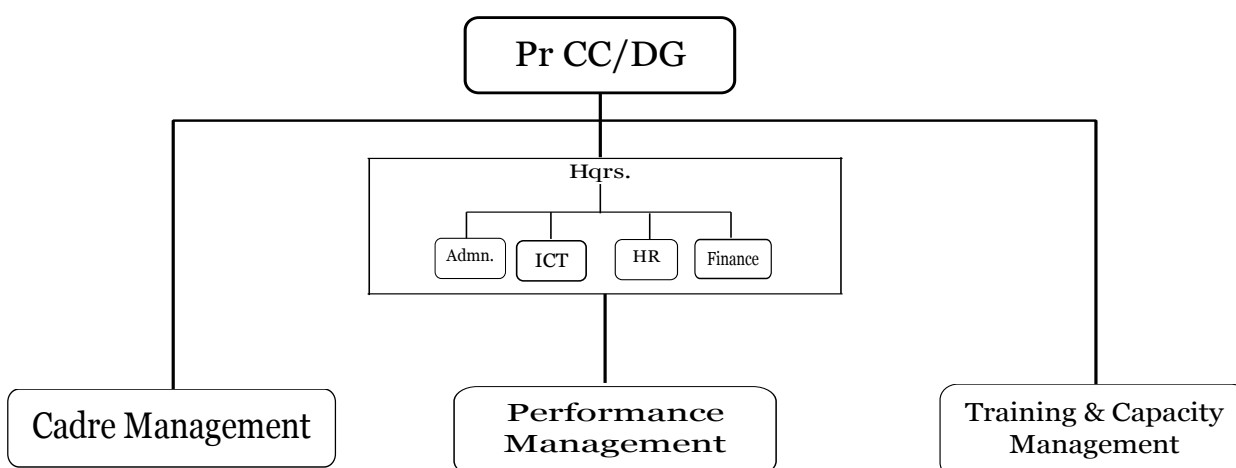
Today, in the HR function, for example, transfer policy and action is capricious at best, ruthless at worst, and there are several cases of irrational decisions that can be cited with ease. There is little accountability on senior officials for taking meaningless action on transfers resulting in an unnecessarily costly impact – pecuniary and non-pecuniary – on dedicated officers. This is often carried out as part of a poorly thought out transfer policy that is unstable, unpredictable and unpractised in civilized HRD environments. There is drastic need for change in this area and possibly some naming and shaming of officers taking such decisions.

It cannot be gainsaid that the key element in any transformational effort is the people in the organization. A policy is only as good as its delivery and to ensure that the tax administration meets its performance goals and the expectations of tax payers, careful attention needs to be paid to all aspects of people management. Hence, the role of DG (HR), who, in fact, should be regarded as the Chief Human Capital Officer, is very critical.

Congruent with the organization's plans in relation to ongoing and future activities, he will be responsible for the development and maintenance of HR policies, policies and processes for performance management and performance appraisals, capacity planning and development, meeting the requirement for specialized skills etc.

There, thus, needs to be an intimate link between functional areas and the DG (HR). In the proposed matrix structure, officers handling these functions will have a line of reporting to DG (HRM), apart from reporting to their superior in the vertical function. This will ensure the development of such a close link. Diagram 3.15 shows the structure of the DG (HR).

**Diagram 3.15: Structure of HR Directorate**



The same applies to the two other support functions listed below, namely, infrastructure and logistics, and finance and accounts.

### **Finance and Accounts**

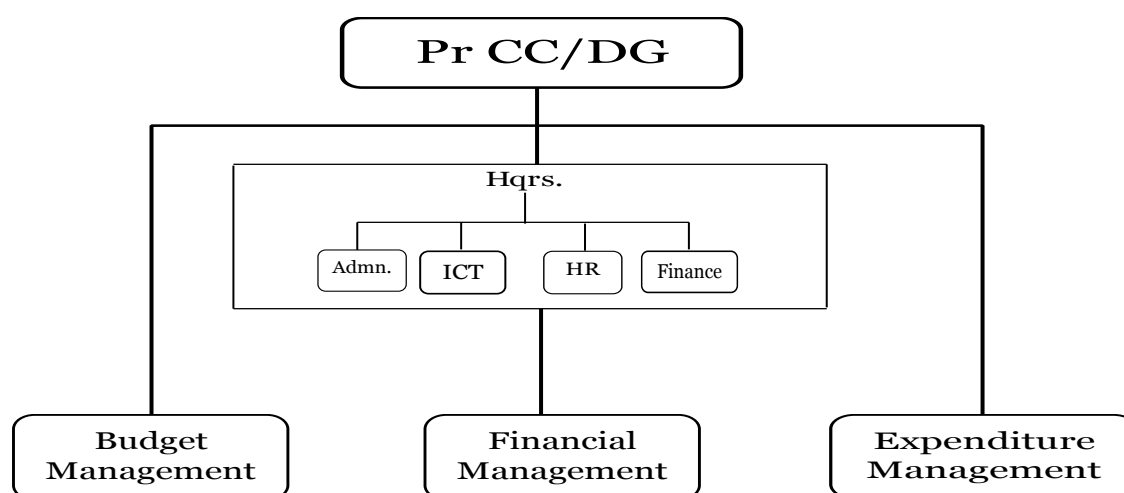
We have already discussed in this Chapter the role of a CFO at the level of a member in each Board. In line with the reasons stated in Para III.4.e, there is also a need to have an officer, DG (F&A), in the rank of Principal Chief Commissioner in each Board to carry out operations. The directorate under him will be responsible for fund allocations, financial evaluation of different projects and programmes, and will act as a financial monitor for the organization. He will, thus, have a stake in the success of the projects and programmes of the organization as he will be



intimately involved in crucial decision making. Financial control will, however, continue to be an important part of his functions; but it will be only one of the functions. The role of CFO has been detailed in Appendix III.8.

There should be a separate vertical under the DG (F&A) for financial control and audit. Functionaries of this vertical will be embedded in different functions of various vertical and horizontal functions. These officers will report for functional purposes to the Chief Commissioner, but for guidance purposes, will look towards the DG (F&A). Such a structure will allow delegation of financial powers at each level to bring celerity into the decision making process. Diagram 3.16 shows the structure of the DG (F&A).

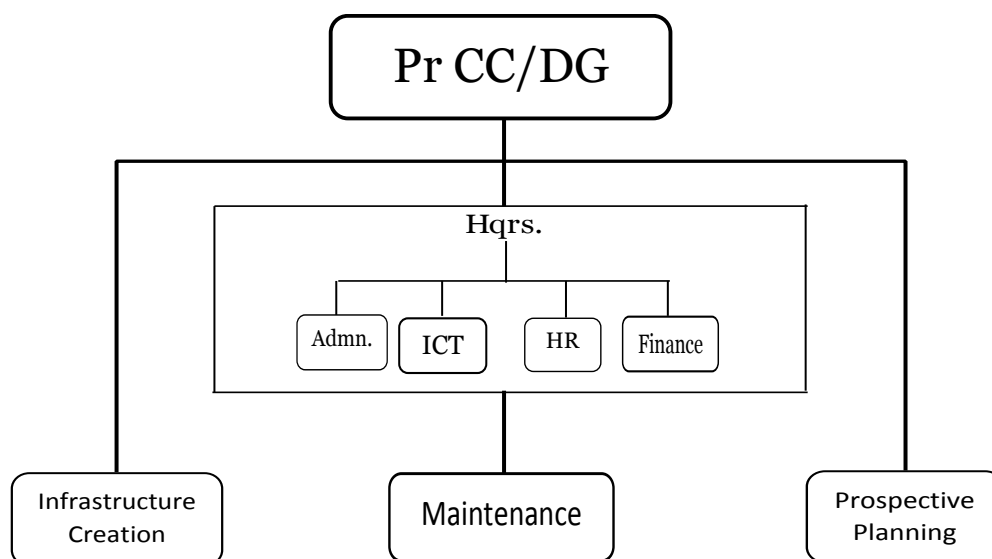
**Diagram 3.16: Structure of F&A Directorate**



### Infrastructure and Logistics

This function will be responsible for the provision of all physical infrastructures such as premises – offices, residential accommodation, guest houses, deals with hotels etc, vehicles and other facilities. It would deal with the acquisition of equipment involving large capital outlays, for example, container scanners, X-ray detectors etc. for customs. Each of the infrastructure and logistics directorates in the two Boards will be headed by a person in the rank of Principal Chief Commissioner as is the case even now.

The role of the directorate would be to address organization-wide infrastructural gaps. For example, one of the most common reasons cited for delays in the field and inadequate taxpayer services is that records are often not available due to poor record management. DGs (Infrastructure and Logistics) of the two Boards need to explore a national solution to this problem. Outsourcing is a viable option that has been adopted by many organizations. The CBDT's CPC is a good example that needs to be emulated elsewhere. Diagram 3.17 shows the structure of the infrastructure and logistics directorate.

**Diagram 3.17: Structure of the Infrastructure and Logistics Directorate**

### III.5.b Restructuring field formations along functions

Field formations under both the Boards currently consist of regions/zones headed by Chief Commissioners under whom the Commissioners, Additional Commissioners, Deputy Commissioners etc., function. In income tax, there is a degree of segmentation in as much as in major cities, there are separate charges for corporate cases, salaries etc. However, all major functions such as assessment/audit, enforcement, recovery, etc are under the charge of a Chief Commissioner or Commissioner. Commissioners (Appeals) are independent. However, their reporting channel is to the respective regional/zonal Chief Commissioner. Thus, field formations are currently largely organized to handle all key functions in a particular geographic region. In order to bring about a functional orientation, field offices would need to be restructured along the core functions of taxpayer services, compliance, audit, dispute management, enforcement and recovery, etc., as discussed above.

Thus, the field formations will be under the chief commissioners responsible for the above core functional verticals under the respective directorates general. The location and geographical jurisdiction of the Chief Commissioners will be determined by the workload and needs of a particular function.

Similarly, in central excise, in the audit vertical, there will be zonal or regional Chief Commissioners who will be exclusively tasked with functions relating to dispute management. They will be assisted by teams of Commissioners, Additional/Joint Commissioners, Deputy/Assistant Commissioners and other officers and staff. The field work will be handled by audit commissionerates, which will have the required number of audit parties under them. Audit

teams will be organized along functional specializations either according to industry/service sectors or taxpayer segments. In large metropolitan centres, the commissionerates themselves could be organized along the key industry/service sector segments such as banking and insurance, software, real estate, automotive, etc.

Similarly, in the dispute management vertical, all the key functions will be supervised by a zonal/regional chief commissioner who is tasked exclusively with this function. He will supervise the work of:

- Commissioners (Adjudication) sitting either singly or in panels
- Commissioners (Appeals)
- Dispute Resolution Panels
- The ADR machinery
- Review of orders
- Legal cells that handle litigation in the tribunal or courts
- Appointment of counsels etc for litigation in high court or, in important cases, in the tribunals

He will be responsible for reviewing and monitoring the achievement of performance targets in the area of dispute management and giving feedback to the DG (Dispute Management) about emerging issues of significance.

The horizontal functions, such HR, finance and ICT, will be embedded in this vertical and officers discharging these functions will follow the matrix pattern of dual reporting, i.e., they will report to their superior in the functional vertical and will have the so-called “dotted” line reporting to the concerned horizontal. This will ensure, on the one hand, that policies in the respective domain such as HR, finance etc., are properly implemented and, on the other, that the needs and concerns of the functional vertical are communicated to support functions.

A similar pattern will be followed for the other verticals such as taxpayer services and collections/debt recovery. There will be field organizations headed by Chief Commissioners reporting to the Principal DG in the respective vertical, with embedded support functions like IT, HR, finance and administration in a matrix structure as illustrated above.

To sum up, the recommendations above will lead to a functional restructuring of the CBEC and CBDT and their directorates and field organizations. Barring commonalities in governance and in certain functions, they will operate separately in respect of the medium and small taxpayer segments. However, for the large business segment, they will operate jointly, as already discussed above in detail.

Appendix III.9 gives the estimated number of Principal Chief Commissioners and Chief Commissioners in each Board for different functions.

### **III.5.c Redesigning roles and functions in field formations to promote clear lines of responsibility and accountability**

With the reorganization of the structure and functions along core functional verticals, there will be enhanced clarity in role definitions of officers and a greater scope for setting appropriate performance targets to achieve performance goals in the respective functional areas. This would usher in clearer lines of accountability as they would be responsible for specific functions within the respective domain. Officers, for example, working in the customer relationship office would have performance goals focused on that area only and would be judged on their performance in that area. The matrix structure, as already discussed above, would also promote greater integration between the functional vertical and the horizontal support layers and provide a greater voice to the “internal customer” when it comes to servicing his needs.

### **III.5.d Promotion of specialization in key areas – industry groups, taxpayer services, technology, finance etc**

Functional orientation would also promote specialization in the respective area. However, this is dependent heavily on the adoption of HR policies that promote such specialization. While this is dealt with in detail in Chapter IV of this report, it needs to be stated here that the objective of functional orientation can be achieved only when the assignment of people to these functions is based on an assessment of their competencies in the relevant area, stability of tenures in that area and continued learning to upgrade their skills in specified areas. It is a truism that tax compliance gets affected by various factors such as industry structures, the peculiar economic factors affecting specific sectors, the behaviour of players in the given sector etc. Tax administrations can respond to challenges appropriately only when they develop specialized knowledge about such factors; therefore, there needs to be continuing research to discover risks and adopt appropriate strategies to mitigate them. It is, therefore, essential that such specialization is encouraged by selecting suitable officers and providing them sufficient tenures to develop specialized knowledge/in key sectors.

The other dimension is that different functions require different skills and mind-sets. The officer who has a natural bent and interest in development and collection of intelligence regarding smuggling may not fit as well into a customer service role. Similarly, someone who has acumen in information technology may not do a great job as an auditor. In the current system of transfers and placements, the likelihood of mismatches between people and assignments is quite high and HR policies need to change to attain a better fit between the organization’s requirements and the skill sets and aptitudes of officers.

### **III.5.e Structures congruent with the potential offered by IT and designed to promote consistent levels of performance and services**

There are some processes in which the key driver is efficiency and there are others where it is effectiveness. Examples of the former are processes like return processing, refunds, duty drawbacks etc., and of the latter, processes like dispute resolution, in-person customer services etc. In the former category, international experience shows that great savings of cost are possible through centralization, which is made possible by ICT. The CBDT has already adopted this approach when it set up the first CPC at Bengaluru and then followed it up with the TDS CPC at Ghaziabad. The benefits of this are beyond doubt and the CBEC needs to emulate this example and centralize the processing of returns in central excise and service tax.

Even in customs, it would be possible to centralize the processing of bills of entry and shipping bills. There are multiple design options possible. If centralization in a single facility is not possible, work can be concentrated in a few major customs houses organized along specialization in terms of tariff lines. Thus, if the best expertise in the ICT sector is concentrated in Bengaluru, it can be given the responsibility for processing all bills of entry across the country, while some other customs house manages other sectors. Only physical examination, when required, needs to happen in the respective location. On the other hand, where decentralization is required because of the need for say, a tax payer's convenience, a robust ICT processing and knowledge management system will, for example, enable greater devolution of functions to the front desks so that the taxpayer needs can be serviced more quickly and effectively.

### **III.5.f Appropriate placement of functions**

The guiding principle for placement of functions should be that (a) as far as possible solutions are delivered at the front desk and the customer should be unaware of the complexities at the organization's back end and (b) where special skills are required to address a particular issue, that knowledge or skill should be brought into play at the earliest possible stage. For example, we have recommended the early dispute resolution mechanism in the dispute management vertical, comprising panels of officers in dispute resolution panels and alternative dispute resolution so that a taxpayer gets direct access to authorities empowered to resolve issues.

Therefore, routine tasks should be delivered at the front desk through adequate delegation and, as far as possible, through the use of technology remotely as in-person services tend to be more expensive. In designing ICT solutions, extensive provision for self-help will further reduce the load on the administration. On the other hand, there should be seamless escalation to expert knowledge within the organization when relatively more complex issues have to be addressed.

### **III.6 Role of Knowledge, Analysis and Intelligence (KAI) and its integration for operational effectiveness**

This has been discussed in detail in the Chapter VII of this report.

As noted earlier, the use of data analytics in the two Boards in policy development as well as in operations is much less than warranted. There is huge potential for improvement in this area, given the wealth of data available to the two organizations.

In this age of big data, successful organizations use information and knowledge as the key lever to transform their operations and tax administrations are increasingly following the lead of the private sector in using data analytics to refine their policies and operations. This requires advanced analytical capabilities both in terms of technological and human skills. Both Boards have moved to the acquire business intelligence tools, reporting tools, etc., in their data warehousing projects. However, the benefits of these technologies cannot be fully realized until the data held by the two Boards is unified. And the real leverage will come when the combined tax data is linked with data from external sources for the purpose of analysis. The potential is immense in both policy and operational areas. With advanced tools that are getting increasingly refined, it is possible to discover hidden risks and potential opportunities, build predictive models, create simulations on historical data for ‘what if’ analyses and build sophisticated rule sets to screen transactions.

To catalyse analytics efforts, the trend among forward looking organizations is to create a centre of excellence, which works with businesses to develop and deploy analytics rapidly. Most often, it includes data scientists, business specialists, and tool developers. Centres of excellence can become hotbeds of learning and innovation as teams share ideas on how to construct robust data sets, build powerful models, and translate them into valuable business tools.

The KAI centre would be the hub of such analytical activity and would release the huge potential for exploiting the value lying in the rich data that the Boards hold and are acquiring every day. Its goal should be for it to be so successful at building data-analytics capabilities that the organizations can tackle increasingly ambitious initiatives and programmes with an emphasis on analytics innovation and breakthrough insights.

Talent is a critical issue in this area. The skills required are typically a combination of advanced ICT and analytical skills and strong business knowledge combined with experience in making business decisions based on data analysis. While it may be possible to train some willing and capable IRS officers, it will not always be possible to create such skills in-house and they may have to be sourced from outside. Considering the acute scarcity of such skills, what will be needed is a creative way to source and retain talent; this is an example of an area where autonomy from normal governmental structures and processes is needed. In view of this, and in view of the fact that it is highly ICT intensive, it would be best incubated in the SPV. Its locus in the organization would normally be that part where it will be most impactful and this would appear to be the DG (SRPM). It must, however, service the deep analytical needs of the other verticals such as customer services, compliance management, enforcement etc. The KAI centre must necessarily be a shared service between the Boards for best results. Given the highly specialized nature of the tasks, it is also essential that the KAI centre is led by a highly qualified expert in the field.

Having regard to the requirement of intensive research orientation, the KAI centre would need to be empowered to develop close links and relationships with reputed national and international research institutes, universities and private sector bodies specializing in data analytics.

### **III.7           Autonomy and independence coupled with responsibility and accountability – relationship with Ministry of Finance (MoF)**

The powers and functions of the two Boards and the lack of clarity in their secretarial functions, as also the lack of financial and administrative authority in the present set-up, have attracted considerable debate time and again. This anomalous arrangement is exacerbated by the separate arrangements for financial powers to the line departments under the two Boards – separate demand for grants exist for the two departments, but the two Boards do not have any financial power and have no role in projecting and prioritizing financial requirements. Similarly, service structuring as well as placement is again often dealt with by the Department of Revenue which not only results in avoidable delays but also undermines the authority of the two statutory Boards. The present system is also quite contradictory to international best practices, which is that revenue bodies, either functioning as departments of the government or as completely autonomous organizations, report directly to the minister.

The Revenue Secretary occupies the apex position in the Revenue Department and is selected from the Indian Administration Service (IAS). He is likely to have little experience or background in tax administration at the national level and little familiarity with tax, including international tax, issues that are increasingly taking centre stage in emerging global challenges in taxation. Yet s/he is the final signatory on decisions on tax policy and administration matters prior to their arrival for the Finance Minister's consideration. The TARC found that this has translated to the Indian tax administration's attention and concerns – in the form of the Revenue Secretary's control over the CBDT and CBEC - to mainly represent the Revenue Secretary's area of familiarity, i.e., general administration, in which s/he may be highly competent but which is likely to possess only thin links to the most challenging matters of tax policy making or modernizing tax administration in the light of current global practices. In a sense, this peculiar practice has assigned the ultimate responsibility for administration and financial control lying with the Revenue Secretary – Department of Revenue – rather than to the CBDT or CBEC.

This is not the first time that a government committee has found that this admixture is anomalous, and that the post of Revenue Secretary is superfluous. It was considered by the Tax Reforms Committee, 1992, chaired by Prof. Raja J. Chelliah. The Committee's views were as follows:

*“We recommend that (a) the two Boards should be given financial autonomy with separate financial advisers working under the supervision and control of the respective Chairman; (b) the Chairman of the two Boards should be given the status of Secretary to the government of India and the members of the rank of Special Secretary; and (c) the post of Revenue Secretary should be abolished.” (Para 9.27 of the Final Report Part – I)*



The TARC's finding regarding the role of the Revenue Secretary is congruent. It is surprising that government has so far not visited this matter and, as will be developed in detail in this report, it is time to give renewed attention to it due to its adverse impact on the efficacy of the tax administration in India.

Interestingly, the Chelliah Committee not only recommended abolishing the post of Revenue Secretary, but also emphasized financial autonomy for the two Boards. To quote,

*“... the Boards should have financial autonomy and that the Chairmen should have a sufficiently high status. We recommend that the two Chairmen should be directly accountable to the Finance Minister insofar as matters relating to tax administration are concerned.” (Para 9.28 of the Final Report Part – I)*

Selected matters relating to the administration/financing structure had been examined in the case of the CBDT by the even earlier Wanchoo Committee, 1971. It recommended making the Board an autonomous body, independent of the Ministry of Finance, with the Chairman enjoying a status equivalent to that of a Secretary to the Government of India as in the case of the Post & Telegraph Board. The subsequent Choksi Committee, 1978, reiterated that,

*“... the Chairman of the Central Board of Direct Taxes should have the status of a Secretary to the Government of India and the Board should have adequate staff assistance and should be provided with personnel having necessary technical background and experience”. (II. 2.16 of Choksi Committee Report)*

This issue of the administrative set up of direct taxes was also examined later by the Estimates Committee of Parliament. In its 10<sup>th</sup> report (1991-92), the Committee made the following recommendation in Para 3.77 of their report:

*“The Committee note that the existence of Central Board of Direct Taxes as an independent statutory body dates back to 1964 when Central Board of Revenue Act, 1963 was enacted. The Board is responsible for administration of various direct tax laws and rules framed thereunder, and for assisting Government in formulation of fiscal policies and legislative proposals relating to Direct Taxes. They further find that apart from the field offices of the Income Tax Department, a number of attached offices also function directly under the Board and assist it in discharging its responsibilities. At present the Board comprises of (sic) 7 members one of whom is nominated as its Chairman. However, the Committee are surprised to note that the Government have not yet accorded appropriate rank and status to the Chairman and members of the Board....*

*The Committee wonder why the Chairman of the Board cannot be given the rank and status of Secretary of Government of India. The contention of the Ministry that there ought to be a Secretary, Department of Revenue, to coordinate the affairs of the two Boards, viz., CBDT and CBEC, is unacceptable to the Committee as in their opinion the two areas of Central revenues dealt with by the two Boards are fairly distinct from each other and do not require more coordination than that*



*is necessary between the Ministries of Commerce and Finance, which are headed by independent Secretaries reporting to different Ministers. The Committee feel that at the Secretariat level whatever coordination is necessary can best be achieved through inter-ministerial or inter-departmental Committees and consultations. The Committee are amused at the contradictory stand taken by the Ministry in deeming the two departments viz. Income Tax and Customs and Central Excise to be more important than the Railway Board and simultaneously expressing themselves against conferring upon the head of these organizations the rank and status of a Secretary to Government of India particularly when the Chairman, Railway Board holds the rank of a Principal Secretary to Government of India. The Committee find no reason why similar status cannot as well be given to the Chairman of the Central Board of Direct Taxes and the Central Board of Excise and Customs.”*

With regard to the Committee’s observation that the two Boards are “fairly distinct from each other and do not require more coordination than that is necessary”, the TARC notes that since 1991-92 international experience has clearly moved counter to the Committee’s observations and as noted in Chapter III, the dominant global trend is in the direction of unification of direct and indirect tax administrations and treating corporate tax and VAT/GST together as business taxes.

The TARC has worked along similar lines. First, it agrees that the post of Revenue Secretary does not merit presence in a modern tax administration. Instead, a Governing Council should be introduced with the chairs of the Boards alternating as its chairperson. In this manner, the TARC adds to the tenor of the Chelliah Committee in that India should benchmark itself with modernizing tax administrations by not only removing the position of Revenue Secretary but by replacing it with a Governing Council that should include members from the non-government sector as well. The Governing Council will oversee the functioning of the two Boards and approve broad strategies to be adopted by the tax administration to fulfil the objective of a more co-ordinated approach to the administration of the two taxes – direct and indirect – and create a structure which is independent.<sup>24</sup> Such a co-ordinated approach also improves the focus of the tax administration towards its customers, or taxpayers.

Second, synergy in tax policies and legislation between the two tax areas is to be achieved through a Tax Council, headed by the Chief Economic Adviser (CEA) at the Ministry of Finance. The Tax Council will bring the rigour of economic analysis and high precision in legislative drafting to tax laws so that tax laws are not only of assured quality, but are also coherent across tax types. The TARC found that the CEA is more equipped to deal with the links between tax and economic policies than the Finance Secretary (who was given a role by the Chelliah Committee). This new pattern reflects prevalent global practice in which tax and the economy are recognized to be intrinsically linked. That link needs to be established in India rather than linking it with external administrative control, apparently to accommodate an administration oriented service.

<sup>24</sup> Examples of autonomy in tax administrations have been given in Appendix III.10.

The proposed structure would result in more autonomy in the functioning of the tax administration, which is unlikely to be achieved in the present structural framework as it fails to empower tax departments to carry out their assigned responsibilities efficiently. The Task Force and Direct and Indirect Taxes, 2002, chaired by Dr. Vijay L. Kelkar, had also recommended that both the CBDT and CBEC should be given requisite autonomy (Para 3.69 of the report on direct taxes and Para 7.2.2 of the report on indirect taxes).<sup>25</sup> The present functions of the DoR could easily be handled by the two Boards. The TARC could not identify the rationale for entrusting such functions to a separate body. Functions such as prevention and combating abuse of narcotic drugs and psychotropic substances and illicit traffic therein, Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, and the administration of central sales tax can be looked after by the CBEC while the enforcement of the Foreign Exchange Management Act, 1999, and Prevention of Money Laundering Act, 2002, can be looked after by the CBDT. The administrative functions relating to the Authority for Advance Ruling, Settlement Commission and Ombudsman can be delivered through the respective Boards.

The Governing Council and Tax Council will operate as single entities over both the Boards to achieve better tax governance. The Councils anticipate the eventual convergence of the two Boards. Over the next five years, the two tax departments would move to a unified management structure, i.e. a common Board and operate the services for both taxes, as shown in Diagram 3.5. This would pave the way over another five years to a fully integrated tax administration with corporate tax, excise duty and service tax, together comprising taxes on business. When major functions of the tax administration are organized along functional lines, and not on merely tax lines, it will enhance taxpayer as well as staff convenience. This reflects current global practice. This would, of course, not be at the cost of specialisation in different tax types.

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<sup>25</sup> The Task Force had further recommended an MoU between the Ministry of Finance and CBDT to bring more meaningful accountability to the tax administrations (Para 3.70 of the direct taxes report).

### III.8 Recommendations

The Commission recommends that:

- a) The two Boards must embark on selective convergences immediately to achieve better tax governance, and, in next five years, move towards a unified management structure with a common Board for both direct and indirect taxes, called the Central Board of Direct and Indirect Taxes. For a unified management structure, apart from the common Board, the functions that can easily support the framework would be in the areas of human resource management and vigilance, finance, ICT, infrastructure and logistics, and compliance verification. (Section III.4.e)
- b) The convergence can begin for large business segment by setting up of a large business service (LBS) which will be integrated and operated jointly by both the Boards. This will be a taxpayer segmentation by the tax administration, and joining LBS will not at the option of the taxpayer. All the core tax functions will be managed jointly by officers of both the Boards. (Section III.4.b)
- c) The tax administration needs to have greater functional and financial autonomy and independence from governmental structures, given their special needs. (Section III.7)
- d) The post of revenue secretary should be abolished. The present functions of the Department of Revenue should be allocated to the two Boards. This would empower the tax departments to carry out their assigned responsibilities efficiently. (Section III.7)
- e) A Governing Council, headed by chairperson of the two Boards, by rotation, and with participation from outside the Government, should be set up at the apex level to oversee the functioning of the two Boards. (Section III.4.c)
- f) An Independent Evaluation Office (IEO) should be set up. Its main work would be to monitor the performance of the tax administration, promote accountability, evaluate the impact of tax policies and assess all factors that affect tax administration. IEO will report to the Governing Council so as to ensure its independence. (Section III.4.c)
- g) A Tax Council should be set up to develop a common tax policy, analysis and legislation for both direct and indirect taxes. The council will be headed by the Chief Economic Adviser of the Ministry of Finance. (Section III.4.d)
- h) Common Tax Policy and Analysis (TPA) unit comprising tax administrators, economists, and other specialists such as statisticians, tax law experts, operation research specialists and social researchers should be set up for both Boards. The existing TPL in CBDT and TRU in CBEC should be subsumed in the common TPA. TPA will report to the Tax Council through the concerned member of each Board. TPA will be responsible for all three major components of tax policy formulation – policy development, technical analysis, and statutory drafting. (Section III.4.d)

- i) Each rule, regulation and other tax policy measure such as exemptions should be reviewed periodically to see whether they remain relevant to the contemporary socio-economic conditions and meet the changing requirements. For this, a robust process should be institutionalized. As a first step, a thorough review of the existing rules, regulations and notifications should be undertaken. Going forward, it should be a standard practice to build sunset clause in each rule, regulation and notification. (Section III.4.d)
- j) The present Boards are not aligned to various needs nor are they geared to respond to emerging and future challenges in an effective and efficacious manner. Keeping that in mind, the two Boards should be expanded to have ten Members, apart from the Chairperson. (Sections III.5)
- k) The two Boards would be responsible only for policy dimensions of tax administration, while the directorates under them would be responsible for operations in the field formations. These directorates would have a vertical and horizontal alignment with functions, and would interact with each other in a matrix-like structure of responsibilities and accountability. (Section III.5)
- l) The field formations are currently organized to handle all key functions in a particular geographic region. In order to bring about a functional orientation, field offices will need to be restructured along the core functions of taxpayer services, compliance, audit, dispute management, enforcement and recovery, etc. (Section III.5)
- m) A functional orientation would promote specialization in the respective area of tax administration. For these reasons, specialization should be encouraged by selecting suitable officers and providing them sufficient tenures to develop specialized knowledge in key sectors. (Section III.5.d)
- n) A common approach for developing robust and comprehensive enterprise risk management framework should be adopted by the two Boards. This should be approved by the Governing Council to bring coherence. (Section III.5.a.i)
- o) There should be one Knowledge, Analysis and Intelligence (KAI) centre for both the Boards and its role should be recognized and used for policy and operational effectiveness. (Section III.6)



# **CHAPTER IV**

## **PEOPLE FUNCTION**



# Chapter IV

## People Function

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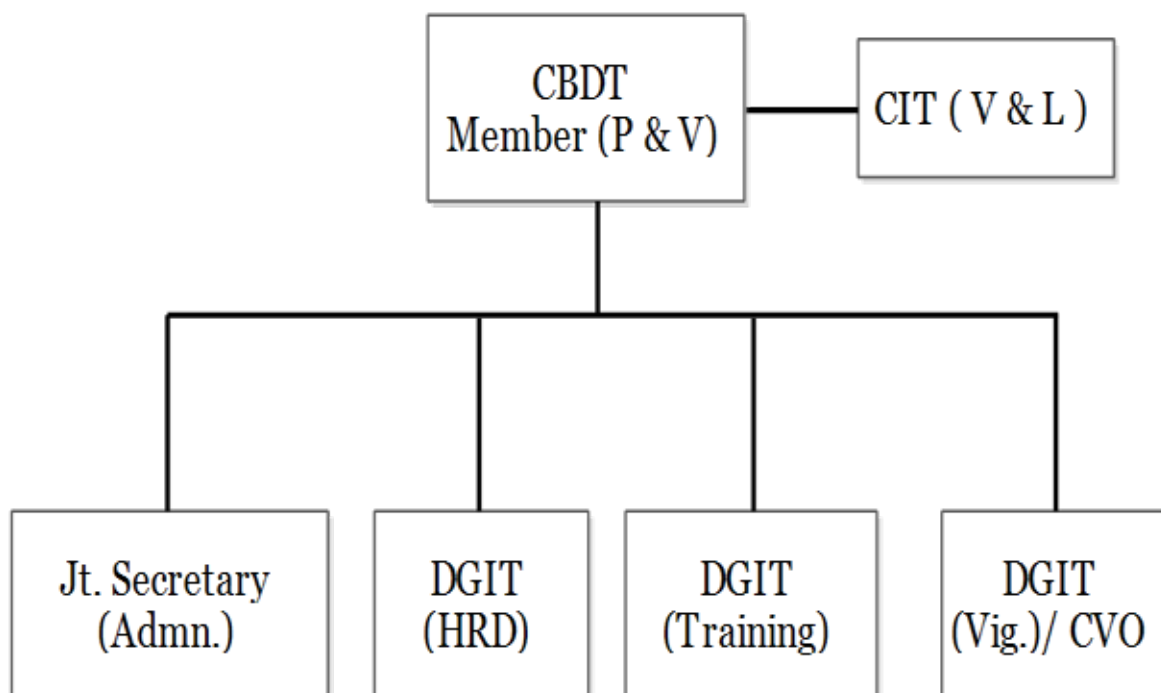
# Chapter IV

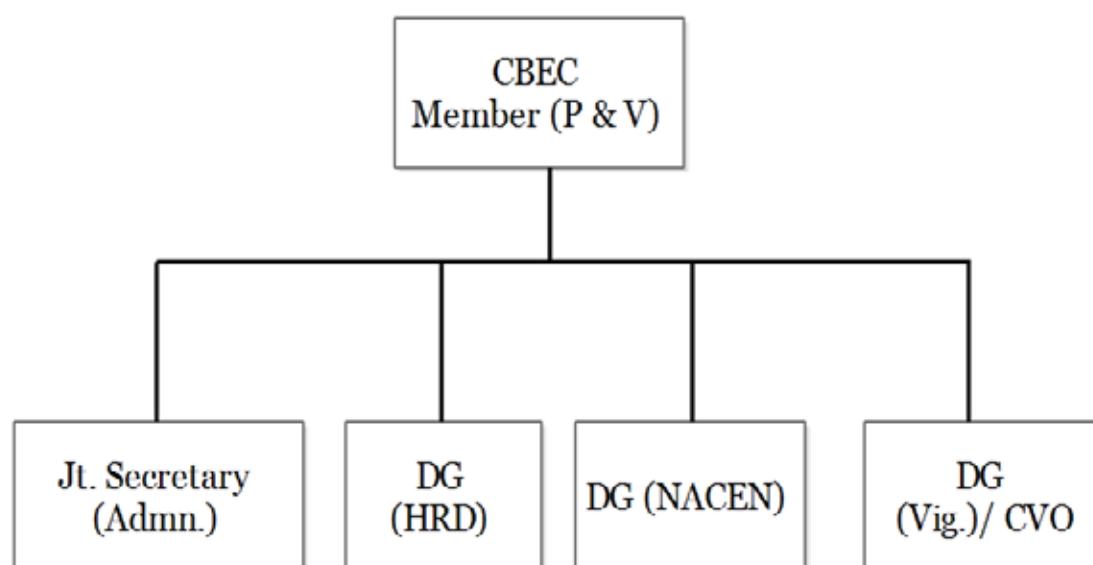
## People Function

### IV.1 Current structures, processes and practices

Human resource development, i.e., people function in both the Boards is under the overall supervision of Member (P&V) and discharged by different sections of the Board through the Joint Secretary (Administration) and two directorates general, namely Directorate General (HRD) and Directorate General (Vigilance). The latter is also the Chief Vigilance Officer (CVO) of his Board. These directorates act as links between field formations and the Boards. All decisions for and on behalf of the President of India are taken in the ministry and the directorates dealing with HR functions provide necessary technical support to the ministry for the discharge of various functions. Besides, the two national academies, namely, the National Academy of Customs Excise and Narcotics (NACEN) and the National Academy of Direct Taxes (NADT), which service the capacity building and training needs of the two tax administrations, also report to the respective Member (P&V). The HR organizational structures of the Member (P & V) of the two Boards are indicated in Diagram 4.1 below.

**Diagram 4.1: HR organizational structures of CBDT and CBEC**





A brief write up on the DGs (HRD) and the two national Academies is in Appendix IV.1. A short note on DG (Vigilance) is in Appendix IV.2.

The two departments, i.e. the income tax (I-T) department and the customs and central excise department (C&CE) headed respectively by the CBDT and the CBEC, are two of the many central government departments. Unlike in the matter of tax policies, where they enjoy relative autonomy, in matters of HR policy, they are guided by the nodal department of the central government on personnel matters, namely the Department of Personnel and Training (DoPT). The DoPT issues circulars, memorandums and notifications on various personnel matters from time to time, spelling out the view or the decisions of the Government of India on personnel and service matters. The CBDT and CBEC have to frame their HR policies in conformity with the prescriptions of the DoPT. Even the broad parameters of the performance appraisal scheme prevalent in the central government have been framed by the DoPT (on the recommendations of the Administrative Reforms Commission) and the departments have been asked to devise their appraisal forms in conformity with such guidelines.

All employees of these departments are central civil servants. Their code of conduct is governed by the same Central Civil Services (Conduct) Rules and disciplinary proceedings are governed by Central Civil Services (Classification, Control and Appeal) Rules that are applicable to all other employees of the central government. Moreover, the protection of Article 311 of the Constitution is also extended to them.

Government departments in India do not have the freedom to fix their own pay bands. These are decided by the central government on the recommendations of the pay commissions, which are set up from time to time. New pay scales and provisions for all kinds of pay and allowances,

including performance related pay, can only be introduced after going through the associated process of approval by the union cabinet.

Recruitment in the departments is done through the annual Civil Services Examination of the Union Public Service Commission (UPSC) for the IRS cadres and the Combined Graduate Level Examination of the Staff Selection Commission (SSC) for subordinate employees, such as inspectors and tax assistants. The qualifications for these examinations and the schemes of these examinations are framed by the two commissions according to qualifications and norms for such recruitment prescribed by the Government of India (DoPT) from time to time. They are common competitive examinations for entry into central government and the entrants are expected to be equipped for the specific responsibilities that they are required to discharge on joining the departments they are assigned to through training by the recruiting departments. Promotions to the IRS, and by the selection method within the IRS, require consultation with the UPSC; the departmental promotion committees are chaired by Chairman/Member of the UPSC. Fifty per cent of the vacancies in the IRS at the entry level are filled by candidates sponsored by the UPSC and the other 50 per cent by promotion from the Group B cadres in the two departments.

Promotions from one grade to another in the two departments, like all other government departments, are governed by the respective recruitment rules and guidelines issued by the DoPT. The rules have to conform to the model rules circulated by the DoPT and can be notified only after approval by the DoPT and in consultation with the Union public Service Commission (UPSC). Guidelines of the DoPT in matters such as determination of seniority and promotions are binding on the departments. In terms of the relevant guidelines and instructions, the selection of officers for promotions, depending on the grade in question, broadly falls into two categories – “selection” method in which there is a comparative assessment of candidates under consideration and “non-selection method”, which involves no comparative assessment and follows the principle of seniority, subject to the rejection of the unfit. Where the method is “selection”, there are benchmarks for the overall level of performance prescribed namely “Good”, “Very Good” and “Outstanding”. To be considered suitable for promotion, the candidate has to attain the prescribed benchmark. Earlier, those obtaining a higher grading of performance would supersede others, thus getting accelerated promotion over their erstwhile seniors by virtue of better performance. However, that has been done away with from February 2002 and now all those obtaining the prescribed benchmark are promoted in order of seniority. Thus, any sort of comparative assessment of officers has been done away with and promotions are almost completely seniority-based. There is little or no discrimination based on performance as far as the officers’ career progression is concerned.

A major reason why this has happened is that the very basis on which performance assessment is based, i.e., the Annual Performance Appraisal Reports (APARs) introduced about three years ago, has itself got thoroughly debased. The APARs were developed as an improvement over the previous system based on confidential character rolls (CCRs), which was perceived to be too

subjective and opaque as the assessment of an officer was not disclosed to him, unless it was adverse. The APARs were designed as a more open system with numerical scores that have to be disclosed to the officer being assessed. In actual experience, this has led to a complete deterioration of the performance appraisal process. One can do no better than quote the findings recorded in the booklet on Performance Management and Evaluation System published by the Performance Management Division of the Cabinet Secretariat.<sup>26</sup> It candidly observes:

*“There seems to be widespread dissatisfaction with the working of the APAR system at all levels in the Government. There is a perception that the attempts to quantify and bring objectivity have not been successful. Most officers expect to get a perfect score of 10 and usually get it thus creating a situation where every individual officer is rated excellent yet the performance of the department as a whole is not considered anywhere close to be excellent (sic). Even though the current APAR system is barely three years old, it is clear that it is also not achieving all its stated goals. The “General Guidelines for Filling up the Form” state:*

*Performance appraisal should be used as a tool for career planning and training, rather than a mere judgmental exercise. Reporting Authorities should realize that the objective is to develop an officer so that he/she realizes his/her true potential. It is not meant to be a fault-finding process but a developmental tool.*

*Contrary to expectations, the primary purpose of the APAR exercise seems to have become an instrument to judge officers. It is not seen to be playing any role in the development or training of officers. Thus urgent reform of APAR is also required and the Cabinet Secretariat is working towards it.”*

The process has promoted mediocrity and ceased to provide an incentive for performers to excel. Besides, the emphasis on seniority also means that officers are reaching senior positions in service, particularly the Board, with very little service left, leaving them with little time, energy and motivation to conceive and implement any medium or long-term plans. Clearly, there is a need for a meritocratic system that recognizes and rewards performance and provides for early identification of high performance, potential leaders who would reach key positions in time to make a difference to the organization.

One of the central weaknesses of the performance appraisal system is that it is not based on reliable performance data. And this is because most processes in government still continue in the paper environment, making it difficult to collect and collate reliable performance metrics. The most critical requirement for a reliable performance management system is that the entire operations of an organization must, as completely as possible, shift to the digital platform so that performance can be measured reliably. Once this is done, the institution of a robust and reliable performance

<sup>26</sup><http://performance.gov.in/sites/default/files/document/pmes/PMES%202014-15.pdf> Accessed on May 2, 2014

measurement and assessment system that enjoys every employee's confidence no longer remains as daunting a task as it is in a non-ICT based environment.

Both the Boards are the cadre controlling authorities for the respective IRS personnel, meaning that they handle issues of recruitment, transfers, promotion, disciplinary matters etc. of Group A officers. Similar functions in relation to Group B and C staff are handled by the cadre controlling chief commissioners in the field.

On the whole, the HR function in the two Boards is primarily focused on administrative compliance with the personnel policies, rules and procedures that have government wide application. It is widely acknowledged that the entire system of personnel management in India has today become captive to a regime based on entitlements for government servants with little regard to their actual performance or contribution. The two Boards are not an exception to this.

A large part of the energy and effort of those assigned the HR function in the two organizations is expended in dealing with such service matters and routine transfers and posting. The two Boards have a detailed transfer policy based on categorization of stations as Group A, B and C for the IRS and these policies prescribe the maximum tenures for officers in the three categories of stations at a time and over their service spans till the grade of commissioner. These policies also prescribe regular rotation of officers between what are called "sensitive" and "non-sensitive" posts within individual stations. Efforts are made by both Boards to select meritorious and suitable officers for the relatively more important postings. However, whatever else may be said regarding the merits and demerits of these policies, one thing is clear and it is that they are not calculated to promote specialization as they give little weightage to it nor do they take into consideration the individuals' willingness, aptitude and attitude in relation to specific aspects of tax administration.

Like in the case of the IRS officers, the officers at the Group B and C levels are also rotated regularly between different assignments, the so-called "sensitive" and "non-sensitive" ones, at the regional or zonal level and also within the local commissioners' charges.

The upshot is that during the transfer season, both organizations see a large part of their employees moving between assignments and, in that period, there is a general dislocation of work and lack of continuity in approach. Further, frequent changes also affect adversely accountability for work. This, in turn, affects the quality of service that the taxpayer experiences. In income tax, officers in the field expressed difficulties arising from the scheduling of transfers around the time when workload is at its peak, causing severe disruptions of work.

Thus, it would appear that, as in the wider government, the HR function in both the Boards has largely remained in the paradigm of the old personnel management function, with its focus on establishment and administrative compliance with laid down rules and policies, control over employees and a very weak focus on the development of people. This contrasts sharply with the

aspirations reflected in the vision/mission statements. For example, CBDT's Vision 2020 categorically addresses this point thus:

#### 4.2.7 *Aligning HR Strategy to Goals*

*Action Point 4: Formulate a comprehensive HR strategy encompassing all aspects of personnel requirements and development with a sound structure for HR Directorate*

*Action Point 5: Match job requirements with skill sets of employees for placements by developing Human Resource Information System (HRIS)*

*Action Point 6: Create motivational climate for employees to excel by designing a career progression path*

*Action Point 7: Reinforce a culture of cross-functional problem solving approach through collaboration*

*Action Point 8: Encourage innovations at work*

*Action Point 9: Conduct training needs analysis and invest in high quality training for overall development of personnel*

*Action Point 10: Set up real time knowledge sharing mechanism for enhancing revenue productivity*

*Action Point 11: Conduct an employee satisfaction survey through an independent agency for ascertaining satisfaction level of departmental employees*

Positive changes in this direction have, however, commenced with the setting up of director generals of HRD under each of the Boards. Both the DGs have been given the mandate, inter alia, to assist the Boards in capacity development, develop strategies and human resource plans congruent with the departments' vision and goals, and develop a Performance Management System (PMS). The TARC gathered that the DG (HRD), CBDT, has made good progress in developing a PMS for the income tax department and the relevant documents have been developed.

Although the directorates have been in existence for some time, they continue to suffer from a shortage of officers. They have been staffed by diverting officers from other directorates and field formations and often have to depend upon such field formations to loan the required people to them. At the time of their creation, no separate sanction of posts was secured for them and the senior and junior staff and officers are drawn from the overall strength of the two departments. Inevitably, the staff strength remains highly inadequate for them to carry out even the limited scope of work they are currently handling. Besides, since there is no separate vertical for the people

function, most of the people working in the directorate come with no or almost no training in HR matters, and they learn the job while being in the position.

Further, despite setting up the two directorates under the respective Boards, no change has been effected in the Department of Revenue (DoR). Matters relating to appointment, placement and promotion of senior officers have not yet been devolved to this directorate, despite an order to that effect on September 8, 2010, in the case of the CBDT. In fact, the erstwhile sections in the DoR, Ministry of Finance, continue to exist without any rationale. There is thus divided responsibility and accountability and consequently inefficiencies in the management of the HR function.

Overall, it is clear that while the two DGs (HRD) have been given a wide and ambitious mandate, including measures for capacity building and development of a robust framework for performance management, they have neither been empowered nor enabled by adequate staffing and infrastructure to perform their assigned tasks. They appear to be functioning largely as appendages to the Boards, assisting them in the administrative dimensions of HR management, such as tracking APARs, compiling seniority lists, and preparing papers for transfers.

It is not that the central government is unconcerned about the need for improved performance management. The Performance Management Division (PMD) in the Cabinet Secretariat has set up a system of target setting, in percentage terms, of government departments by themselves and evaluation against those targets through a results framework document (RFD). Both the Boards have adopted the RFD and notified the various responsibility centres that implement specific schemes or projects, which are assigned a relative weightage in the overall departmental percentage. This is expected to enable evaluation of both the various units of the department, and the department itself.

However, the implementation of the RFD has not made any significant impact on the functioning of the departments. This could be attributed to a number of reasons. First, for example in the case of the CBDT, it largely covers the attached directorates and not the department as a whole. While RFD of the CBEC does cover specific customer facing activities, there is little linkage between performance areas and performance measures selected on the one hand, and the strategic objectives of the department on the other. In many areas, measures appear to be neither outcome oriented nor customer focused. Apart from such weaknesses, the most important limitation of the RFD process is the absence of a link between organizational performance measures and individual performance. In the view of the TARC, while the RFD cannot by itself suffice as a performance management framework, it nevertheless could be used as a basis for developing one.

The 2<sup>nd</sup> Administrative Reforms Commission (ARC), set up in 2005, had recognized that the performance of organizations ultimately depends on the performance of individuals. Therefore, the ARC was of the view that the appraisal formats of civil servants needed to be more specifically linked to the tasks assigned to them and to the goals of the department/organization in which the officer is working. The commission also recommended that this should be supplemented by



preparing a computerized data base wherein the details of the officers reported upon as well as the reporting and reviewing officers are captured for further analysis. This would enable the department to take a view subsequently on how numerical ratings can be moderated, taking into account individual disposition. Based on this recommendation, formats of the APAR were revised. However, this appears to have brought about little, if any, increase in the reliability of the APAR as a measure of officers' performance.

The ARC had also recommended that the government should expand the scope of the present performance appraisal system of its employees to a comprehensive performance management system (PMS). And, in implementing a performance management system in government, it emphasized that the PMS should be designed within the overall strategic framework appropriate to the particular ministry/department/organization. It also recommended that the government seriously examine the issue of performance related pay. The Performance Management Division (PMD) of the Cabinet Secretariat is reported to be working on a scheme of performance related pay.

The Sixth Central Pay Commission also dealt with this issue. After constituting a study group to examine the issue, it made the following observations:

- High performance work practices where high achievers are rewarded had to be made an integral part of the pay structure of government employees.
- A system of rewarding performance in terms of results had to be introduced.
- A Performance Related Incentive Scheme (PRIS) should be introduced for government employees to reward performance, innovation, creativity and responsive administration for inclusive outcomes and service delivery.
- This would bring in result-based management with performance targets, standards and indicators, and greater accountability.

The recommendations of the ARC and the Sixth Pay Commission have been accepted, in principle, by the government. The PMD in the Cabinet Secretariat was set up as a result to implement these recommendations. However, as already explained in earlier paragraphs, the work of the division is still in progress and an effective Performance Management System is yet to be set up while the PRIS is yet to be notified.

On the whole, at the government level, the issue of performance management remains intractable and one of the weakest aspects of governance.

If the tax administration in India is to be transformed to reach global benchmarks, as it clearly must if the country is to remain internationally up to date in its tax administrative practices, it cannot afford to wait for the whole government to reform itself; instead, it must forge a new path.



Measures have, therefore, to be taken to release it from some of the constraints that prevent it from doing so.

## **IV.2 Global practices**

Governments in most countries give varying degrees of autonomy to their revenue bodies for determining the numbers and types of staff to be hired, the skills and qualifications required for specific jobs, the duration and types of employment contracts, and the location of staff. This, however, is sometimes constrained by the overall budgetary allocations at governmental level. While very few have the autonomy to depart from public service pay structures, most of the tax administrations are stated to have autonomy in location of staff, skills and qualifications required, the duration of contract for hiring of the staff, and also the types of staff to be hired. Most allow lateral entry through open recruitment into the tax administration, especially at senior executive levels. Indeed, very few countries follow the sort of service/cadre structure that India maintains, of which the two revenue services are a part.

### **IV.2.a. People approach**

Almost every tax administration recognizes the need to develop human resources management strategy, policies, systems and procedures to achieve the tax administration's objectives. Many tax administrations have conducted assessments of their current and future skills and capability needs and have developed plans to enhance staff skills through structured training and professional development. Most adopt policies that promote the growth of specialization and allow their personnel to advance in their chosen areas of specialization, without limiting their tenures to short periods. Their career advancement schemes tend to be merit based and performance linked, often with weightage being given to specific areas of training and acquisition of higher professional qualifications.

Many tax administrations train their staff in the areas of commercial awareness, risk management and financial management. While undertaking staff development in the area of commercial awareness, the tax administrations often utilize their networks with external organizations including legal and accounting firms. In South Africa, staff are given wide exposure to commercial awareness through dialogue with large corporates on a regular basis and participation in commercial forums, etc. All these are intended to make them appreciate the economic climate for businesses and how they navigate and operate in that situation. The "network" approach may also be reflected in other areas of training.

There is an increasing trend among tax administrations to partner with educational bodies for training purposes, with some working with universities to develop externally accredited training programmes. Apart from training for enhancing staff skills, many countries also have more comprehensive training programmes. A large majority of tax administrations have targets for increasing staff capability, and this is closely linked to the higher objective of increasing

organisational capability. New Zealand, for example, emphasizes the development of leadership qualities.

Some tax administrations have started adopting 360° assessments for staff performance appraisals. This involves appraisals of employees not only by their superiors but also by their peers and subordinates. Such appraisals sometimes also include the feedback from customers. India does not have such an appraisal system.

Tax administrations also carry out regular staff surveys for measuring staff engagement and their satisfaction. Australia recently completed a job profiling project to identify and categorize the work performed by all positions. This was intended to enable it to streamline recruitment processes and implement more robust work level standards for each job. It was also to help in deepening manager/employee conversations on performance and identify training requirements.

The Finnish tax administration regularly carries out a VM Baro job satisfaction survey to measure job satisfaction. The survey responses are discussed individually with staff members and the decisions on areas for development and concrete measures are taken jointly by all those involved. This process has helped the Finnish tax administration to improve job satisfaction over the years.

The Singapore IRAS conducts an Organizational Climate Survey (OCS) biennially to gather staff feedback on its development and initiatives. The feedback helps the IRAS to identify areas needing improvement to make it a better workplace for staff. The US IRS Personnel Management Office conducts an annual employee survey to obtain feedback on a wide range of workplace issues. The UK's HMRC also conducts staff surveys regularly.

All these examples and strategies undertaken by various tax administrations demonstrate that effective human resources management is a key requirement in every tax administration. In fact, over the last decade or so, the tax administrations' attention to human resources management has increased and considerable importance is being accorded to performance management. Organizations have started guiding and steering their staff to undertake more varied roles and encouraging them to take leadership roles. Human resources management has also been helped by the efficient use of information technology (ICT) to measure and manage performance. In fact the ambit of performance management is also increasing – Canada is reported to have redesigned its performance management policies and tools to shift the emphasis away from paper-based reporting and towards continuous feedback. So, tax administrations are undertaking a more rounded approach to performance management, which is focused not only on tax collections and audits but also on improving internal processes, thereby underscoring the importance of relating individual objectives and behaviours to the overall objectives and values of the organization. By contrast, thus far, there has been no staff survey in the Indian tax administration.

#### IV.2.b Performance measurement system

A good performance measurement system would, in sum, have the following characteristics:

- a plan identifying a set of objectives to be achieved
- activities and resources needed to accomplish those objectives
- an ICT based process for capturing, identifying, collecting and analysing information on how well the plan's objectives are being met
- a process for making decisions concerning activities undertaken in pursuit of the stated objectives and
- commensurate allocation of resources.

Performance measurement is an ongoing process of ascertaining how well, or how poorly, an organization fares in achieving its goals and objectives. It provides information/feedback relative to the goals of the organization and its programmes, and enables the identification of areas that require corrective steps to improve its performance.

It involves the continuous collection of data on progress made in this regard. Performance indicators, or measures, are developed as standards for assessing the extent to which these objectives are achieved. The terms performance measurement and performance management are often used interchangeably. However, performance management is a broader term that includes not only performance measurement but also the determination of the appropriate level of performance, the development and reporting of performance information, and the use of that information to assess the actual level of performance against the desired level. It refers to the process of looking after the objectives, approaches, institutional arrangements and performance information systems put in place to measure performance.

One common aim of benchmarking tax administrations is of course to improve their operation, for instance, by providing somewhat more objective “grading” or “ranking” appraisals of tax administrations. Such benchmarking may provide useful guidelines, but is not an independent evaluation on the basic objective, vision and initiatives of the tax administration, as it is ultimately a gap assessment between actual performance and a hypothetical ideal performance and is, therefore, a qualitative approach.

In practice, tax administrations often employ both the approaches – performance measurement – (a quantitative approach) and benchmarking – (a qualitative approach).

Tax administrations mostly use economic and efficiency indicators. Although these are useful as internal management tools, they can sometimes lead to flawed conclusions if mistaken for effectiveness indicators. For instance, a tax administration's expenditure as a percentage of

revenue collection would decline if tax revenue increased as a result of higher tax rates, without any change in the tax administration's efforts. The number of taxpayers penalized, or the amounts collected from fines, are often proposed as alternative performance indicators, but these can also be misleading. When the tax enforcement effort increases, taxpayers are likely to respond by reducing evasion. On the other hand, evasion cases detected can also be expected to increase as effort intensifies; thus, the link between higher expenditure or evasion control by a tax administration and its outcome in term of reduction or increase in observed evasion has to be carefully interpreted. Effectiveness indicators, therefore, have to be drawn up carefully when linked to such quantitative indicators.

A comparison of the key performance indicators used by selected tax administrations is given in Table 3A.9 of this report.

### **IV.3 Way forward**

#### **IV.3.a Organizational alignment**

In an increasingly globalized and competitive world, the quality of governance has a direct impact on the competitiveness of a country's economy. Among the diverse areas of governance, the quality of performance of the tax administration is likely to matter more than most other factors in the economy as it directly affects the business climate and cost competitiveness of industry on the one hand and the ability of government to raise revenues fairly on the other. A poorly performing tax administration, beset with arbitrariness, constrains the growth of the economy. Hence, the people function assumes critical importance. Performance improvement necessitates a framework and processes that link the organization's goals developed from its mission, vision and values to the performance of teams as well as individuals.

The tax administration involves a large number of knowledge workers, working together to administer fairly the tax policies to an expanding base of tax payers. The mission is to use tax policy and its administration to facilitate economic growth while, at the same time, promoting a culture of voluntary compliance. The core values driving it should be integrity, fairness, transparency, openness, customer focus and administrative efficiency.

Currently, the general perception among tax payers is that the tax administration is focused on only one dimension – that of revenue generation. This perception gains strength from the manner in which goals are set at each functional unit of both the direct and indirect tax departments. These goals, in turn, drive the performance of individual tax officials. Therefore, the whole system of goal setting, performance assessment, incentivization and promotion appears to be focused on only this dimension. This single-minded revenue focus can never meet the criteria of the mission and values mentioned above. What is required is a robust framework that is holistic in its approach to issues of performance management.

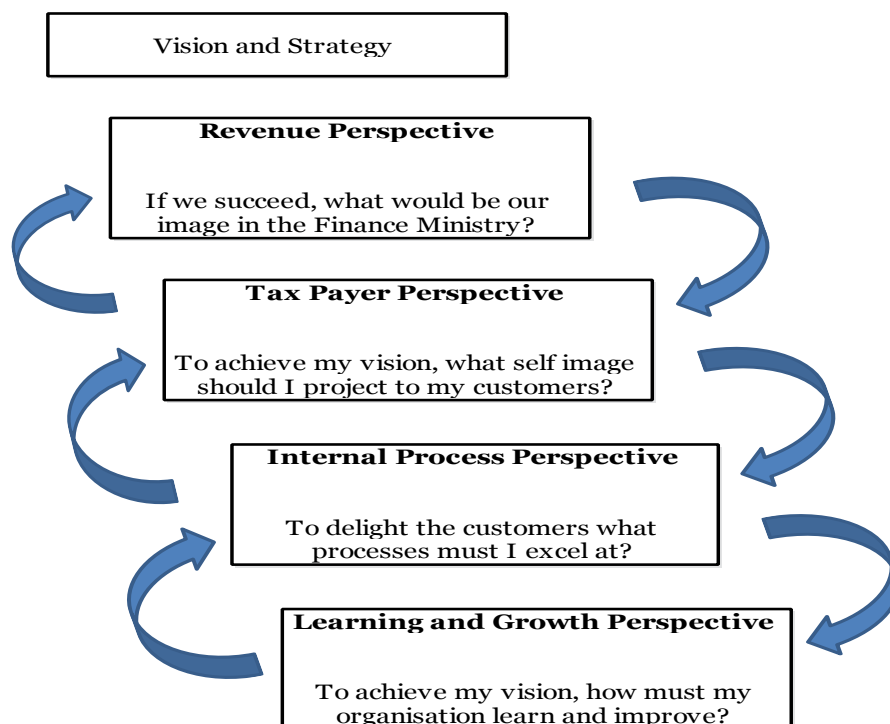
There are four dimensions or perspectives that an organization should look at as it develops its strategies, operational practices and departmental and employee goals. For the tax administration system, we would suggest the following perspectives: revenue, taxpayer, internal processes and learning and development.

The first stage for the adoption of this framework, called the balanced scorecard, is the development of a strategy map, which maps out the themes in respect of each of these four perspectives and shows how all the strategic objectives are aligned to meet the needs of the mission, core values and vision of the tax administration.

For instance, the TARC recommends that the taxpayer service needs to be oriented towards easy tax compliance by making it web-based and automated, and by through restructuring the organization along functional lines. The service orientation is enhanced by instituting a relationship manager, thus transforming the image of the administration as an organization that is as much focused on taxpayer service as it is on revenue generation. Each of the attributes of taxpayer service will lead to better compliance and minimization of revenue leakages, resulting in revenue collection that reflects underlying tax policy.

However, the focus has to be not only on a revenue perspective or a taxpayer perspective, but also on an internal process perspective, which can create an effective, efficient and goal oriented organization. There are four sub-processes that will make the internal process more responsive to the needs of the taxpayer as well as of revenue. These cover operational management, dispute resolution, innovation, and regulatory and social processes. The fourth perspective, which is the focus here, covers learning and development in the institution building process dealing with the development of human, information and organizational capital. Capacity, competency and values of the organization are developed through this perspective, which in turn helps in developing and administering more efficient processes to meet the service needs of different types of taxpayers. This then leads to generation of revenues as targeted.

Therefore, organizational strategies are defined along these four perspectives and they need to be well aligned. A pictorial representation is given in Diagram 4.2 below.

**Diagram 4.2: Organizational strategies**

For each of the four perspectives, it is necessary to define strategic objectives, the key initiatives around which the organization will be aligned, the lead and lag measures through which organizational performance will be monitored and the targets that will be set for each of the initiatives. The balanced scorecard framework essentially focuses on implementing the strategy that flows from the organization's mission, values and vision.

Individual objectives will have to be so set as to meet the overall objectives of the tax administration. Therefore, individual goals of tax officials in the field should be set to ensure that tax policies are fairly administered in the process of revenue collection and it will be driven by service orientation in dealing with tax payers. At the same time, individual goals will ensure efficiency in administration. The goals will also focus on the continuous development of individual staff skills and competency. Aligning individual and organizational goals will be achieved effectively through the balanced scorecard approach. There cannot be a transformation of the governance system unless individual actions are guided by the vision and values of the organization. Each individual employee has to focus on meeting the needs of each of the four perspectives of the balanced scorecard as depicted in Diagram 4.2. Through the collective action of its employees, the organization will have to move from a uni-dimensional to a multi-dimensional approach. Unless the employees live the values and vision, the mission of the tax governance system will not be served.

### **IV.3.b The People function - role of the DG (HRD)**

There is thus an urgent need to enlarge and transform the role and function of the DGs (HRD). As noted earlier, performance management goes much beyond performance appraisals and comprises measures to improve the organization's human capital, such as skill sets, expertise, leadership, and the morale and quality of its people. The DGs (HRD) should therefore be seen as the custodians of human capital in the two organizations and perform the role of human capital officers of the two Boards. They should accordingly be empowered and enabled to perform this task by equipping them directly with adequate numbers of the right type of people and strengthened to perform this most critical role. It is for this reason that TARC has recommended a separate functional organization for this role in Chapter III of this report.

Apart from the routine tasks of administration, one of the important first tasks of the people function would be to create a skills inventory, which would form the basis of manpower planning. This will take into account the requirement of skills, competencies, specializations and the levels at which these are required to meet evolving needs over the medium and long-term. This would lead to actions for recruitment, including hiring of specialists, capacity building and training initiatives and career and cadre management.

The other major task that they need to undertake is the building of a robust performance management system (PMS) that enables the measurement of performance on the basis of a set of carefully selected performance indicators in key performance areas. This cannot happen unless the two organizations carry out all their key tasks on the digital platform as has been highlighted in Chapter VII. On that basis, the DGs (HRD) will have to work in close collaboration with the DG (Systems). The TARC learnt that the DG (HRD) of the CBDT has already made progress in the development of such a system, called the HRMS, which is to be integrated with the income tax business application (ITBA) being developed to automate all core processes of the I-T department. The TARC is not aware of any such system being developed in the DG (HRD), CBEC. Therefore, the CBEC should initiate urgent steps to develop such a system and make the required resources available to the DG (HRD). Since DG (HRD) of the I-T department has already done considerable work, collaboration and knowledge exchange between the two DGs (HRD)'s will go a long way in getting such a system up and running in the CBEC in a much shorter time, concurrently with the development of systems to fill the gaps in their current automation of essential business processes.

### **IV.3.c Recruitment**

The starting point in HR management is recruitment. As mentioned earlier, recruitment to the departments is through the UPSC (Union Public Service Commission) for the IRS and through the SSC (Staff Selection Commission) for the junior cadres. The TARC believes these two commissions have stood the test of time and continue to enjoy public esteem for the conduct of their recruitment examinations. The TARC believes that no change in this aspect is needed.



However, in the light of the TARC's recommendations to professionalize the tax administration by restructuring it along functional lines and create specialized excellence in identified areas, it will be necessary to enable lateral entry of experts in certain key roles. The rules need to be amended for this purpose. While providing for such entry, it is important that while the initial appointment may be on a contract of, say 5 years, such experts should, subject to their being found suitable and willing, be able to integrate with the organization and mainstream their careers in the department at the end of the contract period. This recommendation is fully in line with emerging functions and practices across tax administrations internationally.

In view of the inability of the current HR process to recognize and reward merit, there is also a need for providing the right opportunity to junior officers joining Group C cadres either by direct recruitment or promotion, to move on a fast track on the basis of intelligence and ability. One way of doing this will be to earmark 33 per cent of promotional vacancies in the cadre of the ITOs in income tax, and appraisers and superintendents in customs and excise, to be filled by a limited departmental competitive examination for inspectors, tax assistants, etc., who would be eligible to sit for the examination after 5 years. The examination should test the candidates' abilities and knowledge in related areas like tax and business laws, accountancy, departmental processes, ICT familiarity and communication. Similarly, a part of the promotion quota for the IRS could also be filled by limited departmental competitive examinations at a higher level than the examination for inspectors, etc., open to the feeder cadres in the respective services. This will provide a fast track for meritorious candidates, create an incentive to perform and improve the quality of people in these crucial cadres. It is, after all, officers in these grades that the tax payer most frequently has to interact with and the quality of their performance has a decisive impact on perception about the organization's performance. The regional training institutes should also conduct coaching for employees sitting for the examination.

Since both the departments have undertaken a major cadre restructuring exercise that will result in an increase in the number of posts, they perhaps need special measures to fill up these posts. While the direct recruit posts in the IRS will get filled from the Civil Services Examination of the UPSC, considering the long lead time for the SSC recruitment, a special drive may be necessary to fill posts in Group C cadres and this will need to be taken up with the SSC.

The recruitment each year also needs to be on the basis of a recruitment plan that takes into account longer term considerations such as future needs in specific areas and the career expectations of officers in terms of timely promotions. The absence of such a plan, combined with a short-term approach, has often led to either stagnation or cadre gaps in many cases – the former resulting from excessive recruitment and the latter resulting from under-recruitment. These considerations need to be balanced with short-term requirements to ensure that such aberrations do not occur.



#### IV.3.d Performance management

It would not be unfair to say that the tax administration in India, whether under the CBDT or CBEC, is widely perceived to be unfair, arbitrary, inconsistent, taxpayer unfriendly and characterized by moral hazard. There were many complaints made to the TARC by the chambers of industry along these lines. Ignoring these matters would be tantamount to belittling what appears to be a crucial issue for the tax administration to address and resolve without delay through a reliable performance management system.

To reclaim ethical standards of the staff, their functioning needs to be founded on their empowerment while basing it on a set of values, important among which are the following:

- Integrity
- Transparency and accountability
- Fairness and objectivity
- Professionalism and competence
- Trust and openness
- Team working
- Customer focus and continuous pursuit of excellence

Some of these values already find expression in the vision and mission documents of the two Boards and in their citizen's charters. However, there is a yawning gap between what is contained in these documents and the reality on the ground. That gap needs to be bridged. This requires structures and processes and, above all, leadership that creates an alignment between organizational aspirations and goals, and individual capabilities, motivations and aspirations. Only such a link will lead to a high performance organization that enjoys the trust and confidence of its stakeholders. That is the object of a sound performance management system and the quality of its people, particularly its leadership, is a key determinant of organizational success. Hence, for the management layer of the two IRSs, I-T and C & CE, the TARC is outlining below an approach to such a system, based on the balanced scorecard, which is widely prevalent in many high performing organizations.<sup>27</sup>

#### Creating a shared vision and value system

Before embarking on creating the balanced scorecard, we need to define the vision which will be ingrained in the strategic and operational focus of the organization. As stated already, a large and

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<sup>27</sup> A detailed note on the application of the balanced scorecard to the tax administration is given in Appendix IV.4.

complex organization can deliver results only if employees at all levels share a common vision and work as per an ingrained value system.

The shared vision should result in the following:

- i. Effective communication of tax policies
- ii. Fairness in administration
- iii. Early identification of leakages
- iv. Swift action on defaulters
- v. Meeting service levels to delight customers

An organization operates on a set of values, which are consciously nurtured within it. Given the critical importance of generating confidence and trust among taxpayers in the integrity of the organization, the competency and ethical dimensions are of crucial and equal importance. Therefore, shared values should result in the following:

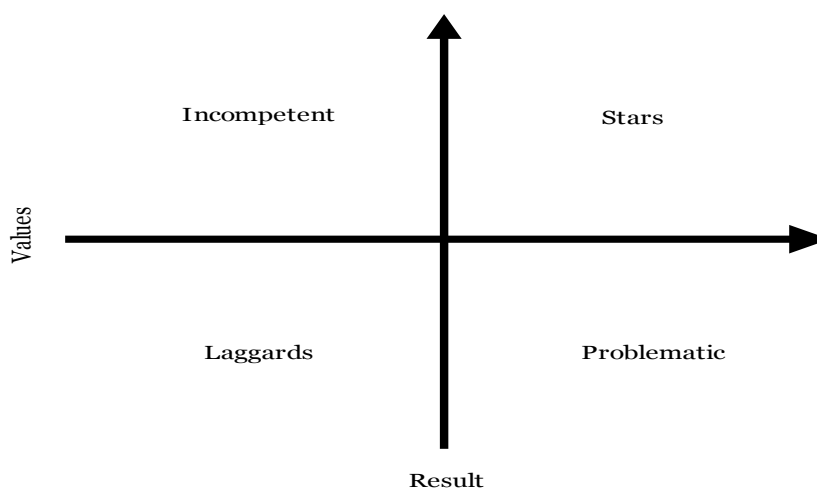
- i. Recognition of competency and specialization
- ii. Valuing efficiency at work
- iii. Promotion of team work to achieve department's goals
- iv. Engagement with taxpayers in an atmosphere of trust and openness
- v. Zero tolerance of ethical transgression
- vi. Creating a high performance work place

### **Objectives of Performance Management System**

A performance management system (PMS) is a platform for developing and motivating employees to give their best to the organization. It is not a paper or virtual plan but is an active and continuous engagement between the organization and its employees. PMS plays a significant role in the development of people to perform their tasks efficiently and in building their competency. It does this through a structured system of employee engagement, communicating the expectations of the organization through the goals set for a function, creating a performance measurement system, specifying the rigour with which performance appraisals will be conducted, setting up an incentive system which recognizes the employee's contribution while at the same time, contributing to enhancing the performance of the organization through periodic evaluation of its own performance in enhancing the human capital value of the organization. PMS will not just concentrate on measuring and managing individual effectiveness. It will pay attention to the effectiveness of teams and in the alignment of individual objectives to team goals. If PMS is not actively and continuously tracked and evaluated, it will remain an unimplemented concept not worthy of reference.

An effective PMS should evaluate each person on two dimensions – result orientation and values. This has been represented by the Diagram 4.3.

**Diagram 4.3: Result Orientation and Values**



Stars are those who achieve results and achieve it through a value system built on adhering to the organization's rules and policies and in an ethical manner. The value system of an organization is often tested by the manner in which it treats purely high result oriented individuals, who, unlike stars, achieve results at the cost of team work and ethical behaviour. These are the problematic cases. Unless it displays a “no tolerance” approach to these individuals, the organization will not be perceived to have the right value system.

Effective tools to eliminate such individuals at the earliest are currently not available; even the mechanism that partly addresses this issue is rarely used. Rule 56 (j) of Fundamental Rules provides the government absolute right to retire a Group A or B government servant on attaining the age of 50 years (or 55 years if he has joined service after the age of 35 years). Under the guidelines, this provision is to be used for weeding out inefficient government servants or those of doubtful integrity. It is essential that this instrument should be effectively used.

It can be argued that the removal of a non-performing civil servant or the one having doubtful integrity only at the age of 50 may be too late. It may be mentioned that the 2<sup>nd</sup> Administrative Reforms Commission (ARC) in its 10<sup>th</sup> report had recommended a system of two reviews, first on completion of 14 years and second after 20 years of service for assessing the suitability of retention of civil servants. The first review would primarily serve the purpose of informing the civil servant about his or her strength and shortcomings of future advancements, and the second review at 20 years would mainly assess the fitness of the civil servant for further continuance in the service. The services of the civil servants found unfit in the second review should be discontinued.

In the spirit of the ARC's recommendation, the TARC feels that the criterion for retirement under Rule 56 (j) should be modified to include review on completion of 20 years of service.

Through a process involving mentoring and providing learning and development opportunities, PMS should play a key role in moving the incompetent towards the star category. Laggards need to be given an opportunity to improve their result orientation, while remaining under close observation in respect of their value system. Therefore, PMS will drive the organization to move everyone towards result orientation and working with values. The challenge for the organization is to recognize the categorization and bravely, fairly and squarely, embrace the action needed to segment employees in a transparent matter and continuously attempt to push the employees towards the stars quadrant.

### **Goal setting**

The starting point of a performance appraisal system is the fixing of goals for the year, which will emanate from the balanced scorecard developed for the organization. The overall goals will need to be cascaded down to each function and each role in a functional unit will have defined goals. These goals will be different for different functions. The performance appraisal system cannot have the same measure for all functions. Each function will be evaluated based on measures appropriate to it. The weightage assigned to each of these measures will vary with the roles and responsibilities of the person.

Currently, the RFD sets goals for the organization at the responsibility centre's level. Earlier in this chapter, we have briefly referred to its key weaknesses, important among which are the absence of a link to individual performance and lack of customer focus. The RFD needs to be reconstructed using the balanced scorecard approach. In Table 4.1, an example of the performance goals and objectives for the dispute resolution function has been shown, based on which the team and individual goals for this function will be developed. A similar goal setting exercise will have to be done across all critical functions. It may be noted that the framework will have to be visited well before each financial year for each function at the level of the Boards and passed through the governing council.

Team and individual operational goals, based on the role and specific functions that the team and the individual would be discharging, will flow from the objectives that are set. At the same time, the goals and targets will be based on both quantitative measures and qualitative factors. As already stated in the report, the measures will arise from the detailing of the strategic themes and objectives, which will lead to lead and lag indicators, taking into account both efficiency and quality factors.

Qualitative factors typically look at effectiveness of approach, leadership qualities displayed, alignment with team objectives, and initiatives taken to accomplish a task. These qualities are judged through examples. It is not enough if a person is a star performer if the team or unit to

which he or she belongs has not achieved its desired goals. Aligning of individual and group goals is important. If this is not aligned, it would result in behaviours that maximize individual performance, but the group will not deliver results.

The key goals of the dispute management function, as illustrated in Table 4.1, would be to achieve a state in which (a) unnecessary or avoidable disputes do not arise (b) the disputes that do arise are resolved quickly and satisfactorily and (c) litigation is handled effectively. The performance areas, therefore, are dispute prevention, dispute resolution and litigation. A strategic plan needs to be developed around each of these areas and these need to be broken into following objectives that together enable the achievement of the goal:

- Pruning down pending litigation
- Prevention of unwarranted dispute initiation
- Prevention of unwarranted appeals
- Improving clarity of law

Table 4.1: Performance management in dispute resolution function

Area – Dispute Management					
Performance Area	Objective	Key Initiatives	Performance Indicators	Performance Target	Achievement
Dispute Prevention	Prune down pending disputes	<ul style="list-style-type: none"> <li>Special drive for time bound review of legacy cases</li> </ul>	<ul style="list-style-type: none"> <li>Number of cases</li> <li>Success rate</li> </ul>	<ul style="list-style-type: none"> <li>50% cases, pending as on the start date, withdrawn by the end of the year</li> <li>Overall success rate of 75%</li> </ul>	
	Prevent unwarranted dispute initiation	<ul style="list-style-type: none"> <li>Pre-issuance review of SCN/draft assessment orders</li> <li>pre-dispute consultation with taxpayers</li> </ul>	<ul style="list-style-type: none"> <li>Number of cases reviewed as per criteria</li> <li>Number of cases of pre-dispute consultation as per criteria</li> </ul>	<ul style="list-style-type: none"> <li>100%</li> <li>75% success rate</li> </ul>	
	Prevent unwarranted departmental appeals	<ul style="list-style-type: none"> <li>Limiting appeals against departmental decisions to only cases of perverse orders or orders involving substantive questions of law</li> </ul>	<ul style="list-style-type: none"> <li>Percentage of cases in which appeals filed</li> </ul>	<ul style="list-style-type: none"> <li>Limiting appeals to 10% of cases</li> <li>Overall success rate of 75%</li> </ul>	
	Clarity of law	<ul style="list-style-type: none"> <li>Consultative process in developing legislation and policy</li> </ul>	<ul style="list-style-type: none"> <li>Putting up draft on website for comments</li> <li>Number of stakeholders consulted</li> </ul>	<ul style="list-style-type: none"> <li>100%</li> <li>Continuous improvement in</li> </ul>	

Area – Dispute Management						
Performance Area	Objective	Key Initiatives	Performance Indicators	Performance Target	Achievement	
				stakeholder consultation		
		<ul style="list-style-type: none"> <li>Clarity and lucidity in drafting</li> </ul>	<ul style="list-style-type: none"> <li>Number of cases disputes involving the relevant legislation</li> <li>Customer surveys</li> </ul>	<ul style="list-style-type: none"> <li>Continuous improvement</li> </ul>		
		<ul style="list-style-type: none"> <li>Proactive interpretative statements</li> </ul>	<ul style="list-style-type: none"> <li>Number of statements issued <i>suo moto</i></li> <li>Number of statements issued on the basis of representations</li> <li>Time taken for initiation</li> <li>Time taken for issue</li> <li>Trends in litigation</li> <li>Customer feedback</li> </ul>	<ul style="list-style-type: none"> <li>100% in case of fresh legislation or important amendments</li> <li>Continuous improvement</li> </ul>		
		<ul style="list-style-type: none"> <li>ADR (Mediation, Arbitration)</li> </ul>	<ul style="list-style-type: none"> <li>Number of cases</li> <li>Time taken for resolution</li> <li>Success rate</li> </ul>	<ul style="list-style-type: none"> <li>Continuous improvement</li> </ul>		
Dispute Resolution (Adjudication and Appeals)	Timely and satisfactory closure	Prescribing time limits for decisions	<ul style="list-style-type: none"> <li>Time taken for each decision</li> </ul>	<ul style="list-style-type: none"> <li>100% within prescribed time</li> </ul>		

Area – Dispute Management					
Performance Area	Objective	Key Initiatives	Performance Indicators	Performance Target	Achievement
before Commissioner (Appeals)	Fairness, objectivity and judiciousness in orders. Judicial discipline	Quality measurement and reviews	<ul style="list-style-type: none"> <li>Satisfaction rate (acceptance by department and taxpayer as reflected in appeals)</li> <li>Number of remands</li> <li>Customer feedback</li> <li>Quality reviews by supervisor</li> <li>Peer reviews</li> </ul>	<ul style="list-style-type: none"> <li>Continuous improvement</li> </ul>	
Litigation (ITAT/CESTAT, high courts and Supreme Court)	Litigate effectively.	<ul style="list-style-type: none"> <li>Robust litigation policy</li> <li>Better preparation and effective representation</li> </ul>	<ul style="list-style-type: none"> <li>Trend in the number of cases</li> <li>Success rate</li> </ul>	Continuous improvement	



Key initiatives need to be launched to achieve each of these objectives. For example, to achieve the objective of pruning down the number of disputes by eliminating unmerited disputes, the key initiative would be to launch a special drive and appoint task forces with the required skills to undertake a thorough review of each of the pending cases against properly defined standards and parameters. It will be necessary to enable the task forces with adequate resources to perform their tasks. Suitable delegation of authority will also have to be made to enable quick and appropriate decisions. Performance targets and the performance indicators will have to be developed carefully, making sure that they have a logical basis and are congruent with and relevant to the key goals and objectives that are set.

In the above example, the target set is the withdrawal of 50 per cent cases pending at various levels as on the start date, by the end of the year. The figure of 50 per cent is derived from the overall success rate(s) of the department, which can be seen in Tables 5.4 and 5.11 of this report. As can be seen, judged against the success rates at various levels, the target of withdrawal of 50 per cent pending cases cannot be considered unreasonable. This is an example of a lead indicator and a quantitative measure of performance that can easily be measured at the end of a given period.

The other performance target against this key initiative is a success rate of 75 per cent in the cases that are allowed to continue after passing the review test. This is linked to the target success rate set for the next two key objectives, namely prevention of unwarranted dispute initiation and prevention of unwarranted departmental appeals. The standard used for reviewing pending cases should be applied in the future as well. And the assumption is that if you get quality dimension right in your key initiatives, the success rates in appeals and litigation should surge. This is a qualitative measure and an example of a lag indicator as it can only be measured, when the cases get decided in future.

Taking the same example, the task forces could divide the work among different teams which handle different categories of cases, based either on the type of cases or the forums where they might be pending. Considering that the success rate(s) of the administration could vary across such categories, the team and individual performance targets could be calibrated accordingly – while keeping the overall performance target of 50 per cent in mind. Similarly, intermediate milestones will have to be set to measure the progress towards the final target.

The combination of lead and lag indicators will move the administration to focused attention to performance. Thus, to prevent unwarranted dispute initiation, the two key initiatives are pre-issuance review of notices/draft assessment orders and pre-dispute consultation with taxpayers. This must occur without fail in all cases it is prescribed – hence, the number of cases reviewed is the performance indicator and the performance target of 100 per cent would require it to be ensured that these actions happen in all cases where these measures are prescribed. The 75 per cent target success rate would, on the other hand, be the lag indicator that would measure the quality of these interventions as manifested in the success rate.

The subsequent entries in the Table can be understood the same way. It gives the framework within which organization level objectives, key initiatives and performance targets would be translated into the team and individual level actions and measures.

It needs to be emphasized that it is necessary to track lag indicators since they clearly have a bearing on the effectiveness of the specific office, even though it may not be possible to link them to an individual's performance as the concerned individual may have moved away. As part of an institution building process, the lag indicators, positive and negative, need to be taken into account while assessing the team's performance as this motivates people to leave a positive legacy.

### **Performance appraisal process**

PMS goes beyond merely appraising a person's performance at the end of the year. As indicated, it is a continuous process of change. It is oriented towards developing a person in order to meet his or her career goals. The performance appraisal system should be part of a PMS which, as we have defined earlier, has as its core a development agenda for the person. There are progressive organizations that require evaluation of the performance of the person not just by the supervisor, but also by his or her subordinates, peers and customers. A 360<sup>0</sup> profile, involving appraisal by such groups, should only be attempted when the measurement systems are mature. For the present, it is recommended that the appraisal system be extended in a planned manner to include feedback from subordinates.

The performance appraisal system typically results in evaluating the performance of the person in discharging his or her tasks during the year. It is usually carried out to come up with a rating. In many systems, it also helps in determining the annual salary increase, which is not the case in government. However, where a person meets the criteria for promotion to the next level, the appraisal system helps in framing a recommendation for promotion.

After completing the appraisal based on multiple factors, the appraiser should be able to give an overall rating to the person. When the measures are well defined and are relevant to the function, it will be possible to defend the rating arrived at. The rating will determine the position of a person among his or her peers. When the process is rigorously followed, it would lead to determining the effectiveness of the person in meeting the targets and the manner in which it has been achieved.

The PMS, as we have described, gives the necessary support structure for enhancing the competency of the individual and ensuring that the goals of each individual is well aligned with that of the organization. No organization can succeed in its endeavours unless it is based on meritocracy. Rating becomes a very important supporting tool for assessing the merit of the individual. Training of appraisers is essential to make the appraisal process a rigorous one. In any appraisal process, there will be a tendency to give a high rating to everyone. Unless this is curbed, the truly meritorious performers will be demotivated.

The appraisal report should form the basis for a discussion between the appraiser and appraisee. These discussions have to be conducted with an open mind. The strengths and weaknesses of the person will be elaborately discussed through these reports. If there is disagreement on the rating after the discussion is completed, the areas of disagreement have to be recorded and the appraisal would be taken to the review process. This is an area where a major change needs to be brought about in the departments. There is need to train both appraisers and appraisees for performance appraisal discussions. At present, the discussions are advised but are not known to happen in an effective manner in a substantial number of cases. Focus on performance against specific goals, aligning the individual to the organization and building the culture of the organization around effectiveness and values cannot take place unless the performance assessment process is rigorously followed. For this to occur, goals themselves have to be deepened and broadened as indicated well before the beginning of the financial year, as opposed to a virtually unchanging and exclusive goal of achieving a targeted revenue collection.

The outcome of PMS should result in each officer being fully competent to perform the task on hand, having the necessary resources and support infrastructure, assisted by a review process that promotes quality and ensures that decisions honestly taken are accepted. The performance appraisal system has to result in further accentuating this environment of openness and respect for independent decision making.

Since the performance appraisal aims to develop the capabilities of the person to meet his or her career goals, the discussions at the time of appraisal should not be done only once a year. It is recommended that formal appraisals are prepared twice in a year – mid-year and year end. An outcome of the discussion of performance has to be an improvement plan, listing the actions to be taken to overcome weaknesses. Apart from an improvement plan for the appraisee, it will also ensure that the superior takes responsibility for his juniors' performance and ensure individual contribution to the team performance.

Every person performing a supervisory function needs to give importance to the performance appraisal process. This is a key initiative for the creation of a high performance organization. Also, this is an important instrument for the development of an individual and, therefore, an organization founded on values will pay particular attention to this aspect.

Finally, it needs to be emphasized that a comprehensive ICT system is a *sine qua non* for effective performance management. This is because for PMS to be reliable and capable of enjoying the confidence of those affected by it as being fair and objective, it must be fact-based. This can only be achieved through an ICT system that captures all key performance matrices, reliably and contemporaneously.

## **Recognizing performance**

Although recognition of performance usually takes place through increments as well as through work and responsibility allocation, in the case of the two departments, it will largely be the latter until a system of performance linked monetary incentives is in place. PMS will have to ensure that in respect of tasks for which such incentives are fixed, there are checks and balances to ensure that the activities are fairly conducted.

Recognition of performance is not just a pecuniary phenomenon. Assigning work to a person based on his or her area of specialization and inclination, ensuring longer tenures to enable an individual to make a difference to the function, and fast tracking for promotions are non-pecuniary ways through which a person should be motivated. PMS ensures that the organization develops its personnel to realize their capabilities in full. The human resource development (HRD) function in the governance structure should use inputs from PMS to create its learning and development practices, formulate its capacity plans, and assign work allocation which links the organization's requirements with individual specializations. The system of pecuniary and non-pecuniary incentives will have to lead to a prepared and motivated workforce.

## **Career planning**

Parts of the PMS, other than performance appraisal, relate to performance improvement, career counselling and career development in the context of the current and future requirements of the administration.

Building a cadre of professionals who can meet the current and future challenges and requirements of the tax administration is one of the key tasks of the HRD function. Tax legislation is becoming complex, as it attempts to reconcile different objectives at the organizational and individual levels. Taxation of Indian and global multinationals, the importance of intellectual property in economic activity and issues arising from the distribution of economic activities around different countries are some of the emerging issues at this time. Taxpayers have different requirements based on their size, their area of operation and the complexity of their business models, which involve capital raising, mergers and acquisitions (M&As), etc. Added to this is the change brought about by computerization in the interaction with taxpayers and in the use of analytics in administering the system. All these activities require the use of specialist officers, who have grounding in the core process of tax administration. Currently, there is considerable focus on training on the job. Obviously, given the complexity of emerging patterns of global as well as domestic economic activity, this process of relying solely on the inherent ability of officers and subordinates to learn and perform has severe limitations. Hence, provision of highly specialized talent from outside will be one the tasks of the people function.

Added to this is the requirement for the tax administration to move towards a formal process of identifying specialized fields currently and in the future, provide avenues for officers to move into

specialist roles, and have a reasonably long tenure in these areas to become effective and to shape administration processes. Career counselling and planning are the key functions required to develop the professional organization required for the future. One powerful way of talent renewal is to allow officers to move outside the organization and gain experience in specialist areas by taking sabbaticals to academic and research institutions and other bodies in the non-governmental sector, without getting into conflict of interest situations, so that they return with fresh knowledge and with broadened horizons. Just as the TARC recommends opening of the tax administration to infusion of talent laterally, it believes that HR policy should allow movement of meritorious officers outside the organization not only to government or public agency locations, but also to the private sector in the taxation field for defined periods of time. The determining factors should be that conflicts of interest are avoided and the areas of work the officers engage in are of relevance to the operations and strategies of the administration.

In the scheme proposed, there will be three phases in the development of an officer's career. The first phase is the building of general competency in the tax administration. This should run for the first 9 to 10 years of an IRS officer's career, during which period there would be rotations among different functional areas. The second phase will require tenure in two or more specialist areas and it could run for another 8 to 9 years. If a person demonstrates the ability to reach top rungs of the leadership, he will be among the select few to go into the third phase. Nurturing the careers of all officials to cater to capacity and competency requirements, providing training and mentoring inputs to specialize, and to identify people with special aptitudes for particular specializations and for assuming leadership positions are the tasks of the people function. While charting the career path of an officer in the second phase, the person's inclination and potential for the area of specialisation should be given due weightage. A person electing for specialisation in a particular area will be expected to deliver a high standard of performance in that area.

There is a need to identify leaders at the end of the first and second phase and help them in developing their careers. While career planning will be an ongoing programme for everyone, far greater intervention than the normal annual exercise is required when a high performing officer is scheduled to move from one phase to another, as described above. It is recommended that a very detailed assessment of the potential of the officer is carried out at these transition points. The TARC recommends the setting up of an assessment centre in respect of the transition from the first phase. In respect of the transition from the second phase, selection will be based on a review process by a panel, which takes into account all-round performance and future potential for the top rungs of the organization. The panel should include outside experts as well. Such a system will create incentives for officers to excel and create a fast track for them to reach leadership positions early enough for them to have the drive and time to perform in leadership roles.

If we map the suggested transition stages to the current grade structure in the two revenue services, they correspond to the junior administrative grade (JAG) (joint commissioner) and the senior

administrative grade (SAG) (commissioner), respectively.<sup>28</sup> These could be regarded as the appropriate transition points and a percentage of posts filled every year (say, 20 per cent) should be earmarked for the fast track. While arriving at the exact percentage for fast track, it should be borne in mind that the select pool of high performance officers should be large enough and have the right age-profile for filling the top leadership positions, such as identified posts at the level of Chief Commissioner, functional heads at the level of Principal Chief Commissioner and Members and Chairperson of the Boards. Further, important positions having greater strategic significance, such as in international taxation, transfer pricing, custom valuation, compliance verification KAI, SPRM, TPA, enforcement, etc., in the grade of Commissioner and principal Commissioner should ordinarily be filled by officers on the fast track. This will prepare them for top leadership.

While normal promotions go by the defined zone of consideration, all officers eligible for the grade in terms of number of years of service could be permitted to apply for the fast track.<sup>29</sup> The intention is to move the prevailing career progression of staff away from one that is characterized by a path that could safely be predicted by the ranking in one examination at the entry level and the age at the time of entry. In the latter case, if no controversy arises during the career, an officer's path is already chalked out and does not depend on his performance, ability or potential. This is widely believed to have led to the freezing of decision making and stifled dynamism.

### **Assessment Centre**

An assessment centre evaluates the different competencies of officers by more than one assessor using a number of techniques. Assessment centres have been used in many countries since the mid-1930s. The annual performance assessment processes, even when coupled with interviews, are not sufficient to gauge the potential of officers across many dimensions.

For an organization to sustain high levels of performance, it needs to identify high performing individuals early in their careers. As has been suggested, this will be taken up after the first 9-10 years of the career of an IRS officer. Every person eligible for promotion to the JAG grade will be eligible for being assessed at the assessment centre. At this stage, the applicant candidates will be screened, on the basis of their past performance as reflected in their service record, for evaluation at the assessment centre for fast track. Since the officer has performed well in setting up a good foundation in his or her career in tax administration, the officer will be ready to move into one of the many specialist areas. At this point, it is essential to evaluate the person's potential in different dimensions including in-depth knowledge in areas of specialization, ability to resolve problems as also to handle stress, display managerial competence, leadership capability, team working and communication. In addition, there will be assessments of the officer's capability to embrace change

<sup>28</sup> At present, the eligibility service for promotion to Joint Commissioner is 5 years in senior time scale (which adds up to 9 years of Group A service), while that for Commissioner is 8 years in the grade of Joint/Additional Commissioner or 17 years of Group A service of which at least 4 should be in the junior administrative grade.

<sup>29</sup> Currently, the zone of consideration is defined as  $2x+4$ , where "x" represents the number of vacancies.



as well as act as a change agent in the organization. Therefore, potential has to be judged across many dimensions. It will not be appropriate to rely on the recommendations of only the appraiser and to base decisions only on a tool such as performance assessment.

The officers will go through multiple exercises in the assessment centre and these exercises will be both individual and group oriented. They will consist of workshops, tests and interviews. For example, managerial, leadership and team work competencies will be assessed through case study classes, group discussions and role plays. Tests and interviews will also be part of the activities in the assessment centre. There is a need to get an objective view point of the potential of a person and this is achieved through the formal assessment centre where independent assessors with both operational and behavioural competencies come together to evaluate the potential of a person. The officers will be given feedback on their performance, such as how they react to emergency situation etc. Therefore, these serve to help officers improve themselves on different dimensions.

An assessment centre will provide the necessary rigour to decide on whether the individual officer can go to the next higher career level, which will lead to fast track career advancement. Obviously, not all will pass this test. Assessment centre typically does not rank persons based on their performance. They are either found to be suitable for the next move or they are not. For those who are not found to be suitable, the feedback will guide them towards an improvement plan and they can come back for one more assessment after two years. However, if they fail to make the grade even in review, they will not make it to the fast track and their promotion line will be the normal one based on satisfactory performance and will end say at the level of the Chief Commissioner. However, they cannot be appointed to posts in the grade of Commissioner and Chief Commissioner which are identified for fast track. The remaining 80 per cent of vacancies can be filled up on the basis of the conventional promotion system.

The annual schedule of assessment for promotion should be so arranged that the assessment centre cycle precedes the conventional promotion through the DPC. There will be no need for officers selected for fast track by the DPC as they have already passed far more rigorous and all-round evaluation. In the final select panel drawn up for promotion, the fast track officers will be placed en block above the others in the select panel in the order of their inter-se seniority.

The people function will have the responsibility for setting up the assessment centre. There has to be periodic evaluation of the effectiveness of the centre. Data will have to be collected covering a period of time on the individual assessment made and the performance of the individual. This will help in improving the process. Further, the assessment centre will show up areas where there is general lack of skills amongst the employees. These will be provided as input to learning and development activity so that appropriate training courses can be devised. Considering that an assessment centre is a very high value resource, it would be preferable for it to be a shared service for both the Boards - a common assessment centre could service both.

## Leadership selection

After an officer goes through the second phase where he or she will assume key roles in operational areas as well as display specialist capabilities, he will be evaluated for taking up leadership positions. As already noted earlier, this maps to the promotion to SAG, after 17 years of Group A service. The persons assessed for fast track after 17 years of Group A service can be eligible for promotion to the SAG grade irrespective of the zone of consideration. At that stage, 20 per cent of the vacancies in each year for promotion to the grade of SAG can be earmarked for the fast track officers. For the other officers, the normal process of promotion through DPC can continue on the balance 80 per cent posts. The non-fast track officers who are in the zone of consideration for the DPC to SAG grade will also be considered for review by the assessment board. If they are assessed suitable for fast track, they too will get into the fast track. This will provide an opportunity to the late bloomers also to compete for top leadership positions. The fast track officers will form the exclusive pool of top performers from which further promotions to the positions of functional heads of different vertical as well as horizontal functions and later to Board level positions, would be made, as already mentioned above.

The responsibility for selecting the next rung of leaders will have to rest with the top management of the tax administration. We are emphasizing this as emerging leaders will have to display their capability in running an effective and efficient organization and will work within its cultural attributes. These candidates will have to go through a process of selection by an assessment board including an interview. The assessment board will have representation from the top leadership of the Boards as well as independent evaluators, some of whom will have in-depth expertise in areas such as organizational behaviour, strategic management, etc.

It may be emphasised that the process outlined above is a schematic depiction. The people function will have to undertake a detailed exercise, including simulations, to work out the percentages to be earmarked for the fast track so as to ensure adequate availability of high performing officers to fill top leadership positions.

Effective leadership can occur only if the leadership team comprises people who are positioned into leadership roles early enough for them to be effective. In the tax administration context, this should start with function heads. Hence the leadership selection process must ensure that the officers in the leadership pipeline for these positions reach them early enough and have sufficient tenures to effectively help setting the agenda and ensuring its effective execution. This will achieve many important outcomes. First, it will prepare them for Board level positions. Secondly, their early involvement with these roles will provide the required dynamism as well as continuity. Thirdly, by virtue of their having had sufficient experience in key leadership positions, the agenda will be set with deep knowledge of policy as well as operations and unaffected by short termism.



The transformation of the Indian tax administration into a forward looking high performance, and concurrently an autonomous, empowered and yet accountable, organization as envisaged in the recommendations of the TARC, necessitates high quality of leadership. Therefore, the process of early identification of effective leaders, grooming them for leadership positions and giving them sufficient tenures as leaders is crucial for creation of such a high performing organization.

### **Competency development**

The goal of PMS is also to develop the individual employee. Tax administration is a knowledge intensive field. A key focus area for HRD is to create a competency profile for each role and provide facilities to acquire knowledge in those areas as well as to get proper certification. It is suggested that a system be created to ensure that an officer gets at least 10 days of formal training in a year. This will need to be accomplished through in-house training classes, attending external training programmes (especially in personality and leadership development areas and specialized technological skills) and also through web-based training. Officers should be encouraged to pick up at least two areas of specialization during the second phase of their careers. These areas could be specializations like transfer pricing, international taxation, service taxation in key areas, customs valuation, intelligence and investigation, audit, ICT, etc. Officers should be assessed for their abilities and potential in the areas of their choice and efforts should be made to place them accordingly and allow growth by giving them long tenures in such functions. The expectation from officers would be that consistently perform well in the chosen domain. They should also be encouraged to acquire additional formal qualifications and certification in many of the competency areas. The training academies, NADT and NACEN, will have to play a crucial role in this. The latter aspect is addressed later in this Chapter.

### **Mentorship**

Mentorship is a very important aspect of the development of an individual in an organization. It is particularly important from the perspective of promoting the right behaviour, right values and codes of conduct. It includes counselling an officer for proper growth in the organization according to his potential. In many organizations, the mentor also has a say in the career advancement and placement of an individual. Even though there was no formal programme, this used to happen in the civil services earlier when senior officers would take young trainees attached to them under their wing and guide them through their careers. In fact, most seniors would take this as an important part of their responsibilities. Over the years, possibly because of the larger numbers of officers coming in, this informal practice has virtually disappeared. Mentorship is an important tool for shaping young officers into effective leaders and sustaining a value based organization. The TARC believes that there is value in creating a formal mentorship programme, as many good organizations do, in the IRSS. Needless to add, the choice of mentors needs to be made with care and this is a matter for which guidelines would be useful.

### **Achievement of objectives of PMS**

PMS would be seen to have accomplished its tasks if it would help in the creation of a high performance oriented organization meeting the needs of the four balanced scorecard perspectives and in complete alignment with its values, vision and mission. Unless the process of performance assessment, career planning and competency development takes place in an integrated fashion, the tax administration cannot meet the expectations of either the government or the tax payer.

### **Consultation with the Union Public Service Commission (UPSC) and DoPT**

Under the current DoPT instructions, promotions within the Central Group A services by the selection method are to be done on the basis of the recommendations of departmental promotion committees (DPCs) that are chaired by either the chairperson or a member of the UPSC. There are some exceptions to this such as the Indian Foreign Service (IFS), Indian Audit and Accounts Service (IAAS) and the Railway services. Involvement of the UPSC brings about a degree of consistency across different services and a degree of rigour in adherence to procedures. However, the system the TARC recommends for the IRS marks a major departure from the promotion systems in the Indian civil services and will necessitate changes in relevant policies and rules. The UPSC does not conduct assessments through assessment centre. The TARC realizes that, if a merit based system is to be implemented, the IRS must move in the direction that has been laid out in this report.

The constitutional mandate of the UPSC under Article 320 does not extend to promotions within Group A services. Its consultation has been mandated by a government decision and the convention has for long been followed, barring some exceptions. The TARC believes that if there is adequate HR competence built in the people wing of the departments and, as recommended, a large number of outside experts are involved in the assessments, excluding promotions in the IRS from UPSC consultation becomes immediately feasible as in the other cited services. The TARC notes that even the proposal for dispensing with UPSC consultation needs prior consultation with UPSC. Therefore, the TARC recommends that the UPSC may be consulted if the TARC's recommendations are to be accepted and if, in the consultation, the UPSC indicates willingness to associate itself with the process, that option should be considered.

As regards other matters in which the UPSC is involved, which is appointment to the IRS whether by direct recruitment or promotion, the TARC recommends no change in this regard. Accordingly, the departmental competitive examination that the TARC recommends for promotion from ITOs in income tax and superintendents in excise and customs will need to be conducted by the UPSC.

As regards the DoPT, considering the fact that the Cabinet Secretariat itself has recognized the failure of the performance appraisal system in government, it should not be difficult to make a case for departure from their norms.

### IV.3.e Transfer policies

A key factor in performance management is the issue of deployment of people. The present transfer policy in both the Boards has been built on the principles of job rotation across the various regions or, in some cases, within the same jurisdictional region. The central idea behind job rotation is to address moral hazard and corruption. It is posited that the officer/staff should not work in the same area or job lest they should develop undue linkage. The transfer policy is thus vigilance centric.

The present job rotation policy has obvious disadvantages in some important aspects, of which, the most important is that it promotes a generalist approach to tax administration and does not allow development of specialists. There is also no attention to career planning, succession planning and skill up-gradation. Transfer policies in the two Boards are applied in a unilateral manner as a rule of thumb.<sup>30</sup> Undue attention to job rotation is often said to be one of the key reasons why neither of the tax administrations have developed any modern HR policy, and the only HR policy worth the name is fixated on the transfer policy. In their approach in this matter, the two tax administrations clearly deviate from global trends and best practices.

Such a generalist approach has also not helped in the development of a responsibility and accountability matrix for officers/staff with clear emphasis on delivery on the key objectives of modern tax administrations. As it operates across the organization at various levels, in the transfer season, the administration is in a state of flux for prolonged periods as officers move in and out of assignments and work suffers, affecting taxpayers. It is time to assess whether the present job rotation policy addresses that and develops a clear understanding in officers and staff about of organization's goals and requirements, so that they can be part of it in a more associative manner.

It would, therefore, be necessary to build a structure in which a performance management system, placement policies and training are part of the same matrix as a triad, each limb having the same importance as the other two. The irrational rotation of officers and staff either through jobs or places does not fulfil the desired objective and approach and, in fact, militates against developing a sound and professional tax governance structure. To a significant extent, this appears to be the outcome of the top administration being staffed by non-specialists, i.e., with little knowledge of the rudiments of taxation, whether tax policy or tax administration. This is another characteristic that is rare in a global context. Indeed, the organization has to set out a path for officers on their career plans and training so that they can deliver on the job. Development of specializations would have to be part of such a placement policy.

Another area that requires strict adherence is bringing predictability, stability and certainty to the placements. The placement of officers/staff have to be carried out at least 3-4 months in advance so that one, the officers/staff get adequate time before the actual movement so that the individual

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<sup>30</sup> Exceptions, if at all, are made for personal needs or in some cases are perceived to be to do a favour.

is able to complete the job at hand and take care of the personal issues in case of movement across the region, and second, the organization gets time to train the officers/staff on the new job and make him aware of the requirement of the new job. The inability to do so has caused considerable dissatisfaction, with a deleterious impact on performance. Therefore, rotations have to be in line with broad career planning for the officers/staff, and succession planning and training or skill up-gradation for the organization. Personal difficulties faced by an officer/staff should be considered sympathetically and a decision taken within a period 7-10 days, so that there is no uncertainty for the organization or an officer/staff. Rotation across regions should be in the same vertical at the appropriate career stage so that the process of specialization is on track.

The present transfer and postings are carried out through a placement committee. This could continue. The HR directorate in each Board, however, should be tasked to be its secretariat and to issue placement orders. DG (HRD) in the respective Boards should function as the member-secretary of the placement committee. HR Directorates would need to use the HR management system, along with overall career planning of the officer/staff and training requirement of the individual before any placement can take place. The present administrative Sections (Ad VI, Ad VIA in the CBDT and Ad V in the CBEC), along with the posts of Joint Secretary (Administration) in the two Boards whose roles are generalist in their approach and delivery, would have no relevance in the new scheme and should be abolished.

### **Leave Policy**

Another oft ignored aspect of the people function is the implementation of leave policy. This appears to be randomly applied at least in selected observed cases. The policy has broad scope for leave accumulation, but granting of leave appears inexplicable and unrelated to the accumulation of leave. Rather, it appears to be linked to the professional relationship between an officer and his superior. The right of the officer to take accumulated leave has sometimes been ignored, revealing a lack of information or of training of managers in modern management principles in which rights such as the days of acquired leave, or stipulated number of days of training, comprise the right of a worker and has nothing to do with a work relationship. There is no redressal for the worker in such circumstances. What is worse, there is no accountability assigned to the errant superior. The TARC gathered the impression that the management tends to wield a tough stick on an officer who s/he falls foul inter-personally of the system.

### **IV.3.f Capacity building**

The primary responsibility for capacity building devolves on the two academies, NADT and NACEN. Details of their activities have been summarized in the Appendix IV.1. Both have been doing an excellent job in providing general professional training. Earlier in this Chapter, TARC had recommended a much larger role to the function of DG (HRD) to develop a robust performance

management system. The training strategies need to achieve a close link with the capacity building needs of the organization as identified in performance management strategies.

Training and development must occupy a central place in the people advancement of the administration. The best people in the organization should be posted in the academies and they should be exemplars to young officers entering the department. It is the imprint left on young minds that shapes the future growth of entry level officers and the administration must ensure that the imprint is of the right kind.

In an ever changing environment with new business models emerging globally, the academies need to adopt a more active posture. They should proactively suggest what newly emerging areas need new training curricula and engage with the Boards to develop plans to implement them. There is need to have a culture of continuous learning and collaboration for tax officers and staff. Such effort would require enhanced organizational capacity for NADT and NACEN trainers and more collaboration with the field and other related organizations such as economic think tanks, regulatory bodies, universities and other academic institutions as well as reputed training institutions in the public as well as private sectors. Such engagement will enable the development of customized programmes that address the diverse capability-building needs of various levels of the tax administration. There is need to clearly identify key learning and development objectives and this should involve an iterative process of research, consultation and analysis. The training curricula need to adequately cover both critical and technical tax issues, and management competencies.

A stronger bonding would also be needed between the field and the two training academies so that more innovative, high-quality workplace programmes, resources and services could be developed. This, at present, is missing. It should not be the responsibility of the two academies alone to identify the areas of training; the top management in the field should also participate in identifying the training needs of officers and suggest the course content that would be required for officers and staff. The two academies can set up from time-to-time groups for designing the courses. Outside faculty and business leaders should also be associated in such groups and such focused programmes should aim at meaningfully addressing current and future requirements of the tax administration.

Training should not be viewed as an isolated activity, it should be one of the key drivers for continuous improvement and organizational change to transform it into a learning organization. To achieve this, traditional training methodologies need to be changed and much greater rigour needs to be brought to the training courses and measures taken to ensure they are taken seriously. The certification given at the end of courses should be based on the evaluation of trainees. The active participation and performance of trainees in certain key courses should be an element in their performance evaluation. There is also the need to link specialized training to deployment of officers. It is often found that officers who receive specialized courses in a given area often get

posted to some other work area and the training they receive loses relevance. Placement policies need to be altered to ensure that cohesion is brought about between specialized training and deployment of officers. Ideally, officer's posted to work in an area which require specialized knowledge and skills should be made to go through training needed to acquire specialist knowledge before assuming office.

In critical areas, the academies need to transform themselves into hubs of research. At present, the permanent faculty at both NADT and NACEN comprises only the IRS officers and other departmental staff. The academies need to be organised into academic departments in areas such as law, economics, management, etc. These departments should be manned by competent academic faculty on a full-time basis. These faculties would also anchor research in the relevant selected areas through research projects. Programmes similar to fellowship programmes can be developed where either internal or external candidates can be awarded fellowships for research. In case of internal candidates, they can be treated as being on duty. These fellows will also perform teaching duties at the academies. Presumably, it was similar considerations that led to setting up of centre of excellence in NACEN.<sup>31</sup> However, the NACEN experience has been far from satisfactory. Because it is poorly resourced, it has been able to achieve little in productivity. This experience underlines the need for the leadership in the CBDT and CBEC to give serious attention and priority to ensure that such facilities are properly resourced and managed.

Besides the above, the following points need attention:

- Greater emphasis needs to be placed on inculcating value education and customer focus in the curricula. This is not a one-off. Continuous coaching and re-enforcement of values, desirable codes of conduct and behaviours and importance of customer focus is needed both in the work place and in the academies. Towards this end, a component on values and customer focus needs to be built in the curricula of all courses conducted by the academies. This is important at all levels and the course curricula for Group B and C officers and staff should also lay emphasis on this.
- The TARC found that readings recommended in the courses were often dated. The academies need to regularly update and improve the content of courses taught to the probationers to keep the training contemporaneous.
- From the current curricula it is found that the emphasis is largely on the technical and procedural aspects of tax laws. The consequence is that IRS officers coming out from the academies has reasonable technical and legal knowledge about taxation but little

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<sup>31</sup> The TARC learns that the CBDT is also in the process of setting up such a centre of excellence.

understanding of the economics of taxation or salient features of tax policy and tax administration and their place in the national and global economies.

- The pedagogical methods need to be updated. Much greater emphasis needs to be placed on the case study method, which has been widely adopted as an effective tool for learning.
- The academies need to invest in faculty improvement programmes to ensure that the quality of training delivered is continually upgraded and updated in sync with global developments.
- Regular training for trainers can generate internal resources that can be used widely in different areas so that some of the training can be delivered in the workplaces.
- Much greater investment needs to be made in e-learning modules and distance learning methodologies so that the reach of training efforts can be expanded and training can be delivered at workplaces. By joining the knowledge network and creating virtual classrooms, the NADT has taken the lead. The NACEN needs to follow suit.
- The Academies should make greater use of external accreditation. The NADT has developed an arrangement with the NALSAR to award the degree of Master of Business and Taxation Laws. It is recommended that the NACEN may also explore the possibility for a similar tie-up with national/international bodies for specialization and capacity building of the IRS (C&CE) officers in the field of indirect taxes/international trade.
- Concurrent with the need for greater specialization, both academies need to further upgrade specialized courses. These would be in the areas of international taxation, transfer pricing, customs valuation, economic analysis, policy design and development and other relevant areas of business and technology.
- Much greater integration needs to be achieved between the two academies and they could develop exchange programmes to give greater exposure to probationers across direct and indirect taxation.

While the training courses for the IRS officers are generally well structured, an equally serious effort needs to be made to train Group B and C officers. This is of critical importance as it is these officers who are the face of the two departments and lack of skills at that level severely affects the administration's image. It is learnt that often there is a large gap between fresh recruits joining the department and the induction training being delivered to them, largely due to lack of capacity and resources.

The capacity of the academies, which is already stretched, is likely to be further strained as both the services will be recruiting more officers at all levels following the restructuring. The staff



strength of the academies needs to be substantially improved if they are to meet the challenge. The NACEN, in particular, appears to be ill-equipped to deal with this. It was designed for a batch size of 50 while the current intake is twice that number. The situation gets aggravated when two batches overlap for a part of the training period. The NACEN is learnt to have proposed the creation of a separate academy for probationary officers at Rishikesh (Uttarakhand) and use the existing infrastructure at Faridabad to train in-service officers, and for mid-career training programmes (MCTP) and international programmes only. The proposal needs to be accepted.

Similarly, the NADT too is facing a capacity crunch. Both the academy and the RTIs need infrastructure upgradation. The TARC also feels that the regional training institutes (RTIs) and ministerial staff training units (MSTUs) should be merged for better use of training infrastructure.

The national training policy recommends that 2.5 per cent of the salary budget should be devoted to training. From the data in the Appendix, it is seen that there are gaps between the funds allocated and this norm – the gap being consistent and much larger in the case of the NACEN. We cannot make out from the figures alone whether the gap is on account of funds not being available or because of the NACEN has been unable to formulate projects to seek funding. It is desirable that at the minimum, the national training policy is followed and funds as per norms are made available to the academies.

Another point that was represented to us was that in the case of the NADT and NACEN, the expenditure is considered an item of non-plan expenditure, while in the case of the LBSNAA, it is considered as plan expenditure. We are unable to understand the rationale for this difference and believe that all three should be treated on the same footing.

#### **IV.4 Vigilance administration**

Corruption in administration is undoubtedly a crucial issue. And tax administrations, by the very nature of their functions, are among the more vulnerable sectors of government. Data taken from the CVC's annual reports indicates that about 6 per cent to 7 per cent of complaints handled by the CVC fall in the areas of the CBDT and CBEC. Their two CVOs together handle about 10 per cent to 12 per cent of the total complaints handled by CVOs across the government and the two departments account for approximately a little under a quarter of the prosecutions sanctioned against government servants on the advice of the CVC.<sup>32</sup> These figures, in particular the last one, underline the sensitivity and vulnerability of the two tax administrations. Therefore, a properly functioning vigilance machinery is a critical element of people management.

In dealing with different aspects of the PMS earlier in this chapter, the TARC underlined the centrality of values in driving performance. It also noted how a wide gulf exists between the lofty values and goals articulated in the vision, mission and citizen's charters and the actual practices

<sup>32</sup> Figures derived from CVC's Annual Reports for the years from 2008 to 2012



and behaviour on the ground. The need to link the two cannot be over emphasized. As the subsequent discussions in this section show, the current state of vigilance management is beset with many difficulties, not the least of which is intractable delays. The punitive approach to vigilance administrations has inherent limitations. Therefore, a more proactive approach is needed if the right type of behaviour is to be actively propagated in the two tax administrations. The TARC believes that the way to do this is to adopt a code of ethics and this must be done quickly by the two Boards together.

#### IV.4.a Code of Ethics

The 2nd Administrative Reforms Commission (ARC) went into the important question of a code of ethics for civil servants. It noted that many administrations abroad had adopted detailed codes of ethics for public servants while, in India, there was no such code. With regard to the CCS (Conduct) Rules, 1964, it observed that they enunciated a code of behaviour, which “while containing some general norms like ‘maintaining integrity and absolute devotion to duty’ and not indulging in ‘conduct unbecoming of a government servant’, were generally directed towards cataloguing specific activities deemed undesirable for government servants. These conduct rules do serve a purpose, but they do not constitute a code of ethics.” Hence, among other things, they recommended:

*Public Service Values’ towards which all public servants should aspire, should be defined and made applicable to all tiers of Government and para-statal organizations. Any transgression of these values should be treated as misconduct inviting punishment.*

While the recommendation has been accepted, the TARC is not aware of the progress towards implementing it.

Even as the government takes action on the ARC’s recommendation, the TARC believes that there is value in the two Boards developing and adopting a code of ethics and they should do this jointly. The code should be based on the values that are expressed in the vision, mission and citizen’s charter that the organizations need to imbibe and promote.

In the TARC’s view, the importance of such a code of ethics is twofold:

- (a) it will provide clarity and meaning to general expressions like ‘maintaining integrity and absolute devotion to duty’ and ‘conduct unbecoming of a government servant’, occurring in the CCS (Conduct) Rules, 1964, in the specific context of tax administration and provide a standard on which conduct can be judged; and
- (b) it will provide support to the ethical dimension of performance management and set clear expectations regarding employee behaviour and conduct.

While the code cannot be statutory for now and, therefore, its violations may not attract punitive consequences, it will have to be a vital aspect of performance management and deviations from it will have a weightage that can be calibrated according to the gravity of violation in the performance assessment of employees. This will be one of the most powerful ways of promoting desired behaviour.

#### **IV.4.b Preventive and punitive vigilance**

There are two dimensions of vigilance management: preventive vigilance and punitive vigilance. The former focuses on measures that deter the occurrence of moral lapses or unacceptable conduct while the latter focuses on punishment for such conduct. The preventive dimension operates at the systemic level by reducing opportunities for corruption and misbehaviour. It focuses on aspects like simplification of procedures, transparency, accountability, reducing discretion, and infusion of technology. Punitive vigilance, on the other hand, focuses on detection and punishment for breaches of conduct rules and prosecution of offending civil servants in egregious cases, such as those involving corruption.

To maintain standards of integrity in the organization, the leadership must place strong emphasis on both. As mentioned in the section on performance management, strong adherence to desirable values must be the overriding consideration and the performance management system must take this into account.

Technology will play a very large role in preventive vigilance. Maximizing transparency is a quick way to reduce inappropriate conduct. Other measures, such as setting CCTVs in areas with public interaction, creating systems in which all significant work happens in the digital environment with proper audit trails and opening up the internal working of the department to public view are powerful ways of reducing corruption. Many of the recommendations the TARC has made in the other chapters will contribute significantly in the area of preventive vigilance. Both the Boards, when they devise new policies and procedures, should take this aspect into account and use this as one of the touchstones for assessing the impact of the changes being contemplated.

On the punitive side, an effective vigilance system will ensure that misconduct is swiftly detected and punished. This is an area which is a matter of grave concern for the administration as well as the charged officers because of the excessive delays in the conclusion of disciplinary proceedings. For the administration, delays imply the misconduct remains unpunished for long periods, affecting the tone and morale of the administration and its public image; for the charged officer, especially if he is not guilty, the process itself becomes the punishment, thereby demoralizing not only him, but also others in the organization. Care, therefore, must be taken to ensure that proceedings are not launched lightly without adequate diligence and, when launched, they must be concluded swiftly. We have indicated some measures to cut down delays in the finalization of disciplinary proceedings later in this chapter.

#### **IV.4.c Empowering officers to take proper, judicious and timely decisions, sustaining a culture of independence coupled with accountability**

A vital aspect of governance is the need to balance an effective vigilance administration with sustaining a culture of taking fearless, independent and unbiased decisions. In our extensive discussions with trade and industry as well as field officers, one theme that recurred consistently was that the fear of vigilance, along with fixation of revenue targets, was the main cause for excessive risk aversion at the original and appellate levels of the departments, resulting in unjustified, high pitched assessments that lead to a surge of avoidable disputes, resulting in added costs and harassment for the taxpayer. It was mentioned that there have been a few instances in which Directorate of Vigilance has gone to the extent of reopening old/closed vigilance files or asking field officers about the reasons for not filing appeal against a tribunal order or enquiring why an assessment was made in a particular way. A view was expressed that the fear of vigilance intrusion in their quasi-judicial function and close scrutiny of adjudication orders forces them to pass orders against the taxpayers even if there was hardly any evidence on record.

On the indirect tax side, mention was made of a circular issued by the DG (Vigilance), CBEC,<sup>33</sup> advising chief commissioners in field that the committee of Chief Commissioners Or Commissioners performing the review functions under the respective laws may also examine adjudication/appeal orders from the vigilance angle, keeping in view the guidelines laid down by the Hon'ble Supreme Court in the K. K. Dhawan case<sup>34</sup> and refer suitable cases involving substantial or recurring revenue implications for further vigilance investigation. This was based on a vigilance audit of the Directorate of Vigilance, CBEC, carried out by the CVC in 2009, in which the auditors recommended the scrutiny of adjudication orders passed by field officers from a vigilance angle. The fear of vigilance was widely attributed to this circular.

On the other hand, DG (Vigilance), the CBEC informed the TARC that starting from 1997 till date, only 18 adjudication orders have been taken up for scrutiny in the Directorate General of Vigilance. This indicates that, on an average, only one case in a year i.e. 0.001% of total quasi-judicial orders passed in the department, have been taken up for vigilance scrutiny. Thus, any apprehension in field formations regarding vigilance scrutiny being very intrusive did appear to be somewhat unconvincing. While the TARC fully agrees that quasi-judicial authorities cannot be given blanket exemption from vigilance scrutiny, the wide perception needs to be addressed as it is clearly leading to excessive and avoidable disputes, and causing heavy reputational damage to the administration.

Recognizing the causes of poor performance of dispute management in the two departments, the TARC has given a number of recommendations in Chapter V to improve the quality of that

<sup>33</sup> DG (Vigilance), CBEC's letter F. No. V.500/100/2009-Pt.1, dated February 24, 2010

<sup>34</sup> 1993 SCR (1) 296

function. Implementing those recommendations will significantly improve the quality of orders and address the concerns of industry.

Coming to officers, the TARC cannot help observing that the fear that is said to be driving officers to take decisions that they themselves know to be incorrect appears, in large measure, to be misplaced and the TARC observes that, in many situations, it is used as an aid to take the easy way out. The onus of discouraging such a lackadaisical attitude towards the quality of decisions clearly lies on the senior leadership of the organizations. The TARC, in Chapter V, has recommended, among other things, that the review of orders should be based solely on merit and not on the basis of their revenue consequence. The supervisory officers can use this tool to send a clear message to officers that their performance will be judged on the basis of correctness and the quality of orders, irrespective of whether they are in favour or against the department. There is no short cut to this and the cue for the change in attitude must emanate from the two Boards.

In K. K. Dhawan's case, the Supreme Court had prescribed the following tests to examine the conduct of officers acting in a quasi-judicial capacity:

- Whether the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty
- If there is prima facie material to show recklessness or misconduct in discharge of duty
- If he has acted in a manner unbecoming of a government servant
- If he had acted negligently or omitted the prescribed conditions, which are essential for the exercise of statutory powers
- If he had acted in order to unduly favour a party
- If he had acted by corrupt motive, however small the bribe may be because as Lord Coke said long ago "though the bribe may be small, yet the fault is great"

These are robust principles and CVC instructions require that these be applied. In its instructions vide circular No. 39/11/07, the CVC has instructed CVOs, while referring cases to them, to critically examine whether any of the criteria were attracted and give detailed reasons for their conclusion. However, the impression created by the CBEC's circular that every case is to be looked at from the vigilance angle needs to be moderated by specifying that this should apply only to cases that prima facie meet the criteria laid down in Dhawan's case.

Having said that, it also needs to be recognized that with the growing complexity of the taxation landscape, a very high degree of familiarity is required for those who have to scrutinize the tax officers' decisions and such familiarity may not always be available within the CVC's establishment. It was obviously in recognition of this that the practice has been established that the CVO in both Boards, unlike in other departments or PSUs, be appointed internally from the serving

IRS officers. A panel of three officers of chief commissioner's level, known for their integrity, is sent to the CVC for selection for appointment as CVO. Hence, considerable weightage should be given to the views and recommendations should normally be accepted by the CVC and where there might be a difference of opinion, the panel should be consulted and allowed to explain its views before the CVC takes a view in the matter.

At present, all senior level posts in CVC, including that of CVC, vigilance commissioners, additional secretary and Joint Secretary are usually filled up from the IAS, IPS and the banking sector only and the representation of the revenue service does not go beyond the level of director. Having regard to the complexities of decision making in the banking and financial sector, usually one member is drawn from the banking sector. The TARC believes that taxation is an equally complex area, requiring specialized knowledge and background, and, therefore, a case exists for a similar dispensation in relation to the tax administrations. It is necessary to establish the convention of appointing one of the vigilance commissioners from among IRS officers, considering that the two departments together account for a significant part of the overall CVC workload. Similarly, at least one joint/additional secretary level officer in the CVC secretariat should always be from one of the two (direct and indirect tax) services. This will go a long way in ensuring better appreciation of the decisions that might be examined in the CVC. It will also address the issue arising from perceptions about vigilance that have created a risk averse atmosphere leading to high tax payer dissatisfaction and costs on the one hand, and high reputational damage to the tax administration on the other.

#### **IV.4.d Dealing with complaints**

Another theme that recurred in our interaction with officers was the perception that the culture of making anonymous complaints was affecting the quality of decisions. The data mentioned above reveal that the two Boards account for a significant proportion of complaints across the government and there does seem to be a culture of complaints that is beyond acceptable levels. There should be a uniform policy that anonymous complaints, without exception, will be consigned to the paper shredder. The argument that some solid evidence may emerge post-facto from an anonymous compliant holds no ground. The careers of some excellent officers have been jeopardized or irretrievably slowed down due to anonymous complaints that bore no fruit. Thus, the policy laid down in DoPT OM No. 104/76/2011-AVD.1 on October 18, 2013, should be strictly followed.<sup>35</sup>

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<sup>35</sup> This was issued consequent on the CVC putting in place a mechanism for whistle blower protection under the Public Interest Disclosure and Protection of Informers' Resolution - 2004 (PIDPI). It supersedes earlier instructions and unequivocally states that anonymous complaints, irrespective of the nature of allegations, are to be simply filed.

#### IV.4.e Delays in finalization of disciplinary proceedings

Government has been grappling for long with the problem of delays in disciplinary proceedings. A committee, under the chairmanship of Shri P.C. Hota, former Chairman of the UPSC (Hota Committee), had gone into this question in great detail. Its report refers to a study by the Indian Institute of Public Administration on the causes of delay that came up with the following findings:

- Administrative departments accounted for 69 per cent of the delay
- Inquiry officers accounted for 17 per cent of the delay
- CVC accounted for 9 per cent of the delay and
- UPSC accounted for 5 per cent of the delay

Clearly, the administration has to take steps to ensure appropriate time closure of the proceedings. The TARC is not going into the detailed recommendations of the Hota Committee, which have already been considered by government. However, the TARC believes that the following selected measures will go a long way in eliminating delay in finalizing disciplinary proceedings.

- **Dispensing with enquiry in minor penalty cases** - In respect of minor penalty proceedings, there is no constitutional requirement under Art 311(2) of the Constitution to conduct a detailed enquiry before the imposition of a penalty. Due consideration of the explanation submitted by the charged officer (CO) is sufficient before the imposition of penalty by the DA. However, the CCS (CCA) Rules in its present form provide for mandatory enquiry both for minor as well major penalty charge sheets if charges are denied by the CO. Dispensing with enquiry in minor penalty cases will require amendment to the CCS (CCA) Rules.
- **Delegation of powers of disciplinary authority** - In respect of Gr. 'A' officers of both the revenue services, the President is the appointing as well as the disciplinary authority (DA). This means that these powers are exercised by the Finance Minister. The Hota Committee in its report had recommended that the Minister-in-charge be the disciplinary authority only in respect of officers of the rank of Additional Secretary and above. In respect of all other Gr 'A' officers, the powers of DA may be delegated to the Secretary of the department. In respect of the CBDT and CBEC, these powers could be delegated to the concerned Chairpersons.
- **Plea Bargaining**- The Hota committee recommended the introduction of the concept of 'plea bargaining' in disciplinary proceedings. Under the scheme, an officer who has been served a charge sheet for 'major penalty' may admit the charges unconditionally and request a 'plea bargain'. This facility was not to be available to the CO in cases involving lack of integrity and corrupt practices. The request of the CO for a plea bargain should be examined by a panel of three officers constituted by the Secretary/HOD and if accepted, suitable minor penalty (instead of major penalty) shall be imposed by the DA on the CO. In the context of the CBDT

and CBEC, this power may be exercised by the respective Chairperson, who may constitute a committee chaired by the respective DGs (Vigilance) and comprising two chief commissioners of known competence and integrity.

There are other measures that the TARC recommends for timely finalization of disciplinary proceedings:

- **Safe custody of relied upon documents (RUDs)** – Non-availability/traceability of RUDs and other related documents with disciplinary authority (DA) or presenting officer (PO) for supply to the charged officer (CO) is another major reason for delay in enquiries. It is recommended that in the office of DA, one officer should be designated as the custodian of RUDs and a certified copy of RUDs must compulsorily be made available to him at the time a charge sheet is issued. This officer may be made responsible for safe custody and supply of RUDs to PO as and when needed.
- **Posting of officers as full time IO** – At present, most enquiries are assigned to officers in field formations as additional work, apart from their other normal day-to-day work. Hence, the enquiry does not get due importance/priority and it is treated as a secondary job. If an inquiry officer is transferred, his/her replacement initiates the process of inquiry afresh, resulting in further delays. The appointment of retired officers as IOs has helped in completion of inquiry faster in a few cases, but quality suffered because retired officers were not accountable. Delays in the submission of the IO's report are one of the biggest contributing factors to the overall delay in disciplinary proceedings. At present, only two officers, one each in Delhi and Mumbai, are posted as full time IOs; most enquiries are being assigned to field officers as additional work. The TARC makes the following further recommendation.
  - Four full-time commissioner-level IOs should be appointed in the Directorate of Vigilance (one in each zonal unit) under each Board for conducting inquiries against Group 'A' officers.
  - In respect of Group 'B' & 'C' officers, there should be at least one full-time IO of Additional Commissioner level in each cadre-controlling chief commissioner zone.
  - Once an officer is appointed as an IO in a case, he should complete the enquiry proceedings even if he or the CO is transferred to some other place/formation.
- **Ensuring presence of witnesses** – Non-availability of witnesses before the IO for examination/cross examination by the CO or the presenting officer leads to delays. At present, under the Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act 1972, the central government can empower an IO on with the powers of a civil court to enforce attendance of witnesses residing anywhere in India for deposition or production of documents. However, it is done on a case-to-case basis. The Hota committee had



proposed that powers under this act may be extended to all IOs and the need for notification/empowerment of IO on a case-to-case basis may be dispensed with. This commission agrees with the Hota Committee proposal and recommends that all IOs be conferred with the powers of a civil court to enforce the presence of witnesses.

- **Day-to-day hearings** – A major cause of delays is adjournments. To avoid this, the hearings should preferably be held on a day-to-day basis to complete the inquiry expeditiously. If it cannot be done because of adjournment sought by the presenting officer or the delinquent government servant or for any other reason, the reasons should be recorded in an order sheet. The order sheet should also record the next date of hearing and other relevant matters.
- **Honorarium for inquiry officers** – The inquiry officer, whether serving or retired, must be adequately compensated for the arduous nature of work in a disciplinary inquiry in the form of an honorarium. At present, the honorarium granted to a serving officer is only Rs.3000 per case (if he works as an inquiry officer in addition to his normal duties) and that to a retired officer Rs.9750/-. This needs to be made more reasonable and attractive. In addition, the retired officer should also be paid a consolidated sum as transport allowance and to hire typing assistance.

#### IV.5 Recommendations

The Commission recommends that:

- Both the departments should shift all their key operations to the digital platform so that performance can be reliably measured. (Section IV.3.d)
- A system of limited departmental competitive examinations should be introduced by earmarking 33 per cent of the vacancies in the promotions quota in Group B as well as Group A, so that relatively more meritorious and younger officers in the feeder grades can get a fast track in promotions. (Section IV.3.c)
- Recruitment needs to be made on the basis of carefully drawn recruitment plans that balance the short and long term needs and career aspirations of officers. (Section IV.3.c)
- Provision should be made for lateral entry of experts in key roles and specialized areas. While they may be on contract for 5 years, subject to their suitability and willingness they should be able to integrate with the organisation at the end of the contract period. (Section IV.3.c)
- The CBEC needs to develop a human resource management system, as has been done by the CBDT; collaboration and knowledge exchange between the two DGs (HRD) will enable CBEC to get such a system going in shorter time. (Section IV.3.b)
- A comprehensive performance management system needs to be set up for both tax administrations by revisiting and reconstructing the RFD. (Section IV.3.d)



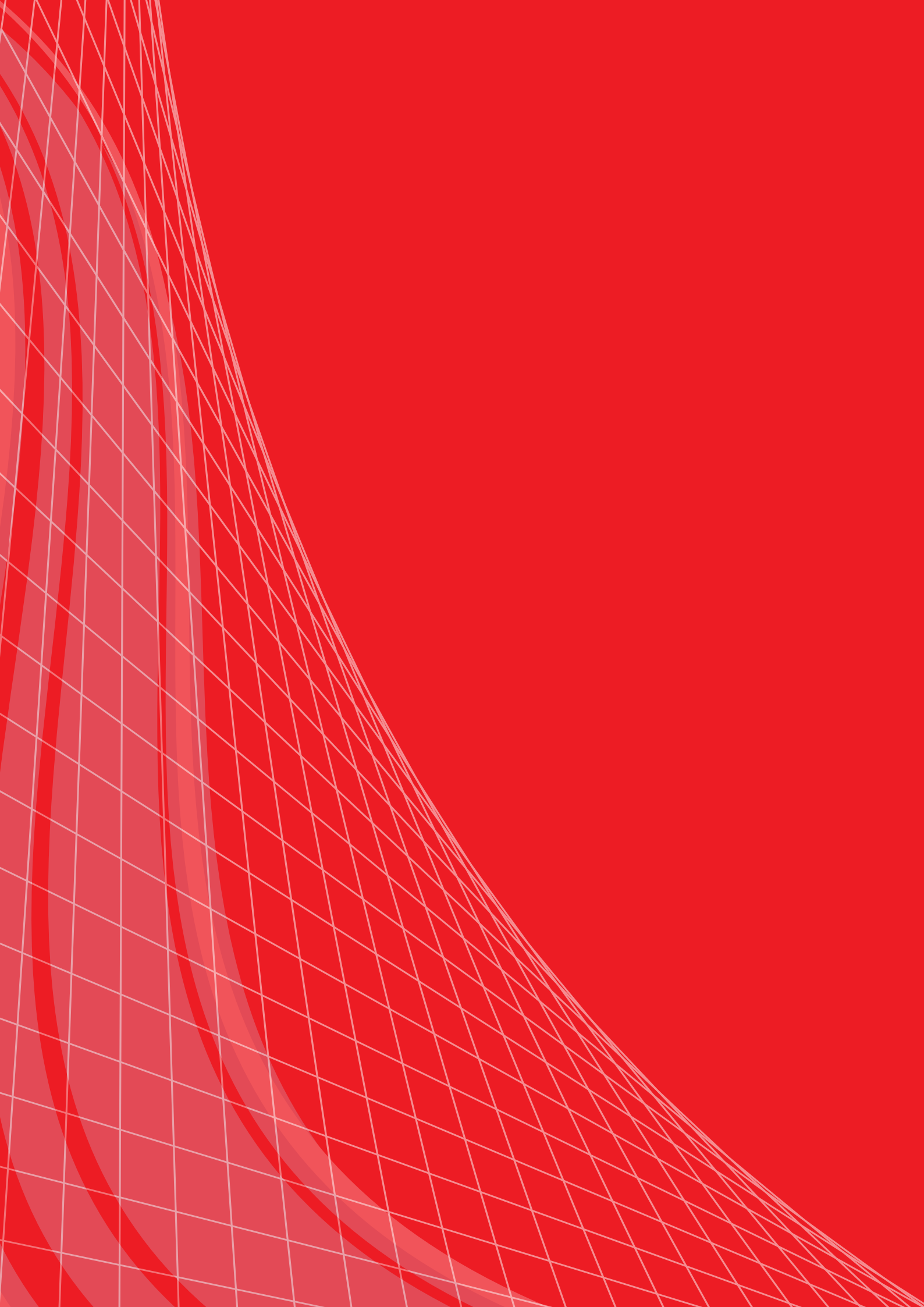
- Key performance indicators, detailing the performance areas, objectives, key initiatives, performance indicators and performance targets, should be arrived at using the Balanced Scorecard methodology. (Section IV.3.d)
- The performance appraisal process needs to be made more wholesome and reliable by making it more open and by introducing a mid-year review. (Section IV.3.d)
- The tax administrations should extend the performance appraisal system to elements of 360° appraisal to include feedback from subordinates. (Section IV.3.d)
- The outcome of discussions during the performance appraisal process should result in the superior taking responsibility for juniors by putting in place an improvement plan to overcome their weaknesses. (Section IV.3.d)
- Performance needs to be recognized through non-pecuniary measures such as giving important assignments in chosen areas of work or specialization. (Section IV.3.d)
- To facilitate renewal of talent and professional growth, officers should be allowed to move outside the departments for defined periods of time. (Section IV.3.d)
- The career of IRS officers should be divided into three phases:
  - The first 9-10 years should be spent rotating through different functional areas to gain familiarity
  - The next 8-9 years should be in two or more specialist areas
  - Persons showing the ability for top leadership will go into the third phase and constitute the pool from which selection will be made for top positions (Section IV.3.d)
- A common assessment centre for the two Boards needs to be set up by the people function to make a thorough, all round assessment of officers at the first transition point. (Section IV.3.d)
- In view of a different promotion system being recommended, the UPSC should be consulted for exempting these promotions in the IRS from their purview like some other services, e.g., the Indian Foreign Service, Indian Railway Services and Indian Audit and Accounts Services are exempted. However, if the UPSC is willing to be associated with the altered promotion scheme, that option should be considered. (Section IV.3.d)
- A formal mentorship programme may be set up, with carefully selected mentors. (Section IV.3.d)
- The transfer and posting policy should be recast to promote specialization and accommodation of individuals' choices in professional growth and should bring about predictability, stability and certainty to placements. Personal difficulties of officers should receive due consideration. (Section IV.3.e)

- DGs (HRD) should assist the Boards in transfers and postings and they should be member secretaries of the placement committees. The administration section should have no role to play. (Section IV.3.e)
- Learning and development should occupy a central place in people advancement and all officers must undergo a minimum 10 days of training every year. (Section IV.3.f)
- NADT and NACEN infrastructure should be substantially upgraded and the academies need to keep themselves updated in terms of the contemporariness of course content, pedagogy and use of ICT in training and they should be treated on par with LBSNAA. Their budgets should match the stipulation of the National Training Policy, i.e., 2.5 per cent of the salary budget of the departments should be earmarked for training and should be treated as plan expenditure. (Section IV.3.f)
- More emphasis in training needs to be given on customer focus and value education. (Section IV.3.f)
- A code of ethics needs to be developed, congruent with the values in the vision and mission statement. (Section IV.4.a)
- There should be more proactive approach to preventive vigilance. (Section IV.4.b)
- The provisions of Rule 56(j) of the Fundamental Rules should be effectively utilized for weeding out officers who are inefficient or of doubtful integrity. The criterion for review should be changed to completion of 20 years of service. (Section IV.3.d)
- CVC should have a Member who has been an officer of either of the IRSs and there should at least one Joint Secretary/Additional Secretary level officer posted in the secretariat of CVC. (Section IV.4)
- No cognizance should be taken of anonymous complaint as laid down in the existing DoPT instruction. (Section IV.4.d)

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# **CHAPTER V**

## **DISPUTE MANAGEMENT**



# Chapter V

## Dispute Management

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# Chapter V

## Dispute Management

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### V.1 Current status

The credibility of the tax administration of a country depends to a very great extent upon the credibility of its dispute resolution mechanism. This is in terms of how quick, consistent, transparent and fair the dispute resolution mechanism is in the eyes of the taxpayer. The quality of the tax administration is also influenced by its ability to ensure that avoidable disputes do not occur or are not prolonged. This requires clarity in laws, rules and procedures and the adoption of a transparent and collaborative approach towards taxpayers.

India has an elaborate structure of tax administration, including, in particular, administrative practices for dealing with disputes. The comprehensive system has become more significant in the wake of the ever-growing size and quantum of cross-border transactions, frequent disputes emanating from interpretational uncertainties, and the rapidly emerging convergence between international tax policies across nations. It cannot be said strongly enough at the outset that this is an area in which there is widespread dissatisfaction among stakeholders and that the administrative machinery suffers from a crisis of confidence among taxpayers. It is widely perceived to lack in objectivity, fairness and adherence to timelines.

On the direct tax front, the I-T Act, 1961, functions as a self-contained tax code covering within its scope diverse aspects – rules for levy and collection of tax, procedure for assessment of income, dispute redressal mechanism and others. The I-T Act, which is more than five decades old, has been amended several times through successive Finance Acts as part of Parliament's annual budgetary exercise. In the recent past, the key driver for tax reforms has been the macro-economic challenges faced by the government on account of the stiff fiscal deficit targets set out by Parliament. There has also been a steady reduction in marginal tax rates for taxpayers and rationalization of the rate structure to reflect best international practices. Further, various amendments have also been made for broadening the tax base through enhanced focus on voluntary compliance requirements and stricter anti-abuse rules in legislation in line with international best practices across the globe. However, an environment of a large number of tax disputes results in a perception of risk and uncertainty among potential investors. In particular, mounting disputes in transfer pricing (TP) and international taxation cases have adversely affected the external investment scenario.

There has been rationalization of tax rates in the case of indirect taxes too. This was done to carry out structural changes reflecting international best practices and to align the central indirect tax system with an anticipated Goods and Services Tax (GST) regime. The implementation of rules

permitting cross-utilization of input tax credits for payment of taxes on goods (excise duty) and services (service tax), introduction of new valuation rules and attempts to simplify export refunds related procedures are some of the key aspects exemplifying the central government's resolve to modernize the indirect tax regime.

Service tax law has undergone a massive makeover since its introduction in the Finance Act, 1994 through two decades – from a 'positive list' based taxation regime (with 119 services comprising the taxable services' list by 2012) to the introduction of 'negative list' based taxation in July 2012. Tax administration has had its set of challenges administering the erstwhile 'positive list' based taxation. The fundamental jurisdiction of the Finance Act to levy service tax on various activities was challenged in courts on multiple grounds such as violation of Article 14 of the Constitution of India, and the overlapping of powers of the centre and states to levy tax on certain activities. Besides, the definition of each service as provided under Chapter V of the Finance Act, 1994 was vague. This led to a large volume of litigation. The advent of the 'negative list' in service tax has not solved these problems. It has added to litigation in certain areas where the tax department has interpreted an activity as a taxable service while the taxpayer has disagreed. Similarly, there have been disputes in the area of valuation and classification under the excise and customs laws.

If amendments in tax laws are too frequent, then the frequency of such amendments tends to make legislation unstable in terms of understanding or interpretation for an average taxpayer. This could force the taxpayer to grow sceptical, thereby incentivizing tax avoidance. Factors such as the mechanical application of laws, arbitrary tax demands, protracted litigation, multitude of conflicting judgments by tribunal benches and jurisdictional high courts have further dampened the investor/taxpayer's faith in the tax administration and policy makers. On the other hand, the tax administration has also suffered because of the long drawn out dispute resolution process as billions of rupees in revenue have been locked up in disputes for years.

To combat the loss of taxpayer's confidence in tax administration without losing sight of the daunting task of having to contain the fiscal deficit at the macro-economic level, policymakers have consistently looked towards 'tax reform', embracing best international practices with renewed interest. In the past, several expert committees have been set up by the government to address specific issues plaguing the tax administration. Policymakers, while deciding future tax policies, weigh upon recommendations put forth by such expert committees.

The move to replace the I-T Act with the Direct Taxes Code and consolidate most indirect taxes (including state levies) into GST highlights the intent of the policy makers to simplify and re-align tax practices. The setting up of the Tax Administration Reform Commission (TARC) is in line with this thinking, with the government, for the first time, naming a National Commission to exclusively examine and recommend measures for reforming the tax administration.

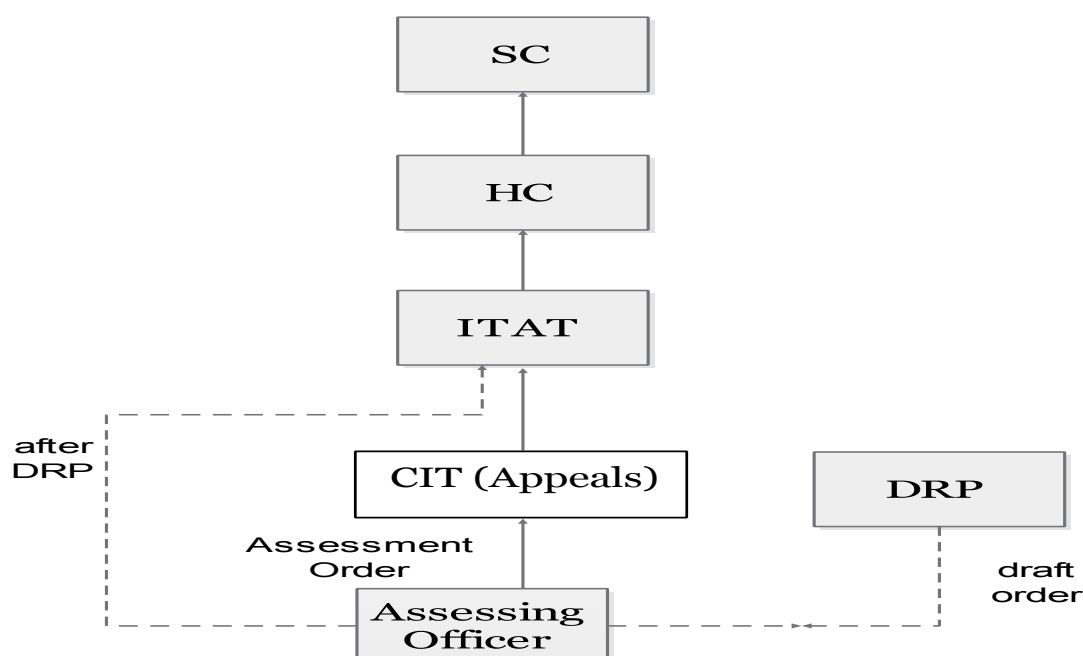


### V.1.a Present organizational arrangement for dispute resolution

#### Central Board of Direct Taxes (CBDT)

Provisions relating to appeals are governed by Chapter XX of the I-T Act. Sections 246 to 251 deal with appeals to the Commissioner (Appeals) (CIT (Appeals)), Sections 252 to 255 with appeals to the Income Tax Appellate Tribunal (ITAT), Sections 256 to 260 with reference to the high court (for orders passed by ITAT before October 1, 1998), Sections 260A & 260B for appeals to the high court (with effect from October 1, 1998), and Sections 261 & 262 for appeals to the Supreme Court. Chapter VI of the Wealth Tax Act, 1957, deals with the appeal processes for wealth tax cases. Diagram 5.1 gives the appeal process.

**Diagram 5.1: Appeal process in the I-T Act**



The procedure for filing an appeal by the taxpayer before the CIT (Appeals) is laid out in Section 249 and Rules 45 and 46. The appeal should be filed within 30 days of the date of serving the demand notice relating to an order of assessment or penalty. But if a copy of the order is not served along with the demand notice, the time taken for obtaining the copy of the order is excluded from the period of 30 days. The CIT (Appeals) can condone the delay in filing an appeal if there is sufficient cause for the delay.

The CIT (Appeals) is empowered to make further inquiry as he thinks fit and to call for reports from the Assessing Officer (AO) on certain points. In such cases, the AO as per the directions of the CIT (Appeals) has to examine the points on which the inquiry has been sought afresh, and submit the results of his examination to the CIT (Appeals) through a report known as the remand

report. But at times, considerable delay is seen in finalizing the remand report. This in turn impacts the delivery of the appeal order.

Once the order of the CIT (Appeals) is received, the AO scrutinizes the appellate order to ascertain if all or some of the decisions of the CIT (Appeals) is/are unacceptable and whether a second appeal to ITAT is necessary. Based on his analysis, the Range JCIT/Additional CIT submits an appeal scrutiny report to the Commissioner of Income Tax. The monetary limits for filing departmental appeals have also been laid down in Departmental Instruction No. 03/2011 dated February 9, 2011, as shown in Table 5.1.

**Table: 5.1: Threshold monetary limit for filing appeal in CBDT**

Appellate forum	Monetary limit of tax under dispute
ITAT	Above Rs. 3,00,000/-
High Courts	Above Rs. 10,00,000/-
Supreme Court	Above Rs. 25,00,000/-

Such instruction is to avoid filing appeals in small revenue cases. But the ceiling limit does not apply in cases where a revenue audit objection on the issue involved has been accepted by the department or where the CBDT's order, notification, instruction or circular is the subject matter of an adverse decision or where prosecution proceedings are contemplated against the taxpayer or where the constitutional validity of the provisions of the I-T Act are challenged. But many times such guidelines are flouted, and cases are filed before the ITAT in a routine manner, many of which are often non-deserving cases.

For a class of cases – cases involving international transactions, i.e., cases of TP and cases of international taxation – the Dispute Resolution Panel (DRP), a collegium of three Commissioners, was introduced vide Section 144C of the I-T Act to provide speedy disposal of disputes. This arrangement is optional for taxpayers and only draft assessment orders are reviewed by the DRP. An appeal thereafter lies before the ITAT. Earlier, there was no appeal available for the department after the DRP order, but since financial year (FY) 2013-14, the Commissioner can also file an appeal to ITAT in case he considers the order unacceptable to him.

At present, the posts of CIT (Appeals) are filled in by junior Commissioners and the seniors are posted as administrative commissioners. Even the transfer policy guidelines of CBDT emphasize that.<sup>36</sup> At the time officers are promoted to, the NADT conducts a training course for the newly promoted Commissioners on appellate work, but there is no specific timeline for such training.

<sup>36</sup> Para 3.6 of the Transfer/Placement guidelines for IRS officers issued by CBDT on 16.02.2010 states so.

This training is supposed to be compulsory but many do not attend the training and there is no accountability for missing the training.

Often, the CIT (Appeals) are transferred mid-year, and instances of *de novo* hearing have been reported for the new incumbent, leading to increased compliance cost for the taxpayers and in the number of pending appeal cases. There are also instances of delayed orders after the hearings have been completed, leading to an increase in tax demand (due to mounting interest) for the taxpayers.<sup>37</sup>

The appeals to ITAT are governed by Section 253 of the I-T Act. Section 253(3) lays down the limitation period, i.e., 60 days within which the appeal to the ITAT should be filed. But the ITAT is also empowered to admit an appeal after the expiry of 60 days if it is satisfied that there is sufficient reason for the appeal not having been filed within the time limit.

The department is represented before the ITAT by the Authorised Representative of the department (DR). Nowadays, Commissioners are also posted to represent before each bench of the ITAT. The CITs present search cases, revision cases by the Commissioners as well as cases above a monetary limit or complex cases. The Additional/Joint CIT represents other sets of cases. But the performance of the DRs in some cases has not been adequate. Instances of lack of preparation on the part of the DRs have come to notice. There are also instances of lack of co-operation by field Commissioners with the DRs. Since representing before a bench requires different skills, such as marshalling of facts, court craft, etc., it is important that whoever is posted as DR is given adequate training.

The provisions relating to appeals to the high court are dealt with in Sections 260A and 260B of the I-T Act. An appeal can be filed by the chief commissioner or commissioner or a taxpayer aggrieved by the ITAT order. An appeal lies to the high court against the order of the ITAT if the high court is satisfied that the case involves a substantial question of law. The time limitation prescribed for such an appeal is 120 days from the date of receipt of the ITAT order. Where the high court is satisfied that a substantial question of law is involved, it formulates the question.

Section 261 provides an appeal to the Supreme Court against any judgment of the high court on a reference made under Section 256 (before October 1, 1998) or an appeal made under Section 260A. On behalf of the department, it is CBDT that can file the appeal to the Supreme Court. This appeal would lie only when the high court certifies that the case is fit for appeal under Section 261.

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<sup>37</sup> Appendix V.3 gives the appeal processes of some advanced tax administrations.

### Pendency at various appellate levels in CBDT

The tax administration in India is excessively dispute ridden. A large number of tax disputes are avoidable as evidenced by the low success rate of the government. Table 5.2 gives the number of disputes for two FYs, 2011-12 and 2012-13.

**Table 5.2: Pendency of disputes at various appellate levels in CBDT**

Appellate Authority	FY 2011-12	FY 2012-13
Supreme Court	5,666	5,808
High Court	31,373	31,230
ITAT	30,928	31,015
CIT (Appeals)	2,30,616	1,99,390

Source: CBDT data

It can be seen from the Table above that there was a reduction in the pendency of the number of cases filed in FY 2012-13 before the CIT (Appeals) over the previous FY 2011-12. There is also a marginal reduction in cases before the high courts, while there has been little change in the number of pending cases before the ITAT and the Supreme Court. The age-wise break up of pending appeals at various appellate levels during the last two FYs is given in Table 5.3 below.

**Table 5.3: Age-wise pendency of cases for CBDT**

Appellate Authority	FY 2011-12					FY 2012-13				
	Less than one year	One to two years	Two to five years	Five to ten years	More than ten years	Less than one year	One to two years	Two to five years	Five to ten years	More than ten years
Supreme Court	1,424	1,942	1,306	788	206	1,093	2,203	1,678	686	148
High Court	7,553	10,087	9,076	3,999	658	7,669	10,257	9,269	3,302	733
ITAT	9,706	12,697	6,432	1,697	396	11,877	10,971	5,896	1,706	565

Source: CBDT data

The Table shows that although the number of pending cases before the Supreme Court in the category of more than ten years has come down in FY 2012-13 over the previous year, the total number of pending cases has increased from 5,666 in FY 2011-12 to 5,808 in FY 2012-13. There is also an increase in the cases pending for one to two years and two to five years. The cases pending in the high courts have come down marginally from 31,373 in FY 2011-12 to 31,230 in FY 2012-13. The cases in all categories of pendency have increased; some reduction is however

seen in the category of five to ten years. The total number of pending cases before the ITAT, however, has increased overall from 30,928 in FY 2011-12 to 31,015 in FY 2012-13.

The total number of cases that were disposed of during the last two FYs is given in Table 5.4. It also provides a comparison of the success rates in the cases filed by the department and the taxpayer.

**Table 5.4: Disposal of dispute cases for CBDT**

Appellate Authority	Disposal in favour of	FY 2011-12		FY 2012-13	
		Total Disposal	Success	Total Disposal	Success
Supreme Court	Department	1030	104 (10.1)	536	62 (11.6)
	Taxpayer		402 (39.0)		317 (59.1)
High Court	Department	7,543	1,631 (21.6)	5,723	1,177 (20.6)
	Taxpayer		4,474 (59.3)		3,500 (61.2)
ITAT	Department	20,884	5,102 (24.4)	21,424	4,349 (20.3)
	Taxpayer		9,642 (46.2)		9,984 (46.6)
CIT (Appeals)**	Taxpayer	76,907	22,293 (28.9)	85,473	19,859 (23.2)

Source: CBDT data

\* Values in bracket are in per cent.

\*\*In the case of CIT (Appeals), I-T Department is not an appellant.

The percentage is on the basis of success in favour of the department or the taxpayer out of the cases disposed of by each appellate authority. The remanded cases are considered to have been disposed of, but they have not been included as a success case for the appellant. It can be seen from the Table above that the success for the department at each level is lower than that for the taxpayer.

The age-wise disposal of cases during the last two FYs is given in Table 5.5.

**Table 5.5: Age-wise disposal of cases for CBDT**

Appellate Authority	FY 2011-12					FY 2012-13				
	Less than one year	One to two years	Two to five years	Five to ten years	More than ten years	Less than one year	One to two years	Two to five years	Five to ten years	More than ten years
<b>Supreme Court</b>	268	250	268	207	37	136	136	125	101	38
<b>High Court</b>	1,668	2,439	2,325	925	186	1,415	1,711	1,602	687	308
<b>ITAT</b>	6,799	8,016	4,535	1,251	283	6,223	8,435	4,732	1,336	698

Source: CBDT data

The Table above shows that the number of disposals by the Supreme Court during FY 2012-13 was almost half that during FY 2011-12 – 1,030 during FY 2011-12 and 536 during FY 2012-13. The trend has been similar for cases pending before the high courts. ITAT, however, showed higher disposals, in particular in the category of more than ten years of pendency, the disposal in FY 2012-13 being 2.47 times the disposal in FY 2011-12.

A study undertaken by FICCI on dispute resolution found the average time at each level as follows:

Hierarchy	Time-frame
Order passed by AO	1-2 years
Appeal to CIT (Appeals) within 30 days	3-4 years (6-8 years in certain jurisdictions)
Appeal to ITAT within 60 days	2-3 years (longer in certain jurisdictions)
Appeal to High Court within 120 days	3-5 years (8-10 years in certain jurisdictions)
Supreme Court	4-7 years (depending on the case)

Graphs 5A.1 and 5A.2 in Appendix V.1 show the number of pending cases under the top ten Sections of the I-T Act in which the disputes are pending before the high courts from June 2012 to September 2013.

### Central Board of Excise and Customs (CBEC)

CBEC deals with three types of taxes, namely customs duties, central excise duties and service tax. While most of the disputes in each type of tax are similar, some differences exist in the process

of dispute resolution in the cases of baggage handling in customs and in cases of customs duty drawback. In the case of baggage handling, the value limit of the baggage determines at what level the cases are to be adjudicated. Table 5.6 below gives the adjudication limits.

**Table 5.6: Adjudication limits in customs**

a) In cases other than baggage

Customs Officers	Nature of cases	Duty involved
Commissioner	All cases	without limit
Additional/Joint Commissioner	All cases except in cases involving erroneously paid drawback, collusion, wilful misstatement or suppression of facts, etc.	Up to Rs.50 Lakh
	All cases involving erroneously paid drawback, collusion, wilful misstatement or suppression of facts etc., and baggage	without limit
Deputy/Assistant Commissioner	All cases	Up to Rs 5 Lakh

b) In cases of baggage

Customs Officers	Value of Goods involved
Superintendent	up to Rs. 50,000
Deputy/Assistant Commissioner	up to Rs. 5 Lakh
Additional/Joint Commissioner	Without any limit

In the case of central excise service tax, there is no difference between different levels, and the adjudication is carried out according to the norms given in Table 5.7.

**Table 5.7: Adjudication limits in central excise and service tax**

Central Excise Officers	Nature of cases	Amount of duty involved
Superintendent	All cases excluding cases involving determination of rate of duty or valuation and cases involving extended period of limitation	up to Rs. 1 Lakh
Deputy/Assistant Commissioner	All cases excluding cases where Superintendents are empowered to adjudicate. However, all valuation and classification cases are decided by	up to Rs. 5 Lakh

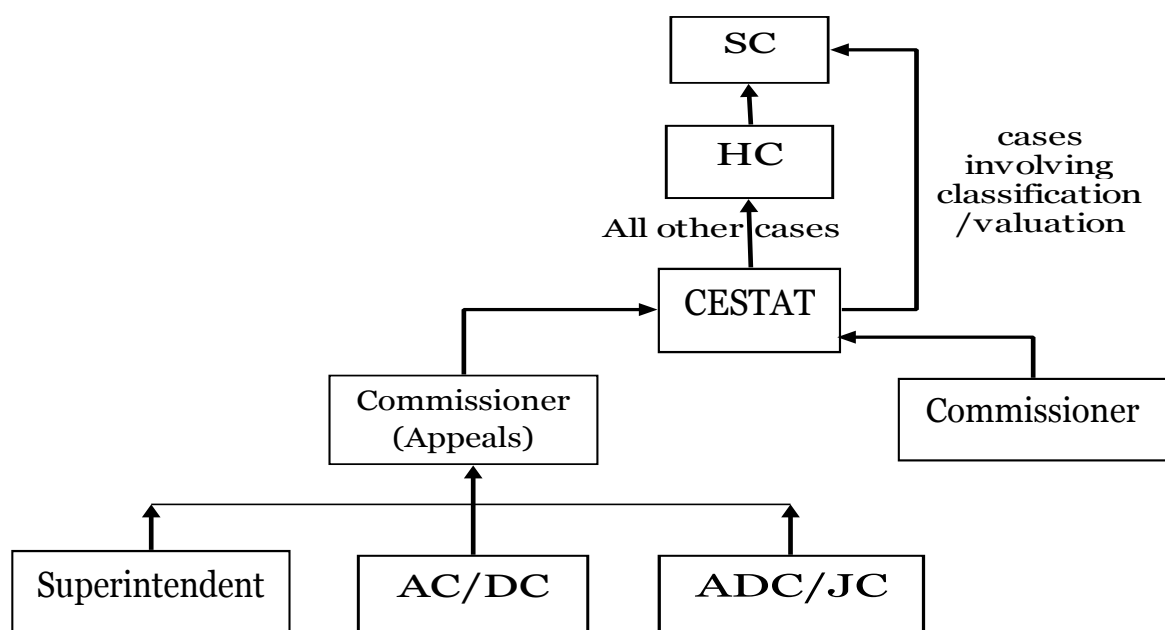
Central Excise Officers	Nature of cases	Amount of duty involved
	Deputy/Assistant Commissioner, irrespective of the amount of duty involved	
Additional/Joint Commissioner	All cases	up to Rs. 50 Lakh
Commissioner	All cases	Without limit

The provisions relating to appeals in indirect taxes are governed by the following:

- Chapter VIA of the Central Excise Act, 1944, Sections 35 and 35A deal with appeals to the Commissioners (Appeals), Sections 35B, Section 35C and 35D with appeals to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Sections 35G, 35H, 35I, 35J and 35K with appeals to the high court, and Sections 35K, 35L, and 35M for appeals to the Supreme Court;
- Chapter XXV of the Customs Act, 1962, Sections 128 and 128A deal with appeals to the Commissioners (Appeals), Sections 129, 129A, 129B and 129C with appeals to CESTAT, Sections 130, 130A, 130B, 130C and 130D with appeals to the high court, and Section 130D, 130E and 130F with appeals to the Supreme Court; Chapter V of the Finance Act, 1994, Sections 84 and 85 deals with appeals to the Commissioners (Appeals), Sections 86 with appeals to CESTAT.

If a case is not resolved at the level of adjudication as mentioned above, appeals against the orders of the Superintendent, Assistant Commissioner/Deputy Commissioner or Additional/Joint commissioner lie with the Commissioner (Appeals). Any appeal against the order of Commissioner (Appeals) goes to CESTAT. Appeals against the orders of commissioners, however, lie directly with the CESTAT. Appeal Orders of Commissioner (Appeals) in baggage/drawback cases, however, lie with the Joint Secretary (Revision Application). Diagram 5.2 shows the appeal process in indirect taxes.



**Diagram 5.2: Appeal process for indirect taxes**

For central excise and customs, an appeal before the Commissioner (Appeals) should be filed within 60 days of the date of communication of the decisions or orders appealed against. A further period of 60 days is allowed on sufficient cause being shown by the taxpayer. Appeals before CESTAT should be filed within 3 months of the date of receipt of the decision or order appealed against. The delay may be condoned if sufficient cause is shown by the taxpayer. An appeal before the high court should be filed within 180 days of the date of receipt of the decision or order appealed against. An appeal before the Supreme Court lies after the decision of the high court or the tribunal. Appeals against all cases of CESTAT, except those involving classification/valuation issues, lie with the high court while that of classification/valuation cases lie directly with the Supreme Court.

In the case of service tax, an appeal before the Commissioner (Appeals) should be filed within 2 months of the date of communication of the decisions or orders appealed against. A further period of 1 month is allowed on sufficient cause being shown by the taxpayer. Appeals before CESTAT should be filed within 3 months of the date of receipt of the decision or order appealed against.

### **Pendency at various appellate levels in CBEC**

For filing departmental appeals in the higher courts, CBEC has issued instructions, dated August 17, 2011, specifying the monetary limits for filing cases. These are given in Table 5.8.

**Table 5.8: Threshold monetary limit for filing appeal in CBEC**

Appellate forum	Monetary limits of duty under dispute
CESTAT	Above Rs.5,00,000/-
High Courts	Above Rs.10,00,000/-
Supreme Court	Above Rs.25,00,000/-

The total number of appeals pending at various appellate forums during the last three FYs is given in Table 5.9 below.

**Table 5.9: Pendency of disputes at various appellate levels in CBEC**

Appellate Authority	FY 2010-11	FY 2011-12	FY 2012-13
Supreme Court	2,675	2,863	3,081
High Court	15,211	14,695	15,113
CESTAT	46,094	53,583	62,163
Commissioner (Appeals)	23,882	27,825	33,225

Source: CBEC data

From the tables above, it is apparent that there is an increasing trend in the number of appeals filed at all levels; there is a marginal decline only for the cases filed in the high court for the FY 2011-12. While the cases at the Commissioner (Appeals) are filed by taxpayers, both parties (as well as taxpayers) may file cases at other levels on the basis of the adjudication orders received by them. As may be observed from Table 5.10, the volume of cases filed before the CESTAT is large.

**Table 5.10: Age-wise pendency of disputes in CBEC**

Appellate Authority	2011-12				2012-13			
	Less than one year	One to three years	More than three years	Total	Less than one year	One to three years	More than three years	Total
Supreme Court	699	928	1,236	<b>2,863</b>	462	1,229	1,390	<b>3,081</b>
High Court	3,416	4,611	6,668	<b>14,695</b>	3,913	4,331	6,869	<b>15,113</b>
CESTAT	17,600	18,241	17,742	<b>53,583</b>	17,011	25,076	20,076	<b>62,163</b>

Appellate Authority	2011-12				2012-13			
	Less than one year	One to three years	More than three years	Total	Less than one year	One to three years	More than three years	Total
<b>Commissioner (Appeals)</b>	19,001	7,281	1,543	<b>27,825</b>	21,301	9,622	2,302	<b>33,225</b>

Source: CBEC

Table 5.10 indicates that the overall pendency has increased at all levels in FY 2012-2013 from the previous FY 2011-2012. Although the total number of pending cases before the Supreme Court has increased from 2,863 in FY 2011-12 to 3,081 in FY 2012-13, the number of pending cases before the Supreme Court in the category of less than one year has come down in FY 2012-13 over the previous year. The pending cases in the high courts have increased from 14,695 in FY 2011-12 to 15,113 in FY 2012-13, with all categories showing an increase. Pending cases in CESTAT have also gone up marginally, from 53,583 in FY 2011-12 to 62,163 in FY 2012-13. The cases in all categories of pendency have increased; some reduction, however, is seen in the less than one year category. The total number of pending cases before the Commissioner (Appeals), however, has increased overall from 27,825 in FY 2011-12 to 33,225 in FY 2012-13.

Disposal of cases at various appellate forums in favour of both the department as well as the taxpayer during the last three FYs, 2011-11 to 2012-13 is given in Table 5.11.

**Table 5.11: Disposal of dispute cases in CBEC**

Appellate Authority	Name of Party	2010-11		2011-12		2012-13	
		Total	In favour*	Total	In favour*	Total	In favour*
Supreme Court	Department	388	16 (4.1)**	394	30 (7.6)	239	29 (12.1)
	Taxpayer		12 (3.1)		24 (6.1)		45 (18.8)
High Court	Department	3,516	238 (6.8)	5,207	336 (6.5)	3,453	245 (7.1)
	Taxpayer		731 (20.8)		2,976 (57.2)		1,788 (51.8)
CESTAT	Department	6,582	482 (7.3)	5,682	383 (14.3)	8,260	690 (8.4)
	Taxpayer		1,922 (29.2)		1,762 (31.0)		4,423 (53.5)
Commissioner (Appeals)	Department	20,149	1,062 (5.3)	22,381	1,709 (7.6)	30,609	1,622 (5.3)
	Taxpayer		6,865 (34.1)		6,546 (29.2)		18,436 (60.2)

Source: CBEC

\*Remanded cases are taken as appeal allowed in favour of the taxpayer.

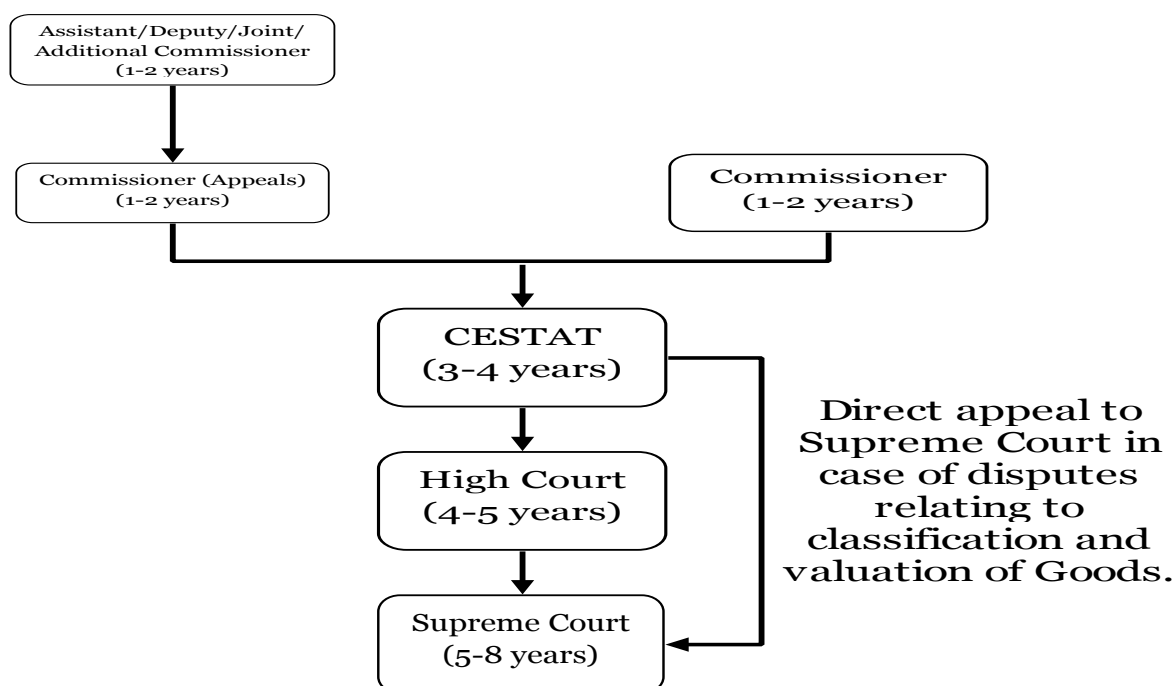
\*\* Values in bracket are percentages.

From Table 5.11, it can also be seen that the cases filed by the department have had a lower success rate than those filed by taxpayers. The percentage is on the basis of success in favour of the department or the taxpayer out of the disposal by each appellate authority. Remanded cases are considered to have been disposed of and have been included in the success case for the taxpayer. It can be seen from Table 5.11 that the success for the department at each level is lower than that of the taxpayer except in the Supreme Court in the FYs 2010-2011 and 2011-2012.

Table 5A.1 to 5A.3 in Appendix V.1 gives disposal and age-wise pendency of adjudication of cases under different sections of the statutes of indirect taxes for FY 2010-11 to 2012-13. The number of cases filed under various sections and rules of indirect taxes up to December 2013 is also available in Table 5A.4 to 5A.6 in Appendix V.1.

The average time taken to resolve disputes at each level estimated in a study by FICCI is given in the Diagram 5.3 above.

**Diagram 5.3: Average time taken to resolve dispute in indirect taxes**



### Present Alternative Dispute Resolution (ADR) Mechanism

At present, the ADR mechanism comprises the following fora in direct and indirect taxes –

- a) **Authority for Advance Ruling (AAR)** – Non-resident taxpayers and certain specified categories of resident taxpayers can file applications with the AAR to obtain binding rulings on income tax issues or issues under indirect tax laws arising out of a transaction/proposed transaction. AAR is mandated to pronounce its ruling within 6 months (90 days in the case of the AAR dealing in indirect taxes) of receiving the application. An AAR ruling is binding on the taxpayer and the revenue authorities. But the same can be appealed against before a high court under Article 226 (writ jurisdiction) and/or the apex court by way of special leave to appeal by the Supreme Court under Article 136 of the Constitution of India.
- b) **Settlement Commission**– The Income Tax Settlement Commission is an alternative dispute resolution (ADR) body in India, which resolves tax disputes by making use of ADR methods (in the nature of mediation or arbitration) between the income tax department and the taxpayer. A similar body has also been established for indirect taxes known as the Customs and Central Excise Settlement Commission. Chapter XIVA of the Customs Act, 1962, and Section 32 of the Central Excise Act, 1944, provide for a settlement commission. Both the commissions have their principal benches at New Delhi and three separate additional benches at Chennai, Kolkata and Mumbai.

Both commissions allow taxpayers to make a true and complete disclosure of their duty liability or additional income (as the case may be) before them, over and above what has been already disclosed before the respective departments. The applicant taxpayer has to pay the full amount of tax and interest on the additional duty or income disclosed before the commission before filing an application.

The applications can be filed before the Income Tax Settlement Commission only if the taxpayer's case is pending before the AO and the assessment has not become time-barred. The advantage of filing the case before the settlement commission is that there is finality of the case and the terms of settlement include determining the amount of additional tax and interest thereon and the manner of payment. But more importantly, there is waiver from levy of penalty and prosecution under any central law for these transactions. However, if the commission is of the opinion that the applicant has not co-operated with it, it can send the case back to the AO.

Similarly, in order to avail of the benefit of settlement provided by the Customs and Central Excise Settlement Commission, a show cause notice (SCN) is required to be issued to the taxpayer. The application to the settlement commission cannot be made if the matter has already been adjudicated upon and is pending before a tribunal or any other court. Further, no such application can be made unless a) the applicant has filed a bill of entry/shipping bill in respect of import/export of goods or filed central excise returns showing production, clearance of goods and payment of duty in the prescribed manner as the case may be, b)

the additional amount of duty accepted by the applicant exceeds Rs. 3 lakh and c) the applicant has indicated when the additional amount of duty accepted by him along with interest due has been paid.

The statute requires the Customs and Central Excise Settlement Commission to pass the settlement order within 9 months of receipt of the application; in practice, the time taken is longer. Immunity from prosecution is granted by the Customs and Central Excise Settlement Commission in respect of the offences under the Act to which it relates. Similarly, the I-T Settlement Commission can grant immunity under the I-T Act and the Wealth Tax Act. The order given by either settlement commission is final and high courts or the Supreme Court can only interfere with such an order under Article 226 or 32 (writ jurisdiction) of the Constitution of India if it is shown that the order issued by the commission is a perverse order. An order is perverse if any of the following is true:<sup>38</sup>

- i. There is no nexus between the reason given and the decision taken by the settlement commission.
  - ii. The order is without jurisdiction or in excess of jurisdiction.
  - iii. Certain important facts, which were not considered or ignored, had a direct bearing on the result of the case.
  - iv. The order is arbitrary.
- c) **Advance Pricing Agreement (APA)** – The APA regime was introduced in 2012 with a view to reducing TP litigation. The regime has been designed to embrace global best practices and is intended to provide much needed certainty to multinational enterprises operating in India. Approximately 150 applications have been made in the first batch of APA filings. The APA process is divided into four distinct phases - pre-filing meeting, filing APA application, preliminary processing of APA application and negotiation and finalization. Recently, in 5 cases, agreements have been arrived at.<sup>39</sup> Details, however, are not in the public domain.

A set of preliminary guidelines released by the CBDT reveals multiple approaches to the APA programme, viz., unilateral, bilateral and multilateral. APAs can be executed for a continuing international transaction, or for a proposed international transaction. The

<sup>38</sup> *M/s Raja Ram Industries vs. ITSC* [81 Taxman 506 (1995) (Del)]

<sup>39</sup> Press Information Bureau informed on 31.03.2014 that CBDT signed five unilateral APAs. The agreements cover a period of five years from AY 2014-15 to AY 2018-19 and specify the arm's length price for the covered international transactions entered into by the taxpayers. These agreements cover a range of international transactions, including interest payments, corporate guarantees, non-binding investment advisory services and contract manufacturing. The agreements pertain to different industrial sectors such as pharmaceuticals, telecom, exploration and financial services.

outcome of a signed APA is binding on the taxpayer and the revenue authorities. The taxpayer, however, has the option of withdrawing from the process before the APA is executed.

- d) **Mutual Agreement Procedure (MAP)** – MAP is the procedure provided for in Article 25 of the United Nations Model Double Taxation Convention between Developed and Developing Countries (UN model) that allows the representatives of the states that enter into a bilateral tax treaty to resolve disputes, difficulties or doubts arising in relation to the interpretation or application of the treaty. Most or all of the tax treaties of India are negotiated on the UN model and ordinarily contain Article 25 on MAP procedure. MAP has evolved as an effective ADR mechanism, which is based on bilateral negotiations between the competent authorities of the two treaty countries, and is outside the purview of domestic tax legislation.

Article 25 of the tax treaties in general sets out two broad areas in which the two contracting states *shall endeavour* to resolve their differences by MAP. These are

- (i) cases in which a taxpayer considers that the acts of one or both of the contracting states result or will result in taxation not in accordance with the provisions of the treaty (covered by paragraphs 1 and 2 of Article 25); and
  - (ii) cases in which there are difficulties or doubts as to the interpretation or application of the treaty (covered by paragraph 3 of Article 25).
- e) **Dispute Resolution Panel (DRP)** – The DRP is another form of ADR that was introduced by the Finance Act, 2009. The DRP was introduced as a step between the AO and the appellate forum. It was designed to address the concerns of non-resident taxpayers and issues relating to TP. The advantage of the DRP was that the taxpayer did not have to pay the taxes until the DRP had given its ruling and passed it to the AO. The taxpayer, if aggrieved, could appeal to the ITAT, thereby compressing the time taken for it to move to a higher appellate forum.

### V.1.b Analysis of weaknesses

The focal concerns of the taxpayer and tax administration are (a) protracted disputes and (b) the absence of effective means to prevent disputes. While, at a macro level, it appears that divergent opinions between taxpayers and the tax administration result in disputes, a granular analysis of the situation is required for formulating appropriate reform measures. Accordingly, it becomes imperative to understand the root cause of taxpayer/tax administration concerns and identify trigger points for protracted disputes.

A review of the situation at hand reveals some key causes, described below, for long-drawn out legal battles between taxpayers and the tax administration.

### **Legislative ambiguity and lack of administrative guidelines**

The Ministry of Finance is responsible for making and amending laws on direct taxes and indirect taxes. The two Boards issue notifications/circulars on a need basis to supplement the primary legislation. This often leads to ambiguity and inconsistency in its application. In the absence of clear administrative guidelines in the context of such interpretative issues, the tax officers inherently have to exercise their individual discretion in addressing matters.

The disputes are also attributed to lack of stakeholder participation at the time of law making and legal drafting. On several occasions, taxpayers and the tax administration have dragged each other to the courts merely because the provisions are capable of multiple interpretations.

### **Quality of assessments**

Apart from the interpretational issues outlined above, the framing of assessments by tax officials, inadequacy of time to taxpayers to respond to the notices and not dealing adequately with evidence on record have also been significant contributors to the logjam at various stages involved in dispute resolution. The substandard quality of assessments<sup>40</sup> (whether in the form of non-speaking order or lack of judicial discipline or misinterpretation of judicial precedents) can be partly attributed to inadequate training/industry experience of tax officers and the practice of taking up assessments at the tail-end of statutory timelines. This also results in taxpayers not getting adequate time to respond to queries raised during assessment. Illustrative statistics revealed that, between May and October 2012, tax officers committed errors in about 88 assessments out of 325 high-value cases pertaining to corporate taxation with a tax effect of about Rs. 486 crore.<sup>41</sup>

### **Arbitrary/Aggressive additions**

In the recent past, it has been widely claimed by taxpayers represented by major chambers during stakeholder consultations held by the TARC in the five metros that revenue authorities have been making arbitrary/irrational demands because of the revenue target-linked performance evaluation and incentive policy for tax officers. While such an evaluation policy encourages revenue collection, the policy cuts both ways – from the tax administration’s standpoint, it creates undue pressure on tax officials to augment revenues leading to arbitrary/frivolous demands in certain

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<sup>40</sup> President, CESTAT during his interaction with TARC on March 5, 2014, subsequently followed by a written communication dated 1 April 2014, stated that show cause notices often record conclusions, instead of allegations. He also stated that, “*adjudication orders fail to critically appreciate the evidence on record, neutrally consider and analyse defences presented by an assessee and record conclusions rationally resulting from the processed evidentiary matrix and applicable legal principles.*”

<sup>41</sup> Report No. 15 of 2013 of the CAG laid before the Parliament on August 23, 2013



cases; from taxpayers' standpoint, it casts doubt on the sanctity of the entire tax administration, reducing the taxpayer's willingness for compliance, thus indirectly creating incentives for non-compliance.

In most cases, the fundamental cause of disputes between taxpayers and revenue authorities is the incompatibility of the interests of the two sides to a dispute. Some instances of undue assertion by the AOs, which may not be really legitimate, could also be a cause. Overarching revenue collection targets set out for tax officials and jurisdictional commissioners inherently conflict with taxpayers' expectations of fair interpretation of prevailing legislation and due regard being accorded to judicial wisdom enshrined in tax jurisprudence; at times, power-driven motives are behind multiple frivolous tax demands that drag taxpayers into forced disputes with revenue authorities in India.

The fact is that, in the absence of a reliable economic model capable of making meaningful revenue projections, budget revenue targets are set in the most rudimentary fashion and, subsequently, not revised to reflect the changing performance of the economy. Consequently, there is immense pressure on the tax administration to collect (non-existent) revenue, which results in the extortive behaviour of the pressured tax officer. This vicious cycle has to stop, with the brakes applied at the very top of the tax administration and tax policy making.

### **Audit objections**

A major component of disputes in both CBDT and CBEC is demands pursuant to audit objections raised either by internal audit or by the CAG. Field formations may not be in agreement with the CAG's audit objections. But the resolution of the matter with the CAG often takes a long time. To take care of that, the CBEC has issued circulars instructing that protective demands be raised in such cases. The logic for the prescription is that such protective demands would ensure that the matter does not become time barred.<sup>42</sup> Besides the above, there are other cases in which the department has gone in appeal before higher appellate authorities, delaying resolutions even further. Cases having similar issues are referred to "Call Book".

The cases referred to "Call Book" are in four categories:

- Cases in which the department has gone in appeal to the appropriate authority.
- Cases where injunction has been issued by Supreme Court/ high courts/ CESTAT.
- Cases where audit objections are contested.
- Cases which the CBEC has specifically ordered to be kept pending and to be entered into the call book.

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<sup>42</sup> CBEC's Circular No. 162/73/95-CX.3, dated 14.12.1995, 385/18/98-CX, dated 30.03.1998 and 674/65/2002 – CX, dated 01.11.2002.

**Table 5.12: Reasons for Pending Call Book Cases in CBEC**

	<b>Number of Cases</b>	<b>Amount (Rs. Crore)</b>
Cases in which CBEC has gone in appeal to the appropriate authority	24,525	342,75.4
Cases where injunction has been issued by SC/HC/Tribunal etc.	1,552	32,11.9
Cases where audit objections are contested	6,565	1,55,42.6
Cases where CBEC has specifically ordered the case to be kept in Call Book	486	10,26.9
<b>Total</b>	<b>33,128</b>	<b>5,40,56.8</b>

Table 5.12 relating to cases consigned to call book illustrates the dimensions of the problem. It is not clear whether the CBEC's instructions are being consistently followed in the field and whether tax officials issue demands contrary to the CBEC's instructions under Section 37B of the Central Excise Act, 1944.

There is, therefore, a need to revisit the basic approach to action on audit objections to eliminate unnecessary demands. To begin with, just because there is an audit objection, there is no legal need on the part of the Boards to require field formations to issue protective demands, particularly in the cases where the latter are convinced that the taxpayer has complied correctly'. This practice of issuing protective demands has clearly emerged out of extreme risk-aversion on the part of the top echelons of the two Boards, to avoid taking proper decisions. It is time accountability is imposed on the Board to take due responsibility, the absence of which impinges directly on the taxpayer in an adversarial way.

#### **Indiscriminate resort to extended period in indirect taxes and lack of finality attached to concluded assessments**

It is often seen in indirect taxes that audits/assessments by the authorities are not initiated within the timelines prescribed by law (generally one year from the end of the relevant tax period). As a result, for tax disputes identified during audits/assessments, CBEC seeks to invoke demands for past periods alleging fraud or suppression on the part of the taxpayer. The experience in this regard has been that in a large number of such cases, the revenue department's allegation of fraud, suppression, etc, does not survive before the courts as the transactions in question are found to have been duly disclosed by the taxpayer in his books of accounts.

Most tax legislations permit revenue authorities to re-open assessments or subject assessments to revision in prescribed circumstances. The rationale underlying the existence of these powers with the tax department is to empower revenue authorities to protect revenue interest and take corrective

action where taxpayers manage to defraud the tax department at the time of the original assessment. However, more often than not, the powers of reassessment or revision of assessment are exercised as a tool to undo inaction or incorrect action taken by the AO at the time of the original assessment. Not enough accountability currently exists in the present structure to ensure that the pre-conditions provided in tax legislation for invoking such actions are fulfilled before they exercise their powers. Thus, there is little accountability on the part of the AO who commits the error; instead, the effect tends to get passed on to the taxpayer, who has to undergo reassessment by another officer.

### **Excessive litigation by way of appeals**

A direct consequence of the lack of objectivity and fairness in the original decision is that far too many cases get into tribunals and courts. These needlessly add to administrative and compliance costs and add uncertainty to the tax environment. The tendency to file appeals against orders in favour of taxpayers, without giving due importance to the merits of the case, is pronounced. Although both departments have come out with guidelines for litigation to control the practice, it appears to have had little effect.

Apart from this, there is currently no time limit prescribed for disposal of cases. In places where such a time-limit is prescribed, it is not adhered to (this is discussed later).<sup>43</sup> In cases where there is closure of cases, detailed reasons before closure are not provided, which consequently leads to appeals and counter appeals being filed.

### **Weaknesses in the present ADR Mechanism**

#### **AAR**

Historically, the AAR has remained one of the most popular ADR forums for taxpayers in India. One distinct feature of the AAR is that rulings pronounced by it are binding on the taxpayers and revenue authorities. However, the importance of AAR as an effective dispute resolution forum has been questioned during the last few years as parties to the dispute resorted to constitutional remedies against otherwise binding rulings of the AAR. In certain cases, the taxpayers/revenue authorities resorted to forum shopping by filing a special leave petition (SLP) before the Apex Court under Article 136 of the Constitution of India, instead of a writ under Article 226 of the Constitution of India. In a recent judgement<sup>44</sup>, the Supreme Court has stated that the ruling can in the first instance be challenged before the high court under Article 226 or Article 227 of the Constitution instead of directly in the Supreme Court as an SLP. An aggrieved party should not

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<sup>43</sup> AAR has a time limit for disposal of cases. Similarly, the settlement commissions also have a time limit.

<sup>44</sup> The Apex Court in the case of *Columbia Sportswear Co vs. DIT* (210 Taxman 42; 283 ELT 321) laid down the principle of writ vs. SLP against the AAR ruling, laying the controversy to rest by holding that the aggrieved party to a dispute can file a writ against the ruling of the AAR; only in exceptional situations, the Apex Court shall exercise discretion in allowing an SLP against an AAR ruling.

appeal directly to the Supreme Court unless it appears to the court that the SLP raises substantial questions of general importance or a similar question is already pending before the Supreme Court for decision.

AAR has also come under criticism for inordinate delays in pronouncing rulings despite a statutory limit of 6 months.<sup>45</sup> Delayed appointment of the chairman/member(s) of the AAR has contributed to such delays. Other key limitations that often come in the way of AAR being an effective forum for resolution of likely disputes are the following.

- (a) Limited reach – AAR is accessible only to non-resident taxpayers, PSUs and some resident taxpayers having transaction with non-residents under the I-T Act. A large number of resident taxpayers, especially large taxpayer units (LTUs), cannot access the AAR. In the context of indirect tax legislation, however, the reach of the AAR has been extended to resident public limited companies.
- (b) Public ruling – AAR’s ruling is in the nature of private ruling insofar as the ruling is applicable to the applicant taxpayer and is binding only on the facts of each ruling. Even though the facts could be identical, the AAR ruling would not be binding on other taxpayers. In other words, AAR is not mandated to give out ‘public rulings’, thus significantly limiting the utility and precedence value of rulings pronounced by the AAR.
- (c) Lack of accessibility – The AAR is located at New Delhi. Not having any bench at other places in the country significantly constrains the efficacy of the AAR’s functioning.

### **Settlement Commission**

There is a limitation for filing an application before the settlement commission. This has been a matter of debate and litigation as taxpayers feel that there should not be any limitation on the kind of applications and the number of times the taxpayers can file before the settlement commission, if it is to be a true ADR mechanism. A taxpayer can file an application before the settlement commission for dispute resolution only if the taxpayer’s case is pending before the AO and the assessment has not become time-barred. The taxpayer cannot approach the commission in case the dispute has reached the stage of appeal. This is true for both direct and indirect taxes.

The application filed is to be considered and either admitted or rejected within 14 days of the date of the application as per Section 245D (1) of the I-T Act. After admission of the application, the

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<sup>45</sup> Section 245R of the I-T Act requires AAR to pronounce its ruling in writing within 6 months of the receipt of application. In indirect taxes, the ruling is required to be pronounced within 90 days, refer Section 96D of the Finance Act, 1994, for service tax, Section 23D of Central Excise Act, 1994, for central excise and Section 28I of the Customs Act, 1962, for customs.

application is to be decided within 18 months of its receipt.

But the CAG, in its 2001 report<sup>46</sup>, has pointed out that the I-T settlement commission, in some cases, has taken between 12 months to 32 months to admit applications. Further, only 624 (36%) application were disposed of out of 1,729 settlement applications filed before the settlement commission between 1994-95 and 1998-99; 1105 applications were found pending by the CAG involving revenue of Rs.112.8 crore, including 22 cases, which were pending for more than 5 years, and 622 applications, which were pending for between 2 and 5 years.

Thus, it can be seen that there has been considerable delay in disposal of settlement applications. One reason often cited for the delay is that at present, there are only four benches of the settlement commission for both direct taxes and indirect taxes. These are at New Delhi, Mumbai, Kolkata and Chennai. Such limited benches compromise the accessibility of the taxpayer and inevitably leads to delay.

## MAP

While the MAP process offers an ADR route for cases, certain inherent limitations in the mechanism are the following.

- (a) Lately, taxpayers appear to have lost confidence in the procedure and usually apply for the MAP as a last resort when all other remedies under the I-T Act or constitutional remedies have been exhausted. More often than not, bureaucratic overhang comes in the way of successful negotiation of MAP outcomes between the competent authorities of the two negotiating countries.
- (b) Lack of transparency and lack of taxpayers' trust in the functioning of MAP authorities is another key challenge. The present MAP is not sufficiently transparent. The record of discussions in the MAP is not made be public.<sup>47</sup> Taxpayers are often circumspect as to the degree of confidential information that they could share with MAP authorities.
- (c) Another limitation that constrains the success of the MAP process is the time limit prescribed in Article 25 of the Model Convention (i.e., 3 years) for invoking the MAP remedy.

As the MAP procedure is typically a special treaty-based procedure falling outside domestic law, the tax administration has to recognize that the competent authority has sufficient legal authority

<sup>46</sup> CAG Report, 2001, Book 2, Chapter 4 - Functioning of the Settlement Commission, available at [www.cag.gov.in/reports/d\\_taxes/2001\\_book2/chapter4.htm](http://www.cag.gov.in/reports/d_taxes/2001_book2/chapter4.htm)

<sup>47</sup> Improving the process for resolving international tax disputes, OECD, 2004

to enter into mutual agreements and to ensure they are implemented. The role of the competent authority, therefore, needs to be clearly recognized and understood in this context.

## DRP

While the DRP was instituted to provide an alternate, yet fair, fast track dispute resolution forum to taxpayers, the implementation of the DRP as an institution has been far from satisfactory. The functioning of the DRP has come under intense criticism even by judicial authorities. The Karnataka High Court stated that the DRP should not be allowed to go beyond the proposed draft order nor should it be allowed to *suo moto* consider issues not raised before it.<sup>48</sup> Even the ITAT argued similarly in another case involving Dredging International NV.<sup>49</sup> It also stated that the DRP can only confirm, reduce or enhance the variations proposed in the draft order but it should not set aside any proposed variation or issue directions for further enquiry and passing of the assessment order.

Practically, it has been observed that the DRP rarely affirms a position different from the one proposed by the AO. Statutorily too, the powers of the DRP is constrained vis-à-vis the powers of the first appellate forum, i.e. CIT (Appeals) – the DRP does not have the power to annul or set aside the draft assessment, nor can it work out a compromise or arbitrate in a dispute. The DRP is part of the assessment process (being part of Chapter – XIV of the I-T Act). It works on the draft assessment order, and hence, there have been questions on whether the DRP can give its ruling on a new issue.<sup>50</sup> CIT (Appeals), on the other hand, has powers to enhance the tax demand by carrying out investigations. The Uttarakhand High Court had also raised questions about the independence of the DRP, but this seems to have been settled by putting officers not of the same jurisdiction on the panel to hear the cases.<sup>51</sup>

Further, the absence of independent experts within the DRP, tight timelines for the filing of objections by a taxpayer and the fact that the DRP is available to only limited categories of taxpayers – cases of international taxation and those of TP - are some of the issues which curtail the efficacy of the DRP as an ADR forum. The credibility of the DRP as an effective ADR forum received a major setback when a provision was introduced by the Finance Act, 2012, which enabled the Commissioner to challenge the DRP's directions. This, in a way, meant that the department was challenging its own order.

<sup>48</sup> *GE India Technology Center P Ltd vs. DRP* [(2011) 338 ITR 411]

<sup>49</sup> *Dredging International NV vs. CIT* (ITA No. 8035/Mum/2010)

<sup>50</sup> *Supra*, ITAT stated that the DRP can issue directions only in respect of the objections raised by the taxpayer and the objections are to be in terms of variation proposed in the draft order.

<sup>51</sup> *Hyundai Heavy Industries Ltd. vs. Union of India*, Civil Writ Petition No. 1778 of 2010

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## V.2 Global best practices

Many advanced tax administrations have taken a strategic approach to dispute management by setting up a dedicated organization for dispute management. These setups function with adequate independence so that the taxpayer has sufficient confidence in the administration's objectivity, justness and fairness. They engage in proactive measures to ensure that avoidable disputes are not generated and only a few matters turning on important issues escalate to litigation. They normally have standard operating procedures, which are made available to taxpayers.

Another emerging concept in tax administrations is 'enhanced relationship' arrangements between taxpayers and the tax administration. The focal point of such an arrangement is a collaborative approach between taxpayers and tax officers, to establish and sustain mutual trust with commercial awareness, openness and responsiveness on the part of the tax administration.

Tax administrations often also issue technical guidance, which has the force of being binding. Technical guidance is to ensure the consistent application of law and rules and to enhance the taxpayer's understanding of law. Technical guidance also provides clarity and consistency in interpretation to minimize disputes in taxation.

Many evolved tax administrations have also been adopting ADR techniques to resolve tax disputes out of court. This results in relatively fewer litigation cases.

Some of these best practices have been discussed in detail in Appendix V.2.

## V.3 Gap

Two issues emerge – one, about the present structure and processes, and the other, about the adequacy of people manning those structures. It is often felt that the present structures are not able to adequately deliver on the resolution of disputes. There is also no structure available to prevent disputes. Prevention of disputes is largely being done through administrative instruction and putting in place some monetary limits. On the adequacy of departmental persons engaged in the area of dispute, it is seen that most people are placed in these jobs without adequate preparation or training. Many countries identify training needs, develop training plans, undertake efforts to improve the outcome of the training and evaluate whether those trained can take on the job. But whether this is sufficient is debatable. In this context, the main gaps could be said to be the following.

### V.3.a Lack of strategic approach to dispute management

In India, even though dispute management is recognized as an important function of tax administration, there is neither an articulated strategy nor a cohesive and structured approach that aims to reduce disputes to the minimum and enhance the confidence of taxpayers by improving the quality of decisions. Indeed, there is no ring fencing of the number of disputes since AOs are



likely to issue infructuous demands, as already elaborated, that are likely to lead to disputes. Effective management of disputes requires a comprehensive strategy that addresses key issues, starting from the causes to the final settlement of disputes. An example of this is the HMRC's Litigation and Settlement Strategy that clearly sets out the strategic objectives and how they are to be achieved.<sup>52</sup>

### **V.3.b Lack of functional specialization and development of required competencies**

Dispute resolution is one of the multiple functions that officers in the field perform and one of the key reasons for the poor quality of decisions is the perception that their performance is assessed not on the basis of the quality of their orders, but by the amount of revenue sought to be generated. The dispute resolution function is performed by the officers irrespective of whether or not they have the required aptitude for the job. Guidance in terms of a proper and effective knowledge management system, case references etc. are also not made available to the officers. But as the business landscape is changing rapidly and complex business models are taking shape due to changes in technology and global integration, the need for tax administrators to develop specialized skills and knowledge in specific areas so as to take informed decisions is increasing day-by-day.<sup>53</sup> The lack of such specialization also adversely affects the quality of decisions.

### **V.3.c Lack of accountability for quality of decisions**

The quality of decisions delivered by tax officers is not a specific parameter in their performance assessment. Performance targets also do not provide for this. For example, the targets given for Commissioners (Appeals) are only in terms of the number of cases to be disposed of in a month. A view that was consistently expressed during our interactions with industry as well as officers was that the targets assigned were not realistic and if the officers were to pass well considered and good quality orders, they would not be able to achieve the prescribed number of disposals. The reviews of orders passed by lower authorities also clearly do not address the dimension of quality and seem to primarily focus on whether the orders were in favour of the revenue department or the taxpayer. What we have heard is that in the latter case, there is a pronounced tendency to take the matter to further litigation, irrespective of whether or not such an action is merited. This leads, on the one hand, to the growth of avoidable litigation and on the other, to sending wrong signals to investors. Further, the rate of recovery of demand made by an AO is not tracked in any manner,

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<sup>52</sup> HMRC Litigation and Settlement Strategy provides a framework within which HMRC seeks to resolve tax disputes through civil procedures, which are consistent with the law and is also customer-centric. The overall objective is maximization of revenue flows while reducing costs and improving customer experience. (<http://www.hmrc.gov.uk/practitioners/lss-guidance-final.pdf>)

<sup>53</sup> President, CESTAT in his letter dated April 11, 2014 suggested creation of a structurally independent adjudication service to function as a “specialist adjudication hub to decide all disputes/assessments” to “dissipate the fear psychoses” and “revenue target pressures”.



while the amount of demand raised is recognized. This is contrary to any rational manner of achieving recovery.

#### **V.3.d Taxpayer unfriendly approach – absence of trust and collaboration**

Currently, the process of engagement with the taxpayer where there is a potential or existing dispute is primarily adversarial and lacks trust or openness. Besides, there is neither a conscious effort on the part of tax administrators to establish facts nor an effort to understand the position of the taxpayer in an open and collaborative manner.<sup>54</sup> This leads to an unsatisfactory outcome in a large number of cases, and escalates them to higher levels of formal disputes. The overall perception that is generated is that the existing system is not taxpayer friendly and taxpayers' submissions do not affect the eventual decisions. In general, therefore, taxpayers do not have confidence that they would get justice at the hands of departmental officers. Thus, the first level where they can expect a fair order is the tribunal. The entire process thus functions in an adversarial environment. The approach should be collaborative and solution-oriented.

#### **V.3.e Retrospective amendments**

Retrospective amendments have further undermined the trust between taxpayers and the tax administration. Many seem to feel that it has become the order of the day. Many of the retrospective amendments have been introduced to counter interpretation in favour of the taxpayer upheld earlier by the judiciary. The most famous is the introduction of provisions for taxation of 'indirect transfer' with effect from April 1, 1961, to overrule a Supreme Court judgment which held that Indian tax authorities did not have territorial jurisdiction to tax offshore transactions, and therefore, the taxpayer was not liable to withhold the taxes.<sup>55</sup> An overnight change in the interpretation of a provision, which earlier held ground for decades, provides scope for tax officials to rake up settled positions. This approach to retrospective amendments has resulted in protracted disputes, apart from having deeply harmful effects on investment sentiment and the macro economy.

#### **V.3.f Lack of timeliness**

Even though tax law lay down the time limits within which a dispute should be resolved, the existing data as given in Tables 5.3 and 5.10 clearly show that in a large number of cases this is not followed.

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<sup>54</sup> Facts are those which are based on evidences. So, establishing facts would require evidences to be proved or disproved.

<sup>55</sup>*Vodafone International Holdings BV vs. Union of India*, (2012) 204 Taxman 408/17 taxman.com 202 (SC)

## V.4 Way Forward

It is possible to change the taxpayers' perception about the handling of tax disputes only through a paradigm shift from the excessive emphasis on revenue collection by tax officers so that risk aversion in their actions guided purely by revenue considerations is eliminated. While the excessive emphasis on tax collection leads to the neglect of some other critical areas of performance of the tax administration, risk aversion leads to patently arbitrary and incorrect decisions that fuel avoidable litigation, which burdens taxpayer with excessive legal and hence, compliance costs. This has been dealt with elaborately in Section III.4.a of the report.

Based on this analysis of the underlying causes of disputes and best international practices for dispute identification, prevention and resolution, the following measures are necessary to successfully prevent, manage and resolve disputes in India.

### V.4.a Organizational arrangements

#### **Independent function with its own structure, accountability and responsibility, delinked from revenue targets**

We have separately emphasized the need for restructuring of the two Boards and their field formations along functional lines while collapsing various functions into one vertical for large businesses. Dispute management, being one of the critical functions of tax administration, is one of the important verticals in the proposed structure, the details of which are dealt with in Chapter III of this report.<sup>56</sup> The dispute management vertical should cover the entire gamut of dispute management commencing from policies and measures to minimize the occurrence of disputes to the efficient and satisfactory resolution of disputes. All functions relating to disputes – at the original as well as appellate level – should reside within this vertical and it should be categorically delinked from revenue targets. It should be driven by separate performance measures and targets that give due importance to the quality of the processes as well as recovery, and not by the extent of demand.

In order to ensure independence and fairness in assessment proceedings, the AO issuing the show cause notice (SCN) in case of a dispute should not be the authority adjudicating the matter. In the present system of indirect tax administration, the authority issuing the SCN, the authority issuing the assessment order, and the Commissioner (Appeals) – all of them function under the administrative control of the same Chief Commissioner. Such a system does not allow an independent view on the SCN. With the functional and administrative separation of the compliance and dispute resolution functions, it is most likely that such independence would result in a number

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<sup>56</sup> Both the Boards recently carried out cadre restructuring. The number of posts of commissioners and principal commissioners increased in CBDT by 88 (total now, 935) and in CBEC by 98 (total now, 440).

of SCNs or untenable notices getting dropped, thus reducing the number of unwarranted cases clogging the judicial machinery.

Officers posted in the dispute vertical must receive adequate induction training and on-the-job training on areas such as basic principles of law and jurisprudence, principles of statutory interpretation, theory of precedents and principles of evidence. They should be given adequate support for discharge of their duty.

### **Placement of dispute resolution functions at appropriate levels**

Dispute resolution requires officers with relevant knowledge, expertise and maturity. Currently, the only criterion adopted in indirect taxes to decide on the level of the adjudicating authority is the amount of duty. This applies to cases in which penal provisions are invoked. In all other cases of assessment, the decision rests with the AO, who usually is the Superintendent/Appraising Officer or Assistant or Deputy Commissioner.

In direct taxes, all original decisions are taken at the level of the AOs, who are ITOs or Assistant or Deputy Commissioners. The Joint/Additional commissioners are required to monitor a specified number of cases to provide guidance to the AOs. A few cases may be marked by the Commissioners to the Joint/Additional Commissioner for assessment.

Subsequently in this Chapter, we have discussed enlargement and strengthening of the scope of the Dispute Resolution Panel as it exists, and institution of a similar mechanism for the indirect taxes.

### **Commissioner (Appeals)**

In other than technical and small value cases, the Commissioners (Appeals) should function as a 3-member Commissioners (Appeals) panel. Further, in important cases, the departments should be required to represent their cases before the Commissioners (Appeals). This will improve the independence as well as quality of decisions. CIT (Appeals) should continue to function as an independent appellate authority. Revenue authorities are called to appear in all cases before the CIT (Appeals), but they seldom do so. It should be mandatory for revenue authorities to appear before the CIT (Appeals) so that CIT (Appeals) has a chance to examine and cross-examine the taxpayer and then base its judgment as a true independent appellate authority.

### **Effective process for proper outcomes**

The principle embedded in both direct and indirect tax laws is that of self-assessment. This means that the primary responsibility of the taxpayer is to exercise due diligence in complying with his obligations under the law and that of the tax administration is to ensure that conditions are created to enable the taxpayer to discharge his responsibilities. Such a system can function effectively where the approach on the part of both is based on a clear recognition of their shared

responsibilities. This emphasizes that the relationship should be based on trust and collaboration. A large number of disputes could be eliminated if adequate participation from taxpayers is mustered starting from the law drafting stage itself.

Like the practices adopted in the Netherlands, Australia and France, India should establish a process where tax officers and taxpayers, prior to starting the assessment, disclose the full facts of the case and come to an agreement on the interpretation and tax positions adopted. 'Enhanced relationships' should be established in India to provide certainty to taxpayers, especially in the Large Business Service (LBS), to elevate their confidence in the transparency of the tax administration in India. Hence, it is essential to agree on the facts of the specific case and interpret the same harmoniously and arrive at agreed positions.

To improve its relationship with taxpayers, it is imperative that the tax administration uses conflict de-escalation measures. Towards this goal, the tax administration should encourage consultative participation from taxpayers in the tax administration process, and adopt an improved interpersonal approach in dealings with taxpayers. A symbiotic and near professional relationship between the tax administration and taxpayers would go a long way in reducing the overall cost of compliance and disputes. NADT and NACEN should institute a course on a regular basis to train people on 'enhanced relationship'. This would also require psychological training.

Tax officers should not use a standard questionnaire for seeking information, and should customize the requirement based on the facts of each case (i.e. carry out an issue based/risk-based assessment). The revenue department can consider implementing a risk-based assessment strategy according to which detailed assessments should be done only in high-risk cases, i.e. cases with the highest probability of under-reporting. This will also result in better use of resources by tax officials with fewer cases and more time for assessment work.

Appropriate procedural guidelines should be issued directing tax officials to start early on the assessments and avoid a last minute rush to complete the assessment. For instance, all non-TP assessments should be completed at least two months prior to the statutory due date, and the same can be spaced out evenly in the last 6 months. This would also give adequate time to appropriately complete the assessments involving TP matters after the orders from the TP officers are received. The current practice of assessing all TP cases applying a monetary threshold is also flawed.

It is also necessary to frame guidelines for reporting to or monitoring by higher tax officials. In MAP cases, these guidelines should direct tax officers to assess the income of the taxpayer for subsequent years on the basis of directions by competent authorities who have settled disputes under the treaty for an earlier year if there has been no change in facts and the law.

To ensure good governance, tax officials should be mandated to be articulate in framing the assessment or draft assessment order. Ideally, the orders issued by the tax officers should follow a standard template to ensure consistency of flow of content regarding the background of the

taxpayer, business operations during the year, the issues including the legal issues involved, interpretation of legislative provisions and its applicability to facts and legal issues involved in the case, tax jurisprudence relied upon by the tax officers and the conclusion thus arrived. Consistency in drafting the assessment order would help minimize potential disputes that could arise from these.

There should be emphasis on greater accountability and the power of revenue authorities to re-open or revise assessments should be restricted. Re-opening/revision of assessments should be initiated only by exception, not as a matter of routine. The action taken by revenue authorities to recover taxes for the earlier periods should be restricted and based on internal guidelines founded on rational reasoning. Clear guidelines must be instituted for tax officials to initiate and conclude investigations under tax legislations within the prescribed time limit. Additionally, re-opening of tax disputes for earlier periods should be subject to the approval of senior officers.

The manner of investigation should be hassle-free and there should be no coercion or force from revenue authorities, leading to harassment of taxpayers, to recover taxes during investigation.

The CBDT and CBEC should encourage consultative participation from taxpayers in drafting supplementary legislation/administrative guidelines. Such a collaborative approach to rule making would be in line with international best practice and will help achieve the desired result in the form of collaborative dispute resolution.

### **Infrastructural support**

Lack of adequate budgets and resources has traditionally been a big hurdle in ensuring the effectiveness of the tax administration. Having a dedicated budget for staffing and training for the two Boards would help improve the productivity of tax officials and improve the taxpayer-revenue authority relationship by professionalising the approach to tax disputes.

## **V.4.b Dispute Prevention**

### **Clarity in law and procedures**

It cannot be overemphasized that effective communication is fundamental to tax administration in general and dispute management in particular. A fair amount of disputes arise due to ambiguity and imprecision in laws, rules and regulations. Adequate care, therefore, needs to be taken at the drafting stage to ensure that the language of the tax provisions is unambiguous and consistent with the legislative intent. Appropriate procedures should be provided for in the legal machinery to necessitate compulsory consultation with stakeholders on the draft law, especially in the case of a substantive provision. The proposed/draft tax legislation should be made public to encourage taxpayers to identify potential areas of ambiguity that could lead to tax disputes. This would help achieve healthy interaction between taxpayers and the tax authorities to address risks in the existing pattern of transactions and the tax laws would be implemented with minimal transitional

difficulties. This process is also an integral part of WTO Agreement on Trade facilitation, which India is a signatory to. Business should be allowed to play a greater role in the evolution of delegated tax legislations. Further, views put forth by stakeholders during consultations should be evaluated rationally and accepted, if helpful. Such a consultative approach would also help draft unambiguous laws as taxpayer views would be discussed and dealt with right at drafting stage. It is useful to mention that a similar approach was followed in the case of Direct Taxes Code Bill and GAAR.

There should be a standard operating procedure for drafting tax laws and tax officials must, as a matter of best practice, refer to these guidelines. The following standard operating procedure should be followed in the process of framing laws, rules and regulations.<sup>57</sup>

- **Initiation:** The rationale for the proposed law, regulation or change in regulation should be clearly explained. This would demonstrate a clear need and justification for the proposed legislative change and the objectives sought to be achieved. A proper impact analysis or cost benefit analysis both in relation to the taxpayers and the tax administration should be undertaken before the decision is taken to frame the regulation.
- **Statement of Objects and Reasons:** A clear and detailed statement of objects and reasons should invariably accompany any new regulation or amendment to regulation. This should clearly state what the object sought to be achieved is and how the proposed regulation would achieve it.
- **Drafting:** The language of the regulation should be clear and precise and as far as possible, free of jargon. Plain language should be preferred. A general taxonomy of terms and expressions common to various tax as well as regulatory legislations should be adopted to impart greater clarity and consistency. This practice would promote uniformity in understanding and interpretations of terms and statutory provisions, and would contribute to bringing down disputes by ensuring clarity in law.
- **Public consultation:** All proposed regulation should be put up on the website for public consultation and comments should be captured and duly considered while taking the final decision. A summary of the comments and their consideration should also be published when the regulations are finally published. Similarly, a summary of the cost benefit analysis should accompany the publication of the regulation.

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<sup>57</sup> Adapted from the “Handbook on adoption of governance enhancing and non-legislative elements of the draft Indian Financial Code”, Department of Economic Affairs, Government of India

### **Timely intervention by Boards to clarify contentious matters**

One of the practices in different tax administrations is to pro-actively clarify contentious matters and articulate the departmental view to provide guidance to taxpayers as well as to tax officials. These are often done through interpretative statements or practice statements. This goes a long way in preventing disputes.

Section 119 of the I-T Act and similar provisions under the indirect tax legislations, Section 37B of the Central Excise Act, 1944, and Section 151A of Customs Act, 1962, empower the CBDT and CBEC to issue orders, instructions, etc to its officers. Such orders/instructions, to the extent they are beneficial to taxpayers, are binding on tax authorities. These delegated powers to issue administrative directions/guidance in the form of instructions have not been used as effectively as in some other advanced tax administrations, such as those of New Zealand, Australia, and Canada.

It is imperative for efficacious implementation of the legislation that the CBDT and CBEC actively issue interpretation statements/rules on deductibility/taxability aspects of particular items, or on new pieces of legislation, such as the GAAR, taxation of indirect transfer of capital assets, approach and administrative practices to APAs, specific anti-abuse provisions, domestic TP, etc, and for indirect taxes on taxation of software/software related transactions, taxation of transactions relating to intellectual property rights, scope of the definition of ‘service’ under the new service tax regime based on a negative list, identification of establishments of service provider/service recipient for service tax purposes, etc. The process of development of such statements/instructions is also of vital importance. Considering the complexity of emerging issues, it is essential that subject matter experts are involved in the development of such instructions.

Both the Boards should proactively engage with their own officers and taxpayers to identify issues that need to be clarified and not wait for the final outcome of litigation, as happens currently. Even though the instructions issued under Section 119 of the I-T Act, 1961, Section 37B of the Central Excise Act, 1944, and Section 151A of the Customs Act, 1962, are binding on officers under the two Boards, it is often found that they are not strictly followed. The Boards need to put in place an effective monitoring mechanism to ensure that they are followed in letter and spirit, any deviation is discouraged and the tax administration’s position in litigation is consistent with the position enunciated in such statements.<sup>58</sup>

The tax official must, as a matter of best practice, refer to administrative guidelines and in relevant cases, refer to preceding views taken by other tax officers relying on such administrative guidelines. A healthy practice of consistently applying administrative guidelines wherever appropriate would ensure accuracy of outcomes in assessment and minimize potential for dispute.

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<sup>58</sup> The instructions issued under these provisions do not bind the Commissioner (Appeals) nor can they be issued to direct an officer as to how a particular assessment should be made or as to the manner of disposal of a particular case. This position should remain unaltered.



Further, tax legislation and administrative rules/guidance should in parallel and continually address potential conflicts with international agreements (such as tax treaties, tax information exchange agreements), guidance by agencies such as OECD, UN etc.

### **Avoidance of tax demands which are not on merits**

As discussed above, a large number of cases involving demands are pending on account of audit objections, particularly those of the CAG. Under the extant instructions of both the Boards, officers are required to issue demands, except where the audit objection is contrary to the Board's instruction. It has also been reported that even where a Board's instruction covers an issue, demands are routinely raised irrespective of merits. This practice of raising 'protective' demands is a negative practice.<sup>59</sup> It is absolutely essential that demands for taxes are invariably raised on merits, whether or not they arise from the CAG's audit objections. In Chapter III of this report, we have recommended a separate vertical for compliance verification or the audit function. One of the responsibilities of this function is to deal with matters pertaining to the CAG and PAC. If required, a view should be formed on audit objections at a sufficiently high level and the required instruction on the acceptability or otherwise of the audit objections should be conveyed to the AOs. Once a view is taken on merits, subsequent action should follow and the department should defend its action before the CAG. In other words, the current practice of raising demands irrespective of merits should be discontinued. This would eliminate a vast area of avoidable disputes.

In the CBEC, there is also the practice of consigning contested demands to call book. This means that such demands remain pending until the final outcome of the audit objection. Data in Table 5.13 indicate that a large number of cases are pending for considerable periods of time. In the taxpayers' accounts, these demands lead to the creation of provisions for taxation or contingent liabilities. If the recommendation we have made is implemented, it will be unnecessary to transfer such cases to call book and keep them pending as demand would only be raised and decided on merits. Hence, the procedure of call book should be abolished.

### **Pre-dispute consultation**

It is desirable to avoid disputes where a collaborative approach can provide a solution. An administrative pre-dispute consultation mechanism may be instituted in both the organizations for resolving tax disputes at the pre-notice stage through an open dialogue with the taxpayer, in which both sides articulate and discuss their respective positions and views on the matter at hand. An amicable resolution would be possible when a common view emerges on the facts and the legal position. It is expected that this process, if followed in proper spirit, would lead to elimination of

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<sup>59</sup> The departments transfer their risk to the taxpayers through protective assessments, and thereby burden them with avoidable costs.



a large number of disputes leaving only a few contentious matters in which mutual agreement is not reached. Such disputes would follow other legal channels.

Tax officers should not be allowed to resort to coercive action for recovery during the consultation process.

Officers who are competent to issue a notice should be the officers to engage in such consultation. They should adopt an open and receptive attitude and give full consideration to the taxpayer's point(s) of view first before formulating their own opinion. The purpose of the mechanism is to actively seek a common ground in the case of a potential dispute; therefore, openness in dialogue is of crucial importance. At the conclusion of this process, a notice/draft assessment order would be issued only in respect of unresolved issues. Further, the proceedings should be duly recorded and signed by both. The points on which agreement has been reached should not be contested any further by either party.

### **Proper control over quality of show cause notices/demands/questionnaires issued to the taxpayers**

The starting point of a formal dispute is the SCN in the case of indirect taxes. The quality of the notice, therefore, is critical to the satisfactory outcome of the dispute. There is a need to ensure that notices issued meet quality parameters. The notices should be clear and transparent to meet the tests of legality and fairness. The factual basis of the allegations made and the correct invocation of relevant legal provisions would be essential. SCNs often suffer from the following weaknesses:

- Notices do not clearly and lucidly set out the material facts based on which allegations have been made.
- Notices do not record the reasoning, or the analysis of evidence including documents, based on which the allegations were made.
- The notice often contains a recital of the relevant provisions without specifying how the alleged legal contravention is said to have occurred.
- Allegations are often vague and imprecise.
- Wherever an extended period of limitation is invoked, it is often seen that this is done without setting out the facts and circumstances justifying such invocation.
- In the case of service tax in particular, notices do not elaborate on how the alleged service is a taxable service.
- Proceedings are initiated even in the cases where the excise duty or service tax and interest thereon are paid before the issue of notice contrary to provisions under Section 11A(b) of Central Excise Act, 1944, and Section 73(3) of the Finance Act, 1994. Apparently this is

done with a view to levy penalty even in cases where no fraud or wilful suppression with an intention to evade taxes is involved.

- At present, interest is not quantified in the show cause notice nor is the rate of interest shown. The notice should show the quantum of interest leviable until the date of its issuance. The adjudication orders thereafter should quantify the interest leviable.

As in the case of indirect taxes, the I-T Act also provides for the issue of SCN under Section 142(2) for obtaining full information relating to income or loss to any person in relation to his assessment. Usually a standard questionnaire is issued for seeking information or production of documents and accounts. The tax officer should give a hearing to the taxpayer after the information is furnished. Typically, no such hearing is given and many times the assessment orders are issued. Such action clouds the transparency of the process.

It is felt, therefore, that the process should be standardized in both direct and indirect taxes to bring certainty and precision in the process.

### **Avoiding conflicts during audits**

While dealing with potential disputes during audit procedures, an attempt should be made to resolve them before the conclusion of the audit. Disagreement should be dealt with in the same manner as outlined above in relation to pre-dispute consultations. This goal can be achieved by imparting good training and instilling reasonableness in tax auditors.<sup>60</sup>

#### **V.4.c Pre-filing support to the taxpayers**

In order to ascertain the tax liability *a priori*, there should be an adequate mechanism to provide pre-filing support to taxpayers. At present, AAR and APA are two such forums. But these need to be expanded so as provide taxpayers authoritative guidance on various provisions of tax laws which have potential to create disputes. Many countries have forums to issue interpretative statements, industry-wise interpretations or clarifications of various provisions of tax laws, etc., on the request of taxpayers or otherwise. These forums are also segmented on the basis of taxpayers. Pre-filing support is intended to help taxpayers plan their business in advance and avoid disputes. These forums can deliver rulings within a specified period of time on questions submitted by taxpayers, which will help taxpayers file their tax returns.

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<sup>60</sup> The methodology prescribed in the Excise Audit manual under the Audit System EA 2000 already mandates such consultation with the taxpayer before the conclusion of the audit.

## **AAR**

In AAR, only non-resident taxpayers and specified categories of resident taxpayers can file applications to obtain binding rulings. The present functioning of the AAR has often been criticized for inordinate delays and inconsistency in decisions. It is imperative to ensure that the timeline for the AAR to provide its ruling is adhered to, as otherwise it would make it imperative for taxpayers to hold back business decisions.

Further, the AAR mechanism should be accessible to all corporate and non-resident taxpayers on proposed transactions in direct and indirect taxes, thereby aligning the scheme of AAR in indirect taxes to the present provisions of the I-T Act. Apart from this, the mechanism should be allowed for all domestic cases as well. All decisions of AAR should follow a consistent principle.

The present arrangement of only one bench of AAR at Delhi limits its accessibility to taxpayers; benches of the AAR should be constituted in other metropolises such as Mumbai, Bangalore, Kolkata and Chennai. The AAR bench in Delhi should function as the principal bench of AAR and should hear complex and high value cases. AAR benches outside Delhi could be chaired by retired judges of high courts.

## **APA**

APA provides for an agreement between the taxpayer and tax department to fix the prices of future related party transactions, covered by TP rules. This can also be expanded to cover domestic TP cases.

## **Group and Individual Issues**

There is a need to provide a forum where taxpayers can request interpretative statements, industry-wise interpretations or clarifications of various provisions of tax laws, etc. These issues, as raised by taxpayers from time to time, would form a bank of issues on which the respective Board can issue departmental views. This could be done in conjunction with the Tax Policy and Analysis (TPA) Division. This forum, thus, would act as a taxpayer service entity, ensuring greater certainty for taxpayers. The tax administration on its part should ensure that statements or interpretations are accurate and consistent, and statements on such group or individual issues should be binding on the tax administration.

### **V.4.d Taxpayer Dispute Resolution Centre (TDRC)**

TDRC will function as a facilitation centre responsible for providing taxpayer service in the dispute management vertical. It would serve as a single point of contact for taxpayers guiding them on whether they should opt for the early dispute resolution (EDR) channel or the ADR channel.

TDRC will communicate with the taxpayer and narrow down and determine the issue(s) involved in the dispute, *i.e.*, whether it involves a question of fact, a question of law or a mixed question of law and fact. A taxpayer can ideally avail the EDR facility if the disputes are small, requiring simple rectification and those that can be disposed of summarily. EDR would also include a resolution through DRP. The ADR channel, on the other hand, comprises conciliation and arbitration. Ideally, disputes involving simple questions of fact should be referred for conciliation while those involving a mixed question of law and fact should be referred for arbitration. Substantial questions of law, however, would not be fit for resolution through these methods and TDRC should advise the taxpayer to opt for litigation for the resolution of such disputes.

After the taxpayer moves to EDR or ADR and gets his issues resolved, the tax demand can be worked accordingly. The TDRC would thereafter communicate the final order to the taxpayer. The tax demand would thus crystallize at this time.

If the taxpayer is dissatisfied with the resolution from the EDR or the conciliation process in the ADR, he can decide to object to it and a formal process of litigation can be initiated thereafter. Arbitral awards are final and binding and cannot be appealed against. However, an application for setting aside an arbitral award can be filed according to Section 34 of the Arbitration and Conciliation Act, 1996.

TDRC should be headed by an officer of the rank of Commissioner and have a number of Additional/Joint Commissioners and Deputy/Assistant Commissioners. TDRC will need to be based in each of the important offices/centres, particularly in those places where the Commissioner (Appeals) is posted. TDRC could be based on taxpayer segmentation and also on the basis of the type of tax. It would be imperative that persons manning TDRC have adequate knowledge of law and processes. If required, professional legal help can also be sought by employing persons with a sound law background with adequate knowledge of tax laws.

#### **V.4.e EDR**

While it is pertinent to have a very strong framework for dispute resolution, the fundamental aim should be to prevent unnecessary disputes. EDR is a process by which an intervention is made at an early stage in the formal dispute process so that the dispute can be resolved early, effectively and efficiently. Tax authorities should aspire to prevent unnecessary disputes and ensure that disputes are resolved at an early stage in an effective and efficient manner. This can be made possible by the collaborative effort of the tax administration and taxpayers.

#### **Summary Proceedings**

Technical violations, not involving loss of revenue, should be part of EDR and be subject to summary proceedings. Further, since such cases are largely compliance related, the conduct of the

concerned taxpayer could be monitored and more severe action taken if there is no improvement in compliance in future.

A large number of issues, which have no strong bearing to any substantive legal analysis and are more factual and can be resolved early, could also be considered to be part of EDR. One such area is rectification of mistakes. These mistakes would be apparent from the records, be mainly arithmetical in nature or could relate to some claim which the taxpayer is genuinely entitled to but for some reason forgot to mention in the tax return. These can be rectified at the earliest, may be at the draft assessment order stage itself so that the taxpayer is not inconvenienced by tax demands that should not have been made in the first place. At this stage, the tax administration should believe in the inherent honesty of the taxpayer and the information provided by him should be considered to be complete and accurate, unless it is evidenced otherwise. Although mistakes can be rectified by the AO, it can also be done at the choice of the taxpayer at the EDR stage.

## **DRP**

DRP is an EDR process and has already been elaborated in Section V.1.b. DRP was introduced in the I-T Act with a view to be an EDR forum. For various reasons mentioned earlier, the working of the DRP has been criticized. It is imperative to resurrect the working of the DRP and make sure that the DRP functions in an independent and effective manner. The present structure of the DRP – a collegium of three Commissioners – should continue, except that it should be beyond the scope of assessment duties, unlike it is at present the case, and should be on a full time basis.<sup>61</sup> The DRP forum should be made accessible to all corporate taxpayers (as opposed to the current system of only cases of TP and international taxation). For these reasons there should be more number of DRPs.<sup>62</sup> The objective of DRP proceedings should be to resolve a significant proportion of disputes within a stipulated period of time.<sup>63</sup>

Similar to the arrangement outlined above for direct taxes, there should be a DRP for indirect taxes also. Contentious or complex issues of taxation or cases above a particular value of transaction could be the remit of the DRP. Cases of special valuation in customs could also be referred to the DRP. In all the three taxes, issues of extended period of limitation and, in the case of service tax, issues such as those relating to taxability can be referred to the DRP.

Since the DRP is a mechanism for EDR, it would be appropriate to have a layered forum for both direct taxes and indirect taxes – one collegium of Commissioners and another collegium of

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<sup>61</sup> ITAT in its interaction with TARC also suggested that the posting of CITs in DRP should be on regular basis independent of other duties.

<sup>62</sup> ITAT also suggested this.

<sup>63</sup> ITAT suggested that disposal by DRP should be within one month.

additional commissioners. The cases that could be referred to the two collegiums could depend on the value of a transaction or the issue in question.

There can be separation of the DRP, based on whether it is a case of service tax, excise duty or customs duty in indirect taxes. Such separation could also be there in direct taxes, depending on whether the case is of international taxation, a simple corporate tax case, a case of audited accounts, a domestic TP or an international TP case. Appeals from the DRP will lie directly with the ITAT and CESTAT.

It is recommended that complex cases may be decided by panels of adjudicators in direct as well as indirect taxes. For instance, in indirect taxes, these could be related party transactions/SVB cases, cases involving extended period, taxability of services, LBS cases, etc. In direct taxes, these could be cases of TP (where we are recommending that DRPs should issue the final order), cases of international transactions, cases of LBSs, and search and seizure cases.

#### V.4.f ADR

ADR processes are considered non-judicial in character and they are not intended to displace resolving disputes by litigation. It only offers alternatives to litigation. ADR processes in India, such as arbitration and conciliation, are typically not bound by the provisions of the Civil Procedure Code, 1908, and the Indian Evidence Act, 1872.<sup>64</sup> In ADR processes, like arbitration and conciliation, the outcome is binding on the parties and is thus enforceable. But ADR may not be appropriate where a matter requires judicial clarification, or there is a departure from a conventional view on a technical issue, which would result in the resolution of the dispute. Issues requiring judicial clarification are basically questions of law, and may not be resolved through an ADR process. A departure from a conventional view may also be beyond the remit of ADR as they normally have a legal connotation different from the extant meaning. In such cases, the matter for resolution would not get confined only to the case at hand but would have a larger implication.

The present tax legislation is required to be amended to incorporate internationally accepted best practices of ADR, such as arbitration, conciliation, mediation, negotiation, etc. The Constitution of India also provides for an effective ADR in Article 39A, enacted in 1976, to ensure easy and speedy access to justice to all sections of people. The Supreme Court had in a judgment stated that the arbitration jurisdiction needs to be derived either through the consent of the parties concerned or through an order of the court or emanating out of a statute.<sup>65</sup> The judgment, therefore, provides a basis to bring statutory ADR through legislative amendment in tax statutes. Keeping this in view,

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<sup>64</sup> Arbitration, one of the ADR mechanisms, was earlier governed through different acts, including Section 89 of the Code of Civil Procedure, 1908, but now, the Arbitration and Conciliation Act, 1996, governs the administration of arbitration.

<sup>65</sup> *K.K. Modi vs. K.N. Modi* (1998 AIR SC 1297)

a legal provision needs to be inserted in tax laws so that the ADR procedure can be made available to taxpayers.

ADR processes could be resorted to before tax demands are made on taxpayers. It is also imperative to provide that the outcome of the ADR should not be amenable to appeal by either party to the dispute (including the tax administration), save as mentioned in Section 34 of the Arbitration and Conciliation Act, 1996. However, parties to the dispute should be allowed to appeal to the ITAT/CESTAT if the ADR process fails.

### **Methods of ADR**

There are five ADR processes provided for in the Civil Procedure Code, 1908, in India: arbitration, conciliation, mediation, negotiation and settlement. But most common law countries largely follow arbitration and conciliation only.<sup>66</sup> An understanding of general law in India suggests that mediation and negotiation are not preferred processes of the ADR in tax matters as they are voluntary and result in non-binding outcomes. Further, there is practically no difference between conciliation and mediation, and they are often used interchangeably. And, in negotiation, parties resolve disputes based on an *a priori* course of action to serve mutual interests. Negotiation also depends on the form of negotiation and is confidential in nature.

- **Arbitration**

Arbitration is an adjudicatory process where a decision is reached by a neutral third party arbitrator(s). In the arbitration process, the arbitrator has flexibility. Also, once a dispute is referred to arbitration, it is normally not referred back to the court by the parties involved, unless the process fails. The arbitration award is binding on the two parties and is enforceable as a decree delivered by a court.

- **Conciliation**

Conciliation, another ADR mechanism, is non-adjudicatory in nature. The parties can attempt conciliation on the invitation of one of the parties. In contrast to arbitration, the disputes referred to conciliation do not go out of the domain of the court process permanently, and if there is no amicable settlement, the matter could revert to the court, which would proceed with the trial after framing issues. But if the matter is settled through conciliation, the settlement agreement would

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<sup>66</sup> The difference between common and civil legal traditions lies in the main source of law. Common law systems make extensive use of statutes. Judicial cases are also regarded as the most important source of law, which gives judges an active role in developing rules. In civil law systems, by contrast, codes and statutes are designed to cover all eventualities and judges have a more limited role of applying the law to the case in hand. Past judgments are no more than loose guides.



have the same status and effect as if it were an arbitral award and be enforceable as a decree of the court.

The essential difference between the two processes is that in the case of conciliation, the taxpayer and the tax administration would agree, *a priori*, on the terms of settlement, whereas in arbitration, the two parties would have almost no involvement in the process, and the decision is of the arbitrator(s). Thus, the arbitration process is akin to the judicial process without it being that formal and rigorous in legal detail. In conciliation, the conciliator makes recommendation (s) which help shape the settlement agreement, whereas in arbitration, the arbitrator(s) imposes a decision on the parties through an arbitral award. Thus, arbitration involves greater intervention while in conciliation, the conciliator merely assists the parties in building a positive relationship.

Since arbitration is more time consuming and elaborate than conciliation, in our scheme therefore, conciliation has been placed before arbitration. Both the processes, however, would need statutory backing in the respective tax laws on direct and indirect taxes. This would allow taxpayers to access conciliation and arbitration with the tax administration, and the consent of the tax administration would not be required. One option would be to have a separate chapter in the respective Acts providing for a statutory ADR. US IRS has a similar statutory ADR mechanism.<sup>67</sup>

In the proposed ADR scheme, the taxpayer can resolve his dispute typically by engaging first in conciliation by making a reference to TDRC. On receiving such a reference, TDRC would refer the case for conciliation on issues of fact. The process of arbitration would be made available to the taxpayer on his request even before conciliation in complex cases involving mixed question of law and fact. TDRC should be able to guide taxpayers on whether he should resort to conciliation and thereafter to arbitration, or resort straightaway to arbitration. Where the conciliation is unsuccessful and terminates without any settlement between the parties, TDRC could refer the dispute for arbitration at the request of the taxpayer. Every reference made to the TDRC by the taxpayer would require to be decided within a stipulated period.

## V.5 Dispute resolution and litigation

It is widely acknowledged that the government is by far the largest litigant. The National Litigation Policy (NLP), 2010, candidly acknowledges this. It states that “*Government must cease to be a compulsive litigant. The philosophy that matters should be left to the courts for ultimate decision has to be discarded. The easy approach, “Let the court decide,” must be eschewed and condemned.*”

The tax administration accounts for a lion’s share of litigation, in terms of both approach and content. The NLP in tax matters states that appeals should not be filed unless the tax implications

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<sup>67</sup> Section 7123 (b) (2) of the Internal Revenue Code



are high or earlier judgments of the tribunal or high courts have remained unchallenged. Mere change in opinion cannot be a ground for appeal. Appeals in the Supreme Court should be filed only in cases involving a substantial or constitutional question of law or a question of fact where the conclusion is so perverse that an honest judicial opinion could not have arrived at that conclusion. The NLP suggests that each case should be accompanied by a proper certification of the need to file an appeal before the Supreme Court.

Based on the above litigation policy, both the Boards have come out with their own respective policies, including monetary thresholds as mentioned earlier in Tables 5.1 and 5.8. It needs to be borne in mind that monetary thresholds are only one element in the strategy to reduce litigation. The National Litigation Policy lays out a large number of other important principles that can reduce litigation. It should be ensured that these are rigorously applied, which does not appear to be happening. It is of utmost importance that the decision to litigate by the tax administration should invariably be merit based and carefully justified.

Proposed flow-charts for dispute management in CBDT and CBEC, along with the compliance function, are given below in Diagrams 5.4 and 5.5, respectively. It is to be noted that the compliance verification function is a separate vertical.

Diagram 5.4: Proposed flow-chart for dispute management in CBDT

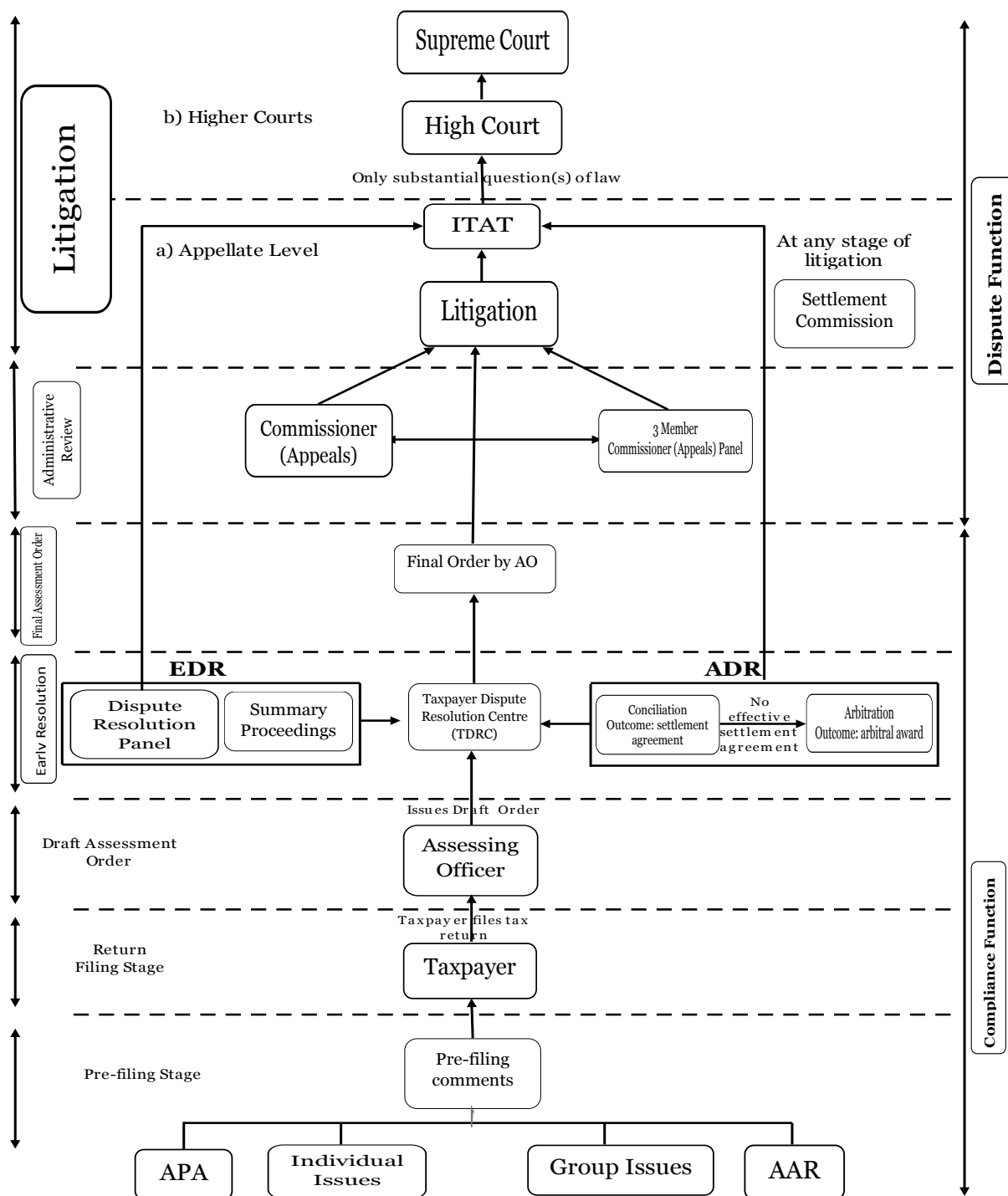
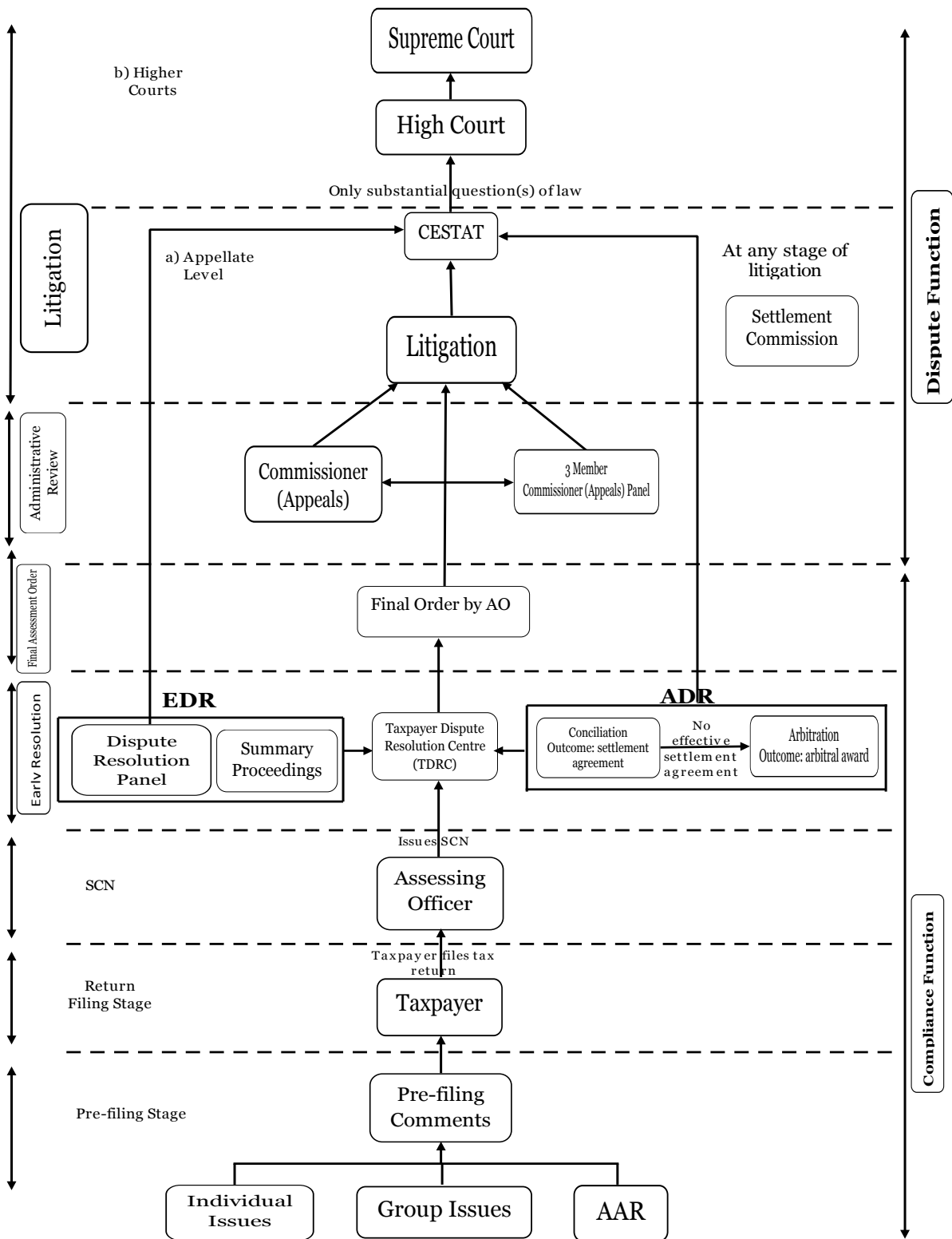


Diagram 5.5: Proposed flow-chart for dispute management in CBEC



### **Assessing performance of original and appellate authorities**

Evaluation of dispute resolution officers should include an evaluation of the quality of their orders in terms of fairness, completeness and reasonableness and observance of judicial discipline. While performing the review function, supervisors should be required to look into this aspect and not simply go by the tax revenue consequence and the number of disposals.

Further, a system of peer review should be introduced through panels of selected officers known for their expertise, competence and fairness. A sample of orders passed should be sent to them for evaluation from a quality perspective. In order to remove bias, the particulars of the taxpayer, the name of the officers and the amounts involved may be blanked out. Proper templates should be developed to maintain consistency in reviews.

An illustrative example of performance framework in dispute management has been furnished in Table 4.1.

### **Empowering original and appellate authorities**

A recurring theme in what we have heard from both departmental officers as well as industry is that the mentality of AOs is affected by the process of review in CBEC and revision in CBDT. These revisionary powers are contained in Section 35E of Central Excise Act, 1944, Section 129D of Customs Act, 1962 and Section 263 and 264 of I-T Act. Both the indirect and direct tax provisions provide the power to examine orders passed by subordinate officers with a view to determining their “*legality and propriety*”. Section 263 provides power to the Commissioner to revise an order of the AO where such order is considered “*erroneous in so far as it is prejudicial to revenue*” and Section 264 provides a similar power where the order is prejudicial to the taxpayer. It would be appropriate to remove the reference to “*prejudicial to revenue*” in the I-T Act and bring in the aspect of “*legality and propriety*” so as to remove the tax collection focus from revenue collection. Indiscriminate questioning of original orders solely on the criterion of tax revenue should stop.

It has been reported that the primary consideration that weighs with the reviewing/revisionary authorities is the tax effect of the order and not so much its legality or propriety. Orders are being routinely reviewed and appeals filed against original orders when they are in favour of the taxpayer. This, coupled with the perceived fear of vigilance and audit, is said to have fuelled the tendency to pass pro-revenue orders without regard to merit and concerns of legality and propriety, forcing taxpayers to approach appellate authorities and courts. In departmental mechanisms, a similar mentality seems to exist at the level of Commissioner (Appeals) and there is said to be a pronounced tendency to drag matters by filing departmental appeals against the order of Commissioner (Appeals) where they decide in favour of taxpayers. This makes the tribunal often the first level of appeal where the taxpayers expect justice.

The taxpayer should move into litigation only as a last resort after having exhausted every other

avenue. The process before Commissioner (Appeals) is an administrative review process, part of the department's dispute management structure. The TARC feels that it should be viewed in that light and strengthened. It is also imperative that keeping in view the principle that the appeal process before Commissioner (Appeals) is an administrative review, the filing of an appeal against the order of Commissioner (Appeals) by the department amounts to filing an appeal against itself. Thus, the Commission recommends that the department should not file appeals against its own orders from the Commissioner (Appeals). Suitable detailed guidelines need to be issued by CBDT and CBEC. Exceptions, if at all, can only be in certain cases involving substantial question(s) of law or in those cases where the order is *ex-facie* perverse. In such cases, the decision to appeal could be allowed by the chief commissioner, who can act on the basis of a proper accountability and responsibility framework. The institution of Commissioner (Appeals) also need strengthening and more accountability and responsibility needs to be fixed on the Commissioner (Appeals) so that the resolution of cases is more thorough at this stage of review itself. In this context, it is important that the present structure of single Commissioner (Appeals) be changed to Single Commissioner (Appeals) and a 3-Member Commissioner (Appeals) Panel.

The resolution time at this stage should not be more than six months, unless the supervising chief commissioner extends the time limit. All cases must be decided within six months. In case a decision is not delivered within six months, the taxpayer's appeal should be deemed to have been allowed.

### **Specialized benches for complex cases**

In large and complex cases, there is need to have panels of officers. Such panels should be constituted of officers with expertise in the respective areas and their number should be based on the workload. In order to improve quality and maintain it, it is essential that these officers are regularly given training in quasi-judicial processes and equipped with the necessary skills. The minimal skills involved in the appeal process could be sound comprehension of the principles of statutory interpretation, theory of precedents and evidentiary principles applicable to appreciation of facts and of evidence. The training should also include sensitization to the functions of an appellate authority, foundation training in the art of judgment writing and the associated qualities of fairness, neutrality, adherence to due process and drafting skills to deliver clear, concise but comprehensible orders. Apart from the above, regular training in technical areas covering the latest developments in legislation, judicial interpretation etc. would help improve the quality of decision making.

### **3-member Commissioner (Appeals) panel**

All corporate cases and cases of a complex nature should be decided by a panel of 3-Member Commissioner (Appeals) panel. These cases could be of search and seizure cases on the direct tax side, and those involving cases of DRI and DG(CEI) on the indirect tax side. Cases barring the above should be dealt with by individual Commissioner (Appeals).

While the doctrine of precedent does not apply strictly in the case of appellate orders, it is certainly desirable in the interest of a just and fair tax administration that there is a broad consistency in the way similar situations are treated. Orders passed by the above appellate authorities should be published on departmental websites so that they are available to taxpayers and departmental officers.

### **Authorised Representative of the department (DR)**

At present, it is rare that the department's case gets represented before Commissioner (Appeals). On the other hand, the taxpayer is often represented by professional tax advisors or lawyers. The decision maker, Commissioner (Appeals), in such cases carries the burden of taking care of the department's interest. To increase the fairness of the process and to assist the appellate authority, it is felt that in complex and large value cases, departmental officers should definitely argue the department's brief before the Commissioner (Appeals), and if possible, in cases that are likely to have legal implication engage special counsels from outside. A panel of such special counsels should be made at various places.

One of the critical weaknesses highlighted by both industry as well as departmental officers is the inadequacy in the departmental representation of cases before tribunals and courts. While matters are handled by DRs in tribunals, they are handled by empanelled advocates and law officers in the high courts and the Supreme Court. Considering the importance of the task performed by the DRs, it is imperative to accord adequate functional support to them. Further, the DRs should be carefully selected and given sufficient incentives and necessary infrastructural support to perform their duties effectively. They should also be given specialized training before they are asked to appear for the department. The administration of the DR function should also be in this vertical. This has been illustrated in Diagram 3.11.

### **Strict enforcement of timelines for decisions**

While the respective tax statutes provide timelines for disposal of cases, in the case of indirect taxes, this is often qualified by the words "*where it is possible to do so*". This qualification in effect nullifies the prescription of time limits for decision. If the intent of the tax statutes is to be fulfilled, the qualification should be removed and a realistic but mandatory time limit should be prescribed. The law must also prescribe the consequences of not adhering to the time limits and the officers should be made accountable for lapses. If not decided in time, it should be deemed to have been decided in favour of the taxpayer. The recommendation for the functional restructuring of the organization provides for clearer accountability in terms of timeliness as well as the quality of decisions.

### **Settlement Commission**

The settlement commission should be seen as a taxpayer service. It should resolve tax disputes between the tax administration and the taxpayer. Any taxpayer at any stage of dispute can file an application before the settlement commission for resolution when a dispute arises. Taxpayers should not be subjected to the stipulation that they can avail of this facility only once in their life time; instead, the facility should be available to them as a “loop-back” at any stage of a dispute. The settlement commission should invariably use arbitration and mediation methods to settle disputes. After considering both sides, the settlement commission should pass the final settlement order in writing, based on the relief sought by the taxpayer. The order passed by the settlement commission would be final and conclusive and be as per the application of the taxpayer.

At present, only four benches of the settlement commission are operational. The number of benches should be increased and it should be established in more cities to provide better access to the taxpayer. To improve accountability, it would be in appropriate that the settlement commission is manned by serving officers of the rank of Chief Commissioners.

### **Second Appellate Level**

The ITAT and CESTAT would continue hear all appeals from the first appellate level i.e. from Commissioner (Appeals) and 3-Member Commissioner (Appeals) panel. Decisions passed by the respective tribunals should be considered final and binding and normally no appeal should lie to the high court unless it involves a substantial question of law.

### **High Court and Supreme Court**

Appeals from the decisions of the tribunals would lie to the high court and thereafter to the Supreme Court and should be according to the procedure established by law.

Advocates and lawyers engaged to appear before the high courts and the Supreme Court should be adequately remunerated and the best lawyers should be engaged based on a the cost-benefit analysis.

### **V.6 Liquidation of undesirable legacy**

While the recommendations, given by the TARC above, will help in reducing dispute generation and promoting faster and better dispute resolution, these improvements would occur over a period of time. It is important to relieve the tax administration as well as the taxpayer of the undesirable burden of legacy so that both can look to a more positive and productive future. The TARC strongly recommends that both the Boards immediately launch a special drive to review and liquidate cases currently clogging the system by setting up dedicated task forces for that purpose with measurable targets. The review and liquidation should be completed within one year and the objective should be to decide on all cases pending in departmental channels for longer than a year

as on the start date of the action plan and to withdraw all litigation in tribunals and courts that are assessed to be without merit. The standards to be applied should be based on the principles articulated in this Chapter. Given the success rate of the departments in litigation, which has been mentioned in this Chapter earlier, we expect that purposeful action would reduce the current pendency of litigations to half its level. For detail, see Table 4.1.

A standard practice should also be established that on disposal of a case by the Supreme Court or a high court, if the judgement is accepted by the department, all cases from various appellate forums should be withdrawn.

## V.7 Recommendations

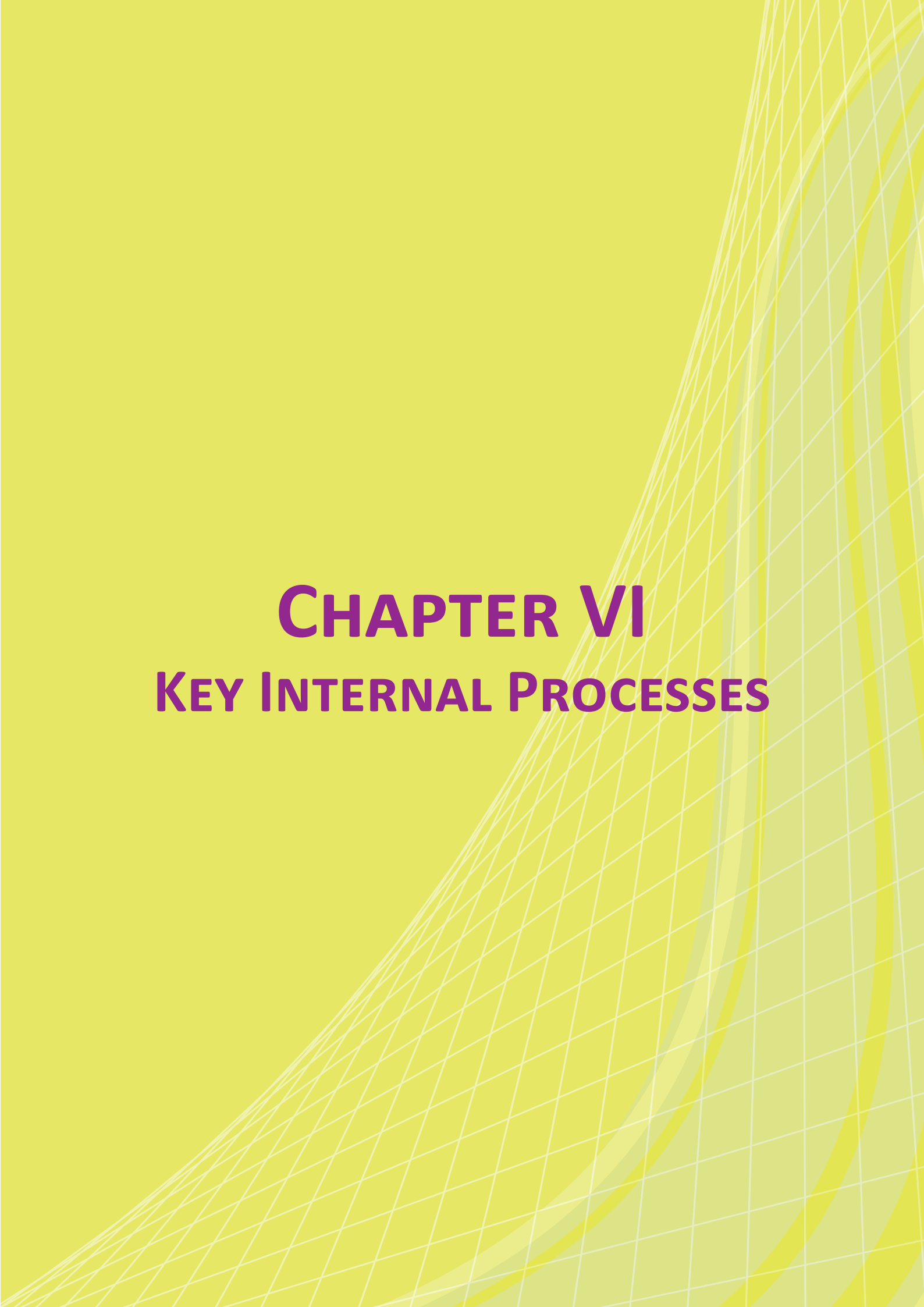
The TARC recommends that

- a) For clarity in law and procedures, a process based on best practices outlined in Section V.4.b should be followed. (Section V.4.b)
- b) Retrospective amendment should be avoided as a principle. (Section V.3.e)
- c) Fundamental approach should be collaborative and solution oriented. (Section V.3.d)
- d) Both the Boards must immediately launch a special drive for review and liquidation of cases currently clogging the system by setting up dedicated task forces for that purpose. The review and liquidation should be completed within one year and the objective should be to decide all cases pending in departmental channels for longer than a year as on the start date of the action plan. (Section V.6)
- e) Dispute management should be a functionally independent structure with adequate infrastructural support. (Section V.4.a)
- f) Officers posted in the dispute vertical must receive adequate induction training and on-the-job training on areas. (Section V.4.a)
- g) To minimize the potential for disputes, clear and lucid interpretative statements on contentious issues should be issued regularly. These would be binding on the tax department. (Section V.4.b)
- h) The current practice of raising demands irrespective of merits should be discontinued. Call book in CBEC should be abolished. (Section V.4.b)
- i) The process of pre-dispute consultation before issuing a tax demand notice should be put into practice. (Section V.4.b)
- j) Disputes must get resolved in time as the time lines as mentioned for decisions in the respective enactments. The law should also prescribe the consequences of not adhering to the time lines, which would be that the case in question would lapse in favour of the taxpayer. (Section V.5)



- k) Ordinarily appeal should not be filed against appeals of Commissioner (Appeals), except where the orders are ex-facie perverse. (Section V.5)
- l) The present structure of Commissioner (Appeals) should be changed to two forums, namely, single Commissioner (Appeals) and 3-member Commissioner (Appeals) panel. If the case is not decided within the prescribed time frame, the taxpayer's appeal would be deemed to have been allowed. (Section V.5)
- m) The DRP in income tax should be made full-time panels. Their mandate should be expanded to include corporate cases of resident cases as well. Same mechanism should be introduced in indirect taxes also, where collegium of three Commissioners would be deciding complex cases involving extended period of limitation, related party transactions and taxability of services. (Section V.4.e)
- n) ADR processes, Arbitration and Conciliation, should be statutorily introduced in both direct and indirect taxes legislations. (Section V.4.f)
- o) The jurisdiction of AAR should be made available for domestic cases also. More benches of AAR should be established at Mumbai, Bangalore, Chennai and Kolkata, with the principal bench at Delhi. (Section V.4.c)
- p) The Settlement Commission should act as part of taxpayer services, and be made available to the taxpayer to settle disputes at any stage. There should also be an increase in the number of benches of the Settlement Commission. It should be manned by serving officers to enhance its accountability. (Section V.5)
- q) Appeals to high courts and the Supreme Court should only be on a substantial question of law. (Section V.5)
- r) Authorized representatives from the departments should be carefully selected and given sufficient incentives and necessary infrastructural support to perform their duties effectively. They should also be given specialized training before they are asked to appear for the department. The administration of the DR function should also be in the dispute management vertical. (Section V.5)
- s) On disposal of a case by Supreme Court/High Court and if the judgment is accepted by the Department, an instruction should be issued to all authorities to withdraw appeal in any pending case involving the same issue. (Section V.6)





**CHAPTER VI**  
**KEY INTERNAL PROCESSES**



# Chapter VI

## Key Internal Processes

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# Chapter VI

## Key Internal Processes

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### VI.1 Registration of taxpayers

#### VI.1.a Current Status

##### **PAN registration**

Tax payer identification and registration is an important function performed by the tax administration. It is the first contact point between a person liable to pay tax and the tax administration.

Under the provisions of the I-T Act, every person is required to compulsorily apply for the allotment of a permanent account number (PAN) if his total income or the total income of any other person in respect of which he is assessable to tax during any financial year exceeds the maximum amount not chargeable to income tax.<sup>68</sup> PAN is also compulsorily required for charitable trusts or institutions and for those carrying on any business or profession whose total sales, turnover or gross receipts are or is likely to exceed Rs.5 lakh in any previous year, and also for any other person who has liability to pay tax. PAN is required to be quoted by a person in all his returns, correspondence with any I-T authority and in all challans for the payment of any sum due under the I-T Act as well as for bank transactions, property transactions, etc.<sup>69</sup>

For new PAN registration, resident applicant persons are required to fill up Form 49A while non-resident persons have to fill Form 49AA. PAN allotment has been outsourced on a public-private partnership basis. At present, NSDL (National Securities Depository Ltd) and UTI-ISL (UTI Infrastructure Technology and Services Ltd) have been entrusted with the task of allotting PAN.

##### **Central Excise**

For central excise, a taxable person<sup>70</sup> is required to obtain a registration for each premise separately. For service tax, centralised registration can be obtained in cases where the taxpayer has

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<sup>68</sup> Person is defined in the I-T Act under Section 2(31) and includes an individual, a Hindu Undivided Family (HUF), a company, a partnership firm, an association of persons, a local authority and an artificial juridical person.

<sup>69</sup> The total number of PAN registrations is around 20 crore. This far exceeds the number of registered taxpayers under the I-T Act, which is around 3.6 crore.

<sup>70</sup> Manufacturer, warehouse keeper, first/second stage dealer, importer, service provider, service recipient, input service distributor.

service delivery or service receipt (in case of reverse charge<sup>71</sup>) through multiple locations, but maintains centralised accounting system. In other cases, the taxpayer for service tax has to obtain location-wise registration. A new taxpayer wishing to register for the purpose of central excise is required to first register online on the Automation of Central Excise and Service Tax (ACES) website. Once registered on the website, the taxpayer is required to fill up Form A-1. On submitting the form, an acknowledgement and registration certificate is generated. The application form thereafter goes to the jurisdictional Assistant Commissioner/Deputy Commissioner (AC/DC) for the generation of a physical registration certificate. A post-registration verification of the premises (for which registration is sought) is scheduled to be done by the range officer within 5 working days of the receipt of a copy of the application for registration along with a copy of the registration certificate. The range officer chooses a date for the verification and intimates the assessee via e-mail and, along with the concerned inspector, verifies the declared address and premises. If it is found in order, he certifies the correctness of the details on the duplicate copy of the application for registration and appends his dated signature on it. A copy of this is then sent to the divisional office for record. The name of the officer doing the verification and the date of verification is also entered into the system. The taxpayer is required to get any deviation or variation noticed during verification corrected. Any major discrepancy, such as a fake address, non-existence of a factory etc., is reported in writing to the divisional officer within 3 working days, who initiates action to revoke the registration after providing a reasonable opportunity to the taxpayer to explain his case. On completion of the verification, the range officer files a report in the system, which is then approved by the AC/DC. Once the verification has been completed after the physical submission, the registration certificate can be viewed by the taxpayer under the “REG menu” on the ACES website.

### **Service Tax**

In service tax, a new applicant seeking registration is required to follow a more simplified method than that involved in central excise registration. The new applicant taxpayer is required to first register with ACES, fill application Form ST-1 on the ACES website and thereafter submit the form. If the registration is successful, a service tax registration number is generated.

In some cases of service tax registration, the registering authority requires the submission of certain documents such as copy of the PAN card, proof of address of business premises, constitution of the business, etc. In case there is a doubt, original documents are required to be presented for verification. A physical registration certificate is issued within a period of seven days from the on-line submission of ST-1 form along with the relevant documents. Registration is deemed to have been granted if the certificate is not issued within seven days.

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<sup>71</sup> Reverse charge on certain services has been notified under Section 68(2) of the Finance Act, 1994 vide notification no. 30/2012-ST, dated 26 December 2012.



## Customs Duty

Both importers and exporters apply online for an importer-exporter code (IEC) for the location/address of their premises for registration to be able to import or export. For clearance of export goods, the exporter or his agents have to obtain a PAN-based business identification number (BIN) from the Directorate General of Foreign Trade (DGFT) prior to filing the shipping bill for clearance of export goods. Exporters are also required to register their authorized foreign exchange dealer code through which export proceeds are expected to be realized and open a current account in the designated bank for credit of any drawback incentive.

### VI.1.b Weaknesses

#### PAN

It has been reported that multiple PANs have sometimes been allotted to one individual. Also, once PAN is allotted, there is no mechanism to revoke it on the death of the individual PAN holder or on the closure of a business entity. Both have led to many infructuous PANs.

Further, PAN is allotted on the basis of three elements – name, father’s name and date of birth. These have often been considered insufficient to make it robust. The verification of address in the PAN application is document based, and often, no verification of the premises is done. In many cases the original address declared at the time of applying for PAN continues despite a change in the address of the PAN holder.

#### PAN based on jurisdiction

Currently, PAN of the taxpayer is assigned a jurisdiction in the I-T Department. This is based on the basic structure of the I-T Department revolving around AO. The jurisdiction of the AO is either territorial or in combination with other criterion like type of entity or income or alphabet of the name or monetary threshold of income. The taxpayer has to interact with the office of the AO for various tax-related issues. At present, PAN of a taxpayer is on an ownership basis, and credit for taxes paid and other such benefits is given by the concerned AO. This system of conferring jurisdiction on the AO in a territorial or quasi-territorial manner is inefficient. Considerable effort goes in transferring PAN from one AO to another in case the taxpayer moves out of its current jurisdiction.

#### Lack of harmony between central excise and service tax registration processes

The existing provisions governing registration under central excise and service tax vary in some aspects. The central excise provides for registration and refers to the activities for which registration is required whereas registration under service tax is limited to the registration of a person providing taxable service, person receiving a taxable service (reverse charge) and an input service distributor.

In service tax, a person is required to apply for registration within 30 days from the date of providing a taxable service. No such time limit has been prescribed under central excise. Under both laws, however, the department has to grant registration within 7 days of the receipt of the application. Service tax provides that if the registration is not granted within 7 days, it would be deemed to have been granted. No such deeming provision is available in central excise. In central excise, the concept of post-verification of the premises by the superintendent is followed but no such verification is undertaken in service tax.

The registration can be suspended or revoked in central excise, but no suspension or revocation of registration exists in service tax.

A provision for obtaining centralised registration for multiple premises exists in service tax while such a provision is not available in central excise. In central excise, registration is granted by the DC/AC, whereas in the case of the service tax, such power is vested with the superintendent in case of single premises and with the commissioner in case of centralised registration.

### **Delays in allotment of registration in central excise and service tax**

As stated, for both central excise and service tax, the registration certification is required to be granted within seven days of filing an application, and the processes are executed through a centralized web-based application – Automation of Central Excise and Service Tax (ACES). Despite these, instances of delays in issuing registration certificates and conducting post-verification and delays/shortcomings in the processing of applications have been reported. Often, these result in surrender of registrations due to reasons such as non-availability of verification reports and lack of monitoring. CAG had also pointed out <sup>72</sup> that there were delays in issuing registration certificates in 700 (25 per cent) out of 2,817 cases in 35 central excise commissionerates. Similar delays were also observed in service tax – there were delays in issue of service tax registration certificates in 1,473 (19 per cent) out of 7,583 cases in 28 commissionerates. The reasons for delays are stated to be improper functioning of ACES system, non-submission/delayed submission of complete records by the assesseees, delay in verification of assesseees' premises, heavy workload, connectivity failures and other administrative reasons.

#### **VI.1.c Way forward**

##### **PAN as Common Business Identification Number (CBIN)**

PAN was introduced as a taxpayer identification number in 1995 in direct taxes.<sup>73</sup> Later, a new business model for delivery of PAN was adopted in 2003, as there were a number of problems in the issuance of PAN. With the change in the business model, it became possible to allot and deliver

<sup>72</sup> Report No. 25 of 2011-12 on Indirect Taxes – Central Excise and Service Tax

<sup>73</sup> Earlier it was the GIR number maintained at each AO level.

PAN with ease and within a definite time limit. The push for this change in the business model came from the vast demand arising from the adoption of PAN as a CBIN in other government departments such as customs, central excise, service tax, DGFT and EPFO. CBIN is essential to identify a taxpayer. CBIN helps to integrate the requirements of various government departments besides giving a certain identity to the business.

The present scheme of PAN, based on ten-digit alpha-numeric characters has the capacity to generate 96 crore unique numbers. A fair amount of acceptability in adopting PAN as a CBIN has been achieved in India. The existing central excise and service tax registration is based on PAN. It is suggested that PAN as CBIN should be continued and made mandatory for all categories of taxpayers including for government departments, regulatory bodies etc., to obtain central excise and service tax registration.

Given that there are a large numbers of partner-users of PAN, there is an urgent requirement to develop a more robust regulatory framework for careful and constant monitoring. The standard practice for mitigating risks, including use of mystery customers to identify gaps, third party audit of systems and processes, concomitant review of system architecture to explore the need for change in basic parameters, (say use of mother's maiden name), or benefits of networking with other large databases (say mobile databases<sup>74</sup> or *Aadhar*) and leveraging on big data, should be deployed to enhance the robustness and reliability of PAN.

Partner-users should also participate in developing a robust regulatory system. This will ensure that other users get time to make the required changes in their data systems if a change in PAN regulation is made. This will increase the reliability of PAN and will be a step closer towards creating a reliable CBIN. Increasing the reliability of PAN and the move towards creating a reliable CBIN, however, would require a better validation and verification mechanism. A more enhanced regulatory framework for the outsourcing-partners (NSDL and UTI-ISL) would also be required for meaningful delivery.

By leveraging the regulatory framework for PAN allotment and its delivery system, we can move towards PAN being a single point of reference for all business transactions as is the case in Australia (ABN - Australian Business Number) and the US (Social Security Number). This will also obviate the need for multiple registrations for different tax types.

The CBDT should continue to be responsible for issuing PAN to entities and organisations to ensure uniformity among different classes of taxpayers. Registration sought from other departments, including by excise and service tax departments, should be denied if PAN is not obtained. Authorities such as the DGFT and state VAT departments should also use PAN as CBIN.

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<sup>74</sup> Many mobile companies have informed that they carry out address verifications through line-partners within 4-6 hours in a non-intrusive manner. A similar regulatory framework may be required for address verification before allotting PAN.

Quoting PAN in all transaction documents should be made mandatory under law. This would enable the tax administration to compare data/information furnished in the tax returns with the declarations/information furnished to the other organisations (third party). As PAN is used as CBIN by other departments having varied requirements, it is essential for the I-T Department to re-visit the existing verification mechanism. For example, to issue registration under central excise and service tax, verification of the address where the business premises are located, the identity of the business, the bank account details, the directors of the company (in case of public or private limited company), the nature of business undertaken, etc., is also very essential. Such verification could be made as an integral part of verification before the issue of PAN. But these additional verifications should not delay issuance of PAN.

### **Changes in PAN data-base**

The system of jurisdiction-based PAN has many problems. Even though the present system is elaborate, the transfer of PAN from one jurisdiction to another does not happen within a reasonable time frame. Although efforts have been made by the I-T department to make such transfers online within its PAN system the process continues to be elaborate and not time bound. Filing for a change of PAN jurisdiction should be made online for the taxpayer, and PPP partners (UTI-ISL and NSDL) should transfer PAN on the recommendation of the AO within a timeframe.

In case of change in the information provided earlier by a taxpayer for obtaining the registration, it should be the responsibility of the registered person to carry out the amendments within a stipulated time-period. Sensitive changes such as amendments to the name of business/taxable person, principal place of business uploaded by the taxpayer etc., may need affirmation by the tax administration and should be dealt with in a more elaborate manner. Other sensitive changes such as addition/deletion of premises, bank details, particulars of authorised persons, particulars of goods/services dealt, details of proprietors/partners/directors may also require prior intimation and affirmation by the department. But in all other cases, the taxpayer may upload the change on his own within 30 days of making the change. Failure to make amendment within a prescribed time-period could be visited with a nominal penalty as a measure of deterrence. Periodic verification by the PAN authority by access to central excise and service tax registration data will also ensure timely updates of information such as the latest address of the premises, nature of business etc, in the PAN data base.

### **Single registration for central excise and service tax**

A taxpayer engaged in manufacturing goods or providing service is required to obtain a separate registration even though such taxpayer may be undertaking activities in the same premises and falling under the jurisdiction of one commissionerate/division/range. The law requires premises-wise registration with the exception that where services are provided from more than one premise, centralised registration can be given on a request by the taxpayer, subject to the fulfilment of certain conditions like centralised billing and accounting.

A common registration covering both central excise and service tax is a desirable option considering that both taxes are administered by the same department and cross-utilisation of credit is permitted between central excise and service tax under the credit rules. Such common, centralised registration could be issued for the 'principal place of business' as declared by the business. This would eventually ensure smooth transition to the GST regime where a single registration would be the mandate for the principal place of business in each tax jurisdiction i.e. states. In other words, it is suggested that the registration should be issued to a taxable person (individual or legal) and not to a factory or premises. The Study Group on Common Code for Service Tax and Central Excise set up by the Ministry of Finance in its final report had also recommended single registration for all manufacturing units and places/premises from where taxable services are provided and to allow CENVAT credit to a registered person for his entire taxable economic activity under one registered PAN without linking inputs, capital goods, capital assets and input services to any particular factory or premise (Para 4.6 of the report).

There is also need to align the provisions relating to grant of registration under both central excise and service tax. The existing procedure of submitting certain documents manually should be replaced with digital submission for online scrutiny. This would eliminate the need for the applicant to visit the tax office, reducing transaction cost and time. Similarly, under central excise, physical post-verification may be undertaken only in a few cases on the basis of risk analysis, instead of in all cases. Know Your Customer (KYC) norms followed by other organisations like banks, PSUs and government departments could be relied upon for verifying the authenticity of declarations made in applications seeking registration. This would eliminate duplicity of efforts and spare the resources of tax administration for efficient utilisation in core areas of work. On-line validation with other agencies such as the I-T department, registrar of companies, banks, other financial institutions, Unique Identification Authority of India (*Aadhar*), National Population Register and DGFT, could be undertaken to confirm the correctness of information furnished while seeking registration under central excise and service tax.

The present deeming provision in service tax for registration should be extended to central excise without awaiting physical verification. The registration process in the proposed goods and service tax regime may also require the aligning of the present registration processes in central excise and service tax.

### **De-registration, cancellation or surrender**

At present, there is no mechanism to revoke PAN on the death of an individual PAN holder or on the closure of a business entity. In central excise and service tax too, there is no provision for 'surrender' or 'deregistration' if the taxpayer ceases to carry out the activities for which he is registered. Considering the above, there is a requirement to provide for de-registration, cancellation or surrender of registration. Surrender of registration or cancellation/revocation of registration should not absolve the taxable person from any liability that may arise against him in

respect of acts of omission and commission done by him during the period that the person was registered.

## **VI.2. Tax payments**

### **VI.2.a Current Status**

#### **Direct Taxes**

The tax identification network (TIN) system allows taxpayers to pay taxes through the net-banking facility. The taxpayer's bank processes the transaction online by debiting his bank account with the tax amount and generates a printable acknowledgment indicating the challan identification number (CIN). Thereafter, the taxpayer can verify the status of the challan in the "challan status inquiry" on the NSDL-TIN website using CIN within two days. In case the payment is made by a physical tax deposit, the credit is reported in four days. Apart from CIN, the taxpayer can also check his online bank statement in "26AS" to verify the tax payment. The I-T department has mandated that all corporate taxes are to be paid online using the net banking facility. The Controller General of Accounts (CGA) has authorized 12,926 branches of nationalized and private banks to collect taxes, of which 11,638 branches collect taxes. This has been explained schematically in Diagram 6A.1 in Appendix VI.1.

Reconciliation of tax payments is done by the 52 zonal accounts offices (ZAO). ZAOs have also been provided with the facility to access the NSDL site through which they can view the challans/scrolls uploaded to TIN and take up the matter with banks if data loaded to TIN does not match with the details reported to them through challans or scrolls. Regular reconciliation is a vital function of the ZAO. This also mitigates frauds. The earlier system of manual reconciliation was cumbersome and had become impossible with the mounting volume of transactions. The on-line tax accounting system (OLTAS) has facilitated reconciliation. This has been explained schematically in Diagram 6A.2 in Appendix VI.1.

#### **Indirect taxes**

The CBEC also has a similar accounting system. The electronic accounting system in excise and service tax (EASIEST) allows taxpayers to pay through the net banking facility. The tax payment credit uploading process and information flow has been explained in Diagram 6A.3 in Appendix VI.1.

### **VI.2.b Weaknesses**

OLTAS requires real time verification of PAN and TAN numbers. This has not been provided at present. It has been reported that, in some instances, tax payments are not reflected in the taxpayers account because either PAN or TAN or both were incorrectly quoted; instead they are reported in

a suspense account. This often leads to non-credit of the tax deposits, resulting in difficulties to taxpayers.

It has also been stated that sometimes there are differences between the data seen by the taxpayer and that seen by the AO. Since the AO grants the credit of tax payment on the basis of what is reported and available to him through the ITD system in direct taxes, taxpayers often encounter difficulty in seeking due refund and claiming credit for the taxes paid. This is also due to mismatch in data.

## VI.2.c Way Forward

### Increasing e-payment of taxes

Payment of central excise and service tax is currently on a monthly basis.<sup>75</sup> However, intermittent payments during the month are not discouraged. The expectation is that the consolidated tax liability of the month is defrayed before the specified date signifying 'end of the month'. Different methods of electronic payments have been adopted by tax administrations. Electronic methods often used are direct debit and internet banking. India has also started encouraging electronic payments. Going forward, the use of multiple platforms for payment of taxes needs to be encouraged. These channels can be payments using credit/debit cards, e-banking as well as mobile platforms.

Since the use of banking channels is a pre-condition, the number of banks authorized to collect taxes would need to be increased to provide better access to tax payers for internet banking services. The authorization framework for banks needs to be fully standards-based and transparent so that all scheduled banks that meet those standards and associated requirements are able to be part of tax collections. Currently, the authorization is separately required for branches of an authorized bank. This should be dispensed with by enabling the banks themselves to start tax collection in any new branch. This would be a customer friendly measure as there would be a wider network of collecting banks.

### Increasing payment gateways

A payment gateway<sup>76</sup> facilitates the transfer of information between a payment portal (such as a website, mobile phone or interactive voice response service) and the front end processor or acquiring bank. There is good reason to increase payment gateways for better customer convenience.

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<sup>75</sup> Time given to large and medium traders for the payment of VAT liabilities vary substantially across OECD member countries, ranging from 10 to 60 days.

<sup>76</sup> A payment gateway is an e-commerce application for a service provider that authorizes credit card payments for e-businesses, online retailers, bricks and clicks, or traditional brick and mortar. It is the equivalent of a physical point of sale terminal located in most retail outlets.



### **VI.3 Return filing**

#### **VI.3.a Way Forward**

##### **Immediate customer feedback on ease of filing, time and cost**

It is imperative that the tax administration adopts a path of continuous improvement in crucial taxpayer services, such as return filing. Many tax administrations use the process of return filing itself to collect customer feedback on important elements as ease of filing, time taken, and cost of compliance. Information so collected is used for improving services, as explained in Chapter II of this report.

##### **Introduction of pre-filings position**

In Chapter V of this report, we have recommended pre-filing positions for individual issues and for group issues, in addition to the existing structure of AAR and APA. These pre-filing positions will be binding on the AOs.

##### **i) Direct taxes**

###### **Single return**

I-T tax returns should also include wealth tax returns so that the taxpayer need not file it separately. These returns should also be processed together in the CPC at Bengaluru. AO would also benefit from this and general return filing compliance of wealth tax would substantially improve.

###### **Signature on return**

Under the present system for filing corporate income tax, tax returns are required to be filed on an annual basis. The return is required to be filed with relevant tax audit reports and other necessary certificates for the deductions and exemptions claimed in the tax return. Besides, the tax return is required to be signed by the Managing Director (MD) or in the absence of MD, by a Director. Section 140 of the I-T Act should be suitably amended so that the tax return can be signed by the chief financial officer (CFO) also instead of only the MD. Under the Companies Act, 2013, every company is required to have a CFO and the CFO is considered a principal officer. The company secretary of a company can also be allowed to sign the return in the absence of other authorized officers.

###### **Disclosures in return**

In order to avoid unnecessary litigation, it is imperative that taxpayers should be allowed to make relevant disclosure in the tax return itself. At present, no such provision exists. Taxpayers experience difficulties, in particular on legal issues. At present, if the taxpayer and tax officer differ on deductibles, the tax officer adds the disputed amount to the income of the taxpayer and penalty



proceedings are initiated. This often puts a burden on both taxpayers as well on the tax administration as avoidable penalty proceedings are initiated.

To obviate such situations, we recommend that the format of the tax return should be amended and space be made available for the taxpayer to state its position on transactions, which have the potential to create disputes of a legal nature and arise from a difference in opinion between the taxpayer and the tax administration.

The disclosures in the return should typically be divided into two broad categories. One column should be to indicate in short the issues on which there is on-going litigation between the tax administration and the taxpayer. The other column should be to indicate the factual and legal position adopted while computing taxable income for the year. The taxpayer should in this column disclose the issues in litigation under the I-T Act until the most recent year for which assessment has been concluded. Such disclosures would give *a priori* information to the tax administration on the taxpayer's affairs and provide information to risk assess the tax return. For the taxpayers, a provision to disclose material facts and the legal position adopted should protect them from allegations of non-disclosure, suppression, escapement of income and penal provisions.

### **Jurisdiction free as far as possible under Income tax**

As already discussed, PAN is assigned to a particular jurisdiction, and so each taxpayer is attached to a specific AO. But it is widely felt that there are significant disadvantages in such an arrangement as the AO may not have specific industry knowledge or subject knowledge with the result the taxpayer is put to undue hardship. It is thus felt that geographical jurisdiction should be dispensed with and industry based assessment should be introduced in line with the recommendation made in Chapter III of this report.

Personal presence for hearings in all tax cases should also be avoided; data can be sought through an e-system, where it can be uploaded by the taxpayer. Personal hearing should be sought only in complex cases. A facility like an e-room can be developed for larger taxpayers to upload data. This data can be suitably protected. If required, video conferencing can be used to hear the taxpayers' or their representative's views.

### **ii) Indirect taxes**

#### **Centralized processing in central excise and service tax**

Many tax administrations around the world have designed their organization along more centralized lines. The I-T department has also adopted centralized processing of tax returns and TDS returns. This has enabled the department to process tax returns speedily, issue refunds within a reasonable time after returns have been filed, etc. A similar centralized processing is also required for central excise and service tax. This would provide quality taxpayer service and relieve field

functionaries of the bulk operations of processing tax returns. The released work force can then be deployed in other more important functions.

### **Jurisdiction free returns in CE/ST**

In central excise, an assessee is required to file a monthly or quarterly return for each of his registered premises with the jurisdictional range authorities. Only under the LTU regime, an assessee files returns for each of his premises/locations with the LTU. If a single registration for an entity is issued irrespective of the number of premises or locations, it can be allowed to file a common return. A suitable proviso for the purpose can be inserted under Rule 12 of the Central Excise Rules, 2002.

### **Credit matching and e-invoicing in excise and service tax**

Abuse and fraud in availing of CENVAT credit is a major compliance risk in central excise and service tax. This is bound to increase once GST is introduced, when both central and state tax administrations enlarge their tax bases to cover the entire supply chain from manufacture to final consumption. The current returns in central excise and service tax cannot address this risk and there is no other reliable mechanism to effectively suppress credit frauds. The advancements in ICT and its rapid adoption in trade and commerce offer opportunities for developing an ICT-based solution that will improve compliance and mitigate fraud risk. The TARC, therefore, is of the view that the development of a robust and reliable ICT-based credit matching system for fraud prevention should be one of the highest priorities of the CBEC. This is in line with the tasks assigned to goods and service tax network (GSTN).

The system for credit matching will have to provide for uploading of invoice level details by taxpayers in the portal; taxpayer ledgers for each individual taxpayer will also have to be maintained. Apart from providing a system-based mechanism for ensuring high compliance, such a system will also be more transparent as taxpayers will be able to view the credits.

E-invoicing has also been found to be an effective way of controlling credit frauds. The tax administration should set up a portal for e-invoicing. To reduce the compliance burden on smaller taxpayers, free utilities for generation of invoices should be provided. E-invoicing systems have been implemented for over a decade in many advanced economies.<sup>77</sup> An e-invoicing portal enables the generation of invoices in standard formats by taxpayers, who feed the invoice data by logging in to the system. It needs to have a high level of validation checks to ensure accuracy and consistency. This would curb revenue loss due to tax evasion. It may be emphasized here that the

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<sup>77</sup> On January 31, 2014, Chile amended its tax Law No. 20.727 and established a mandatory electronic invoice system to be used by the Chilean VAT taxpayers. China also has set up an e-invoicing portal. As of April 1, 2014, Mexico has made e-invoicing mandatory for both individuals and firms.

systems should be compatible with SAP and ERP systems that a majority of companies use for invoicing purposes.

These systems need to provide for robust security and authentication and a high degree of interoperability with other systems. A proper regulatory and legislative framework needs to be put in place. Further, tax authorities should develop the capacity to check on whether the taxpayers' systems adhere to prescribed specifications.

With invoice level data being available through these systems, the authorities would not need to undertake physical verification of invoices and should not ordinarily seek them.

The SPV that TARC has recommended in Chapter VII of this report should be tasked to create and operate the system, which should be done in close co-ordination with the GSTN so that both state and central level data could be leveraged and duplication avoided.

#### **VI.4 Compliance verification (scrutiny/audit)**

At present, scrutiny assessment is carried out by individual officers and the responsibility for assessment vests solely with the officer, except in cases where the Joint/Additional Commissioner issue binding directions during scrutiny assessment in direct taxes. The nature and depth of administrative supervision exercised by the supervisor during audit over the AOs varies widely, depending on individuals. Many times, the extent of supervision is minimal or moderate.

##### **VI.4.a Way forward**

#### **Developing specialization for AOs**

It is important for the tax administration to develop specialization and domain knowledge of various sectors of the economy to carry out effective audits. Adequate training – domestic and international, in-house and external – should be considered to increase domain knowledge. In a few countries, outside experts in areas like international accounting standards, accounting fraud recognition and consultants who provide inputs on latest trends in tax evasion and avoidance have been hired. All these measures need to be adopted in a planned manner. The AO should be assisted by industry experts and suitable analytics so that scrutiny assessment is based on knowledge, analysis and intelligence.

At present, the approach of tax officers is to do transaction-based audit. The tax officers in some cases also lack the requisite experience or knowledge to understand the difference between manual accounting and ICT-system based accounting. Invariably, hard copies of records are insisted upon. Moreover, loads of documents, including copies of invoices/purchase orders/copy of payment vouchers, are called for. The insistence on production of hard copies of records should come as an exception and not as a matter of routine. Further, the lack of knowledge or failure to take specialist support to understand issues often leads to high pitch assessments. Hence, the present practice of

a transaction-based approach should be replaced by a system-based one to facilitate easier and timely access as well as data analysis. The approach of the AO should be more towards actual issues, based on findings, and not on mere surmise and conjectures. If an AO insists on ledger copies/vouchers/invoice, he should have a valid reason to ask for the documents. Routine insistence on the production of documents should be dispensed with. Wherever feasible, the data and documents should be uploaded in a digital data room for verification by the AO and for seeking explanation as may be required. The AO should be encouraged to visit a taxpayer's premises to understand the system and process being followed for selection of documents. However, such visits should not be used to conduct a roving enquiry and audit; enquiries should be restricted to the issues identified. The assessment team could comprise more than one AO in complex cases. In cases where the tax assessed by the AO is higher than what the taxpayer considers is due and the addition proposed is more than a specified amount, the amount should be approved by a team of superiors from outside the AO's jurisdiction. This would bring quality to the assessment orders, as there would be a peer review. The taxpayer should be allowed to explain his position to the team of superiors and the draft order should be finalized based on the final directions.

### **Developing audit protocols**

The compliance verification directorate should develop scrutiny procedures and protocols for different type of audits. Internationally, many countries have evolved various classes of audits like in-depth comprehensive audit, less-detailed desk audit, specific audit and system monitor audit. All these type of audits have specific factors identified that need to be checked. These factors are determined using risk assessment information. But in India, scrutiny assessment is at present carried out largely as desk audits. This practice is primitive and needs to be changed.

It is, therefore, necessary that the audit directorate develops a standard audit protocol for audits that would involve, apart from pre-visit planning, formal interaction with taxpayers, primary and secondary levels of checking of books and records, and gaining insights into the ICT systems in operation. Hiring of external professional auditors and training of AOs will be needed to develop the capability to conduct such audits. The audit protocols developed by the compliance verification directorate should clearly state the manner in which AOs are expected to follow the principles of natural justice and respect the taxpayer's rights to privacy and dignity.

### **Combined audit of customs, excise and service tax**

Currently, the indirect tax administration in India is organised on the basis of the taxes administered, *i.e.*, customs, central excise and service tax. The tax type organisational structure is inefficient and burdensome to the taxpayer as most of the tax functions are repeated for each tax. It has also led to the taxpayer facing two audits even though the business and financial records on which such taxes are assessed are the same. In the recent cadre restructuring approved by the government, there is a proposal to set up 45 exclusive audit commissionerates across the country to exclusively deal with the audit function. The audit commissionerates are proposed to be set up

as functional verticals within the zonal structure. It is suggested that the audit commissionerates should undertake integrated audits covering central excise and service tax together and the Onsite Customs Post Clearance Audit (OSPCA) in the case of accredited clients (ACP), as the records and books to be verified are common to all taxes administered by the CBEC. In major cities where exclusive central excise or service tax commissionerates are functional, the audit function should be assigned to a specific audit commissionerate for carrying out integrated audit of customs, central excise and service tax.

### **Looking at a business as a whole**

At present, in indirect taxes, each factory premise or service location is seen as a separate business unit. However, it would be appropriate to see them as a single business entity, as in direct taxes, to effectively analyse the business and observe trends in the level of activity carried on, both in terms of value as well as volume.

### **Audit process and performance evaluation of auditors**

The proportion of personnel deployed for audit operations in indirect taxes should be sufficiently high, considering the importance of this function. At least 30 per cent of the total resources available in the organisation should be earmarked for audit activities as is the norm in some OECD countries. To achieve desired outcomes, only competent personnel with adequate technical knowledge and field experience should be deployed in the audit branch to undertake audits. The competence of an auditor is a crucial element in ensuring effective audits. Audit capabilities can be built up by identifying the required competencies, and providing training and incentives. Different competencies may be identified in different areas of compliance verification, segments of taxpayers, etc. Regular competency and performance assessments must be built in to identify the skill requirements for audit and to organise training programmes. Auditors should also be made fully accountable and responsible for audits undertaken by them to ensure that this process is not subjected to abuse. The placement policy should be designed in such a way that qualified and experienced auditors are retained for a sufficiently long period to harness their expertise in detecting non-compliance. The use of the Computer Assisted Audit Program (CAAP), currently used for auditing large taxpayers, should be encouraged and training should be imparted in this area to all officers undertaking audit of large businesses.

Access to third party information must be provided to the auditor as such information helps in quantifying the correct tax dues. However, issues of confidentiality, taxpayers' privacy and other similar concerns need to be adequately addressed. Appropriate sanctions for not furnishing information to the auditor within a specified time must be provided in the law to ensure timely conclusion of audits. Apart from this, adequate legal sanctions in the form of penalties may be provided to deter under-reported liabilities. A formal statement of taxpayers' rights and obligations in the audit context may be brought out to ensure transparency and accountability. What could be expected from a tax audit, how one should prepare for it and a listing of taxpayers' rights, including

the right to appeal, have been built into tax laws by several tax administrations. Currently, neither the Central Excise Act, 1944 nor the Finance Act, 1994 contains specific provisions governing taxpayer audit. It is suggested that specific provisions be incorporated in legislations on taxpayer audits on the above lines.

The efficiency and effectiveness of audit critically depends on the legal framework that defines the powers of the tax administration to undertake audit and recognises taxpayers' rights. The legal framework should (a) require taxpayers to maintain proper books and records (b) bestow adequate powers to officers to access records, visit taxpayer premises and carry out wide ranging enquiries (c) enable access to third party information sources (d) provide sufficient penalties to deter non-compliance and (e) recognise taxpayers' rights, including the right to appeal. As tax audit is one of the most intrusive interventions of the tax administration into the affairs of a taxpayer, it is necessary to clearly lay down the powers and responsibilities of auditors and the obligations of the taxpayer. A legal framework is essential to provide integrity in the way the tax administration carries out audits and to ensure that taxpayers' rights are properly secured.

### **Co-ordination between audits of CBEC and CBDT**

Joint audits represent a new form of co-ordinated action between and among tax administrations – direct taxes and indirect taxes. In a joint audit, both CBDT and CBEC could form a single audit team to conduct a taxpayer examination, in particular for large taxpayers. A joint audit is likely to result in quicker issue resolution, more streamlined fact finding and more effective compliance. Joint audits also have the potential to shorten examination processes and reduce costs, both for tax administrations and for taxpayers. Such joint audits will require a change in laws and procedure since the I-T Act does not at present have a provision for open audit as is done in indirect taxes. The I-T Act, however, has provisions to carry out surveys under Section 133A. Besides, data exchange will be needed before a joint audit can take place.

## **VI.5 Risk-based scrutiny/audit selection**

### **VI.5.a Current status**

#### **i) Direct taxes**

Currently, around one per cent of the tax returns in income-tax are selected for scrutiny, based on a risk-based selection approach; the percentage of corporate tax returns taken up for scrutiny is far more than for non-corporate taxpayers. Among corporate taxpayers, the proportion of smaller companies is much lower. The cases that are picked for scrutiny are through two channels – (a) risk-based assessment carried out in an automated manner using computer software; and (b) manual picking up of cases that fall under specified categories of cases that qualify for “compulsory scrutiny”.

The present risk-based approach of identifying taxpayers, called Computer Aided Selection System (CASS), is purely quantitative and not qualitative, but is automated. The quantitative filters are run on the electronic database of tax returns to generate a list of scrutiny cases. It is rare that inputs are called from field officers either for ex-ante choice of the filter or ex-post appraisal of the efficacy of the choice of filters used for selecting scrutiny cases.

Currently, all taxpayers having an income of more than Rs.10 lakh are required to file electronic tax returns. For other taxpayers, it is optional. Since CASS requires automated running of filters on an electronic database, any taxpayer who had filed a paper return and whose return has not been uploaded to the electronic database may escape the audit selection process. However, most large taxpayers (whether reporting a taxable income of Rs.10 lakh or less) file their tax return electronically. It is believed that the quantitative filters applied in CASS are in respect of certain quantitative thresholds of investments made, refunds claimed from the tax department, loans raised, trade creditors, infusion of share capital, purchase of immovable property, exemption of capital gains tax, rebates, etc. This results in coverage of scrutiny of large taxpayers being close to 100 per cent.

The reason for faulty selection or selection based on past trends may also be the lack of information. It is understood that neither CASS nor manual selection by the AO has the benefit of industry data; consequently, the case selected and adjustments made are often not sustained in the appeal.

Besides the cases noted above, another category of cases – involving transfer pricing above a threshold of Rs.15 crore – taken up for scrutiny fall under the head of “compulsory scrutiny”. Other cases that come under the category of compulsory scrutiny are cases involving survey and search, non-profit entities having business operations, entities that have received contribution from foreign entities above Rs.10 lakh, cases where re-assessment notices have been issued and instances where information on tax evasion is received from other government bodies. Manual selection of cases for scrutiny is largely based on qualitative criteria. This is being gradually restricted but it is far from being phased out.

Instances have also been reported where a taxpayer selected for scrutiny is scrutinized on other occasions too, almost on a regular basis even though there may not be any significant issues. A large number of non-corporate assesseees are not picked for scrutiny, but corporate tax payers are subject to scrutiny on regular basis. The nature of scrutiny may not even be significant.

Tax payers who have indulged in incorrect transactions or in transactions meant to avoid tax are not often picked up for scrutiny, pointing to the fact that case selection is not scientific and is not based on a proper risk matrix.



## ii) Indirect taxes

The primary role of audit is to verify the correctness of tax liabilities reported in the returns/declarations as compared to the supporting documentation, i.e., business and accounting records of the taxpayer. Apart from raising additional revenues, audit helps in identifying areas of weak/non-compliance, which could provide valuable insights to the tax administration to address these concerns through specific interventions including policy change. Audit provides direct access to taxpayer records, visit to premises are undertaken and often wide ranging enquiries are taken up. As in the case of direct taxes, there is no risk-based selection of audit cases in indirect taxes either.

### VI.5.b Way Forward

#### i) Direct taxes

##### Quantitative filters for CASS

The pre-requisites for a robust risk-assessment system is collection of data/information from external and internal sources, data cleansing and system-based checks and analysis. There is also a need to make sure that when CASS is run, data for all taxpayers, including those who filed manual returns, is available in the database.<sup>78</sup> Broad-based selection filters for the risk assessment matrix is being increasingly felt. There is also a need to set up a standard operating procedure, which recognizes an iterative method, testing it ex-post, to develop effective and efficacious parameters in the risk assessment matrix. Typically, risk profiling specific to tax would include the following:

- Identifying and evaluating risk by using a range of financial and tax-specific indicators, knowledge of a taxpayer's activities and transactions from third party sources.
- Comparing the accounting results with the tax results reported by the taxpayer for each group with those of their market peers falling within a class of industry. The analysis would identify across-the-board patterns, trends and risks, and specific cases in which tax results seem inconsistent with accounting performance.
- Matching information relating to taxpayer's transactions, including in respect of investments and expenditure, reported by third parties, data from other department/agencies like CBEC, FIU, own intelligence and publicly available information like stock exchange reporting, news reports etc.

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<sup>78</sup> It has been learnt that in some places, the AOs do not upload the paper tax returns to the electronic database, leading to several taxpayers escaping the audit net.



- Fostering collaboration among different tax officials to post relevant information about a taxpayer or group of taxpayers for “related transactions”, litigation history, dispute analysis and similar things that would normally not be accessible to a particular official.
- Utilizing information provided by local field formations and internal intelligence

Based on these inputs, the system should identify potential cases that are inconsistent with the expectations for the business and its industry peers by assigning a score for each business, trade or industry. If the tax return is found to be compliant with the risk score category so defined by the system, that return need not be picked up for scrutiny. An analysis would require to be carried out regularly to ascertain the potential quantum of under-reported income, which should also be tagged to the risk scores, but did not get picked up. Such an iterative method would bring robustness to the system.

This method should be combined with pattern recognition techniques to classify data patterns based on either *a priori* knowledge or on statistical information extracted from the patterns. The patterns would need to be classified either on the basis of industry or trade or some such classification. Through pattern recognition techniques, the risk-assessment system would analyse historical data, compare them with the current data, identify patterns and help risk profiling to reveal organized tax evasion. The pattern could identify spending, movement of funds, receipts etc. This will help also in understanding the behaviour patterns relating to a particular business or geography or a class/category of taxpayer.

### **Increasing the number of audits in non-corporate and small corporate segment**

The current policy of scrutiny selection does not permit a tax officer to take up cases for scrutiny even where there is *prima facie* indication of tax evasion or avoidance. Selecting fewer cases for scrutiny has restricted the ability of the tax administration to investigate cases that otherwise may have the potential to lead to detection of evasion. A positive side effect of that has, no doubt, been less interface with the tax department.

Non-corporate business entities, comprising small and medium size enterprises, form a big part of the tax gap in India. Many studies suggest that tax evasion among these taxpayers is rampant, as they operate largely in the non-formal sector and often have undisclosed sales and purchases, cash transactions and undisclosed investments. These non-corporate entities, as also small or shell companies, are often used for round-tripping, and hence, fake capital building. These entities are often used to provide accommodation entries. Since the overall scrutiny is taken up in less than 1 per cent cases, some of these companies escape the tax net and are used as safe conduits. Traditional ways of identifying scrutiny cases do not bring such cases within the scrutiny net.

## ii) Indirect taxes

In the case of indirect taxes, it is necessary to identify key compliance risks and develop and execute appropriate strategies to address them. Prioritising risks, determining treatment strategies, planning and implementing such strategies, and monitoring and evaluating performance outcomes can assist the tax administration in minimising compliance risks. A system-based risk assessment process that examines every taxpayer and assigns a score indicative of non-compliance could be a starting point for audit selection. Data on registration, returns filed and other declarations made to the tax administration could be matched with third party information for identifying taxpayers for risk-based audit.

The scope and intensity of the audit may depend upon the compliance risks identified by the tax administration. Different types of audit, as earlier stated, could be adopted to address varied degrees of risks. Depending on the available work force, the audit coverage could be determined by prioritising audit of taxpayers falling in the high risk threshold. It is necessary in this context to revisit the risk parameters for audit selection. Under the current guidelines, there is mandatory annual audit of units paying revenue of Rs.3 crore and above in central excise and service tax, irrespective of their risk profile. There is a need to reconsider this as a considerable part of the audit time as well as resources get devoted to completing these mandatory audits to the detriment of attention to relatively more risk prone units and sectors. Audit effectiveness can be enhanced by more robust risk-based selection and auditing units simply on the basis of high revenue payment does not seem to be an effective use of resources, especially when repeated audits of such units have not discovered any major compliance issues. Therefore, there is need to develop more robust risk profiles of taxpayers using multiple parameters and a comprehensive database to refine and improve selection for audit.

### VI.6. Refunds

#### VI.6.a Way forward

More and more tax returns are being filed electronically. Even TDS returns are being e-filed. Despite that, refunds by the I-T department remain tardy. There is no time limit within which an AO is supposed to process the refund in case the refund could not be issued from CPC. The AO normally waits for the file to be transferred from the CPC and even after the file is transferred, the AO goes through manual verification and withholds the amount due to non-availability of the TDS certificate. This process, therefore, needs to be changed. The recommendation in this regard is that there should be a time limit in which refunds should be processed after filing the income tax returns. Since the CPC issues refunds through the refund-banker scheme, the refunds should be based on taxpayer data and deductor data which is already available in ITD system. The insistence on manual filing of TDS certificates before the AO for verification of refund claims should be done away with. If required, the tax payer should be allowed to upload all TDS certificates in the electronic format.

### **Refunds due to taxpayer on relief from ITAT/CIT (A) order**

Sometimes, the taxpayer is eligible to get refunds based on relief obtained from ITAT/CIT (A)/HC/SC orders. Under the present provisions, there is no time limit by which the AO should give effect to the orders passed and issue refunds. Many times, the taxpayer is coerced into paying tax for the current year as self-assessment tax or advance tax. This process needs to be changed. There should be a time limit by which the AO should pass the orders giving effect to CIT (Appeals)/ITAT orders. The necessary refunds arising on the orders should be paid or the taxpayer should be allowed to set-off the amount against the advance tax liability or self-assessment tax liability in subsequent years by giving the document identification number as the appeal effect order is issued through the ITD system.

### **Interest on refunds**

One of the grievances consistently voiced by industry associations during our interaction was that in the indirect tax administration, the interest due on delayed refunds is rarely, if ever, given. This covers all types of refunds, including those arising out of appellate or court orders. The CBEC should ensure that the refund is granted along with the applicable interest in every case. The refund should be granted through the computer system, which should itself calculate the interest due as is done in the case of direct taxes. Further, it would only be equitable if the rate of interest on refunds is the same as that charged to taxpayers in the case of tax dues.

#### **VI.6.b Strict adherence to timelines**

A taxpayer should not be denied refunds if it is due. In fact, both the Boards have time and again issued instructions that in case there is delay in issuing refunds, the taxpayer should be granted interest on delayed refunds, unless it is caused by the fault of the assessee. A directive to this effect was also issued by the Delhi High Court on March 14, 2013, for direct taxes. According to the court, when the delay is not attributable to the assessee, but to the revenue department, the interest should be paid under Section 244A of the I-T Act. The court also stated that even in cases where the taxpayer is 'rightly' denied interest on refund, the AO must provide a written explanation for the denial.

The taxpayer is entitled to interest at 0.5 per cent for every month (6 per cent per annum) from the first day of April of the assessment year to the date on which the refund is granted under Section 244A of the I-T Act, if the refund arises on account of tax deduction at source (TDS) or advance-tax payment. However, no interest is paid if the refund amount is less than 10 per cent of the tax paid.

One question that often arises is why there is delay in the issue of refunds. The responses indicate that most tax officers have their eye on net collections to achieve the tax targets set for them. Since gross tax is normally due to factors such as growth in the economy, an increase in taxpayer's base and effort in tax administration, the refund is used as a tool to augment tax collections. Not only

is it legally incorrect to withhold refunds beyond a reasonable time taken for processing tax returns, it also affects badly the business model of the taxpayers in general and small taxpayers, whose capital base is small, in particular. In fact, this also discourages marginal taxpayers from coming within the tax net. Many industry and other taxpayer organizations have demanded that since there are strict timelines for completing the assessment or filing of appeal etc., issuance of refunds should also follow strict time lines.

Refund of excise is governed by Section 11B of the Central Excise Act, 1944. Refund is to be made to the taxpayer within three days of the order passed after due audit, if any. Section 11 BB of the Central Excise Act, 1944, also entitles a taxpayer to interest at a rate notified from time to time, if the claim for refund or rebate is not sanctioned within three months from the date of filing the application. But the time period in the Act is seldom adhered to. The case of indirect taxes is even starker as the present tax system exists on credit and if credits are withheld, it burdens industry with increased costs, leading to spiralling prices.

Most countries issue refund to taxpayers in a much shorter time. The European Union recently issued a directive that enables businesses established and registered for VAT to submit refund claims via the internet; the amount refundable would be determined within a fixed time limit.<sup>79</sup> The country concerned, which is to make the refund, has been given four months to decide on the application, starting from the day it confirmed receipt of the claim. This directive, has thus tried to bring predictability and certainty to the refund claim. The same predictability and certainty can also be brought about in India.

### **Separate budget for payment of refund or credit**

In a different but related context, the Public Accounts Committee in its 96<sup>th</sup> report to the 14<sup>th</sup> Lok Sabha recommended that there should be a separate budgetary head for interest on delayed refunds. Taking a cue from this, it can be recommended that there should be a separate budget head for tax refunds to bring more transparency and to circumvent the general tendency to withhold refund, even if genuinely due. A separate head of fund allocation for refund of direct and indirect taxes, including drawback, should be made in the annual budget so that there is transparency and refunds and drawback are issued out of that head. This would separate tax collection from refunds and drawback and these would not be reflected in lower tax collections. The timely issue of refunds and drawback would also relieve taxpayers of the financial burden resulting from delayed refund. The government will need to allocate sufficient funds so that refunds and drawback are issued on time without delay.

### **VI.6.c Unjust enrichment - simplification of refund process**

A nine-judge bench of the Supreme Court, by a majority of 8:1, upheld the doctrine of unjust enrichment in relation to refunds under the central excise law in the *Mafatlal Industries Vs Union*

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<sup>79</sup> Directive 2008/09/EC

of India case.<sup>80</sup> This doctrine implies that refund of taxes cannot be given to the claimant if the incidence of that tax has been passed on by him to any other person. The machinery provision, inserted in the year 1991 in the relevant sections of the respective acts, laid down the test to ascertain whether a person seeking refund of duties and/or interest unjustly enriched himself by passing on the incidence of such duties to any other person. If the refund sanctioning authority is satisfied that such incidence of duties and/or interest has been passed on, then the refund is sanctioned but not actually paid to the applicants. Instead, it is credited to a specific fund formed by the government namely “The Consumer Welfare Fund”. Effectively, the entire onus of proving whether the incidence of duties and/or interest sought to be refunded stands passed on or not is cast upon the applicant.

In the *Mafatlal* case, the court dealt with the right to refund and the remedy of refund of duties and/or interest. However, whether the law was economically sound or not was not dealt with in the judgment. Thereafter, a plethora of rulings followed, based on principles laid down in that case.

Under central excise, customs and service tax laws, an adjudication for sanction of refund applications is done. The applicant, as a matter of procedure, is required to produce documentary or other evidence to establish that the amount of duty/interest in relation to which such refund is claimed, was collected from, or paid by him and the incidence of such duty or interest has not been passed on by him to any other person. This is in addition to several other documents and records that are required to be verified such as invoices, returns, etc.

The term ‘incidence of duty’ as understood and applied by the department covers situations where a duty is directly passed on or is indirectly passed on in terms of it being included in the cost of production of goods or provision of services, eventually forming part of the price charged.

Although the provisions contained in the acts clearly spell out the methodology and documentation for applying the concept, in practice, the departments have been found reportedly holding back refunds on the ground of unjust enrichment in many instances. This sometimes includes cases where the applicants have not received refunds even after succeeding before the appellate forums. This is a major source of grievance and no uniform principle or practice seems to be followed in dealing with such cases.

Effectively, if one needs to verify whether or not the applicant has passed on the incidence of the duties and/or interests to any other person, the basis to check can be the treatment of such amounts in the books of accounts. Under accounting principles, there are basically two ways to check:

- a) Whether the amount is shown as deposits recoverable from the government under the head ‘Current Assets’, which is an item appearing in the balance sheet. The certification by the chartered accountant or the cost accountant of the treatment of the amount of refund

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<sup>80</sup> *Mafatlal Industries Ltd. vs. Union of India (Mafatlal Industries)*, (1997) 89 ELT 247 (SC).

claimed can form an authentic basis to determine whether the refund can be allowed or not in such a case; and

- b) Whether the amount has been charged to revenue expenditure forming part of the cost of production of goods or providing services, which implies that such expenditure has been factored in when fixing the price of the goods or services.

While it is easy to ascertain whether there is passing of the tax incidence in the situation mentioned at a) above, situation b) presents difficulties. In this context, one needs to take into account the fact that price as such has no direct correlation with cost all the time. Price is determined by market forces depending upon factors like competition, monopoly, supply or demand, etc. and not by the cost factor alone. In other words, arithmetically adding tax incidence to costs does not by itself denote that the tax burden stands passed on. Therefore, the test to determine whether there is unjust enrichment should be limited to cases of refunds where there is direct passing on of the amounts claimed as refunds. In any other situation, this concept should not be applied. To give effect to this, the provisions as they exist at present in the relevant acts will need to be amended.

#### **VI.6.d Refunds for service exporters**

##### **Current status**

In the existing scenario, a large number of exporters file service tax refunds due to accumulation of unutilized CENVAT credit. Exporters are entitled to get CENVAT credit against the export of services, which they usually use to set off the service tax liability on domestic supplies. In most cases, the exporters end up with a significant pool of unutilized CENVAT Credit. Currently, an exporter faces the following issues in availing of refund of unutilized CENVAT credit against services exported:

- Filing of online refund claim – Even though claims are filed online, the process is still physical as claims have to be filed in paper as well, along with related documents. Similarly, the processing happens on paper. Further, the relevant date is still taken as the date on which the paper claim is filed. Therefore, online filing just adds to the compliance burden and does not help in processing of refund claims.
- Detailed documentation – A detailed back up is required to be submitted of every number that forms part of the refund calculation, including copies of all input invoices, output invoices, CENVAT credit register and bank statement. Further, often the exporter is required to reconstruct the entire documentation because files are misplaced by the authorities.
- Time taken for refund processing - The considerable time taken for processing a refund claim has resulted in a significant backlog of pending refund/rebate claims, which results in making it impossible to avail of the benefits of these schemes in a timely manner.

- CENVAT credit admissibility/refund admissibility – One of the most frequent reasons for the rejection of refund claims has reportedly been disputes about admissibility of CENVAT credit on certain input services.

### **Way forward**

It is therefore imperative that an easier and simplified scheme should be introduced for exporters, i.e., the entire refund filing and processing mechanism should be shifted online to benefit both exporter and revenue. It is also suggested that an online refund processing mechanism should be implemented, for which a provision already exists in ACES. The key features of this mechanism should be:

#### **a) Filing of refund**

The procedure for filing of refund claims in service tax should be online like the system for filing service tax returns. The date of online filing of refund should be taken as the date of filing. The documentation required to file for refunds claims should be minimal.

#### **b) Documentation requirement**

The detailed documentation can be done at the time the unit is audited. Such documentation include proof of export, CENVAT credit details, calculations etc. It may be pointed out that in the case of export of goods, refund can be granted on issue of LEO (let export order) by the customs officer. However, a similar document is not commonly accepted for export of services. To make the process simpler, it is recommended that a bank realization certificate can be issued by the authorized bank on the basis of documents, such as invoice-wise correlation of foreign income realization certificate (FIRC) or reference number in bank statement with export invoices, SOFTEX forms (shipping bill, in case of export of goods), and copies of the invoice and FIRCs on a sample basis (if required by the bank).

The DGFT has now allowed non-STPI exporters of services to also get registered with STPI and get SOFTEX invoices endorsed; this can form the basis for the issue of bank realization certificates (BRCs) or FIRCs. Since e-BRCs are now permitted, this document can form the basis of all export of services and all benefits including refunds can be linked to this document.

CENVAT credit documentation would include the CENVAT credit account, which can be made available online. The credit would have been matched by the credit matching system and sanitized to that extent. Since refund is of a proportion (export turnover/total turnover) of CENVAT credit being availed, input invoices need to be checked at the time of auditing the unit and not at the time of sanctioning refund.



It is also reported that data often asked for is already available in the returns filed by the taxpayer on line. The practice of asking for such information should be avoided and only information that is not already with the department should be sought.

### **c) Processing of refunds**

The online portal will make the processing of refunds quicker and more convenient than it is at present by making supporting documents available online. Further, the processing of refunds should be done on a centralized basis by adopting the concept of central processing centres (CPCs) to minimize the interface between department and the client. The refund sanctioning authority can only dispute calculations and facts relating to export of service and the interaction relating to such issues should be through online communication. Any dispute regarding the eligibility of the services for input credit and verification of invoice particulars etc. may be handled at the time of audit of the unit. Refunds sanctioned should be paid along with the applicable interest automatically as in the case of income tax and not on demand by the clients. As in the case of direct taxes as well as customs duty drawback, the refund and interest payment should be directly credited to the clients' bank accounts.

### **d) Audit of refund claims**

Currently, refund claim is either subject to pre-audit verification or post-audit verification, depending on the amount of refund. Pre-audit causes significant delays in processing of claims. It is also a duplication of work as the process merely replicates what is done in the original scrutiny. Hence, the process of pre-audit should be done away with and check should only be through post-audit. The post-audit verification of refund claim should be risk-based. Further, refunds, in any case, should be part of the risk-matrix so that effective verification in some cases can take place to create appropriate deterrence against fraud claims.

## **VI.7 Tax deducted at source (TDS)**

Tax deducted at source (TDS) and tax collected at source (TCS) or withholding taxes are regarded as the cornerstones of an effective income tax system and justified on revenue grounds. These are ways of protecting the revenue base and capturing revenue at the earliest at the time of the transactions itself. It is essentially an indirect method of collecting tax, which combines the concepts of “pay as you earn” and “collect as it is being earned.”<sup>81</sup> Withholding an amount of tax from payments of income or expenditure made to taxpayers significantly reduces, if not eliminates, chances of understating income as it creates a trail for audit. Further, regular remittances to revenue ensure a

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<sup>81</sup> TDS and TCS are levied under Sections 193,194,194A, 194B, 194BB, 194C, 194D, 194E, 194EE, 194F, 194G, 194H, 194I, 194IA, 194J, 194K, 195, 196A, 196B, 196C 196D and TCS are levied under Section206C of the I-T Act.



good flow of revenue to government accounts and assists treasury management. The government, over a period of time, has brought a number of transactions under the ambit of a withholding tax.<sup>82</sup>

After taxes are deducted, it is the duty of the person deducting tax at source (deductor) to deposit the amount of tax so deducted within the prescribed time in any branch of the Reserve Bank of India or the State Bank of India or any authorized bank in prescribed income-tax challans, as specified in the I-T Rules. Further, the deductor is also duty bound to furnish this certificate to the person from whose income/payment of the tax has been deducted. This obligation is cast under Section 203 of the I-T Act.

#### VI.7.a Way forward

##### **Improving TDS compliance**

I-T Rules provide that all sums deducted under the I-T Act are to be paid to the credit of the central government within a specified period, either on (a) on the same day where the tax is paid without production of an income-tax challan and (b) on or before seven days from the end of the month in which the deduction is made. Any default in compliance can attract levy of interest (u/s 201(1A) of the I-T Act), penalty (u/s 221 of the I-T Act) and in certain cases initiation of prosecution proceedings (u/s 276 B of the I-T Act). But despite these provisions, there have been instances of delayed credit of the TDS deducted. In some cases, the TDS was not deducted even after a considerable gap of time. This is in contravention of the basic objective of levy of TDS/TCS. Besides, it is a bad practice as this is the money of deductee, retained by the deductor at the time of making payments. The Commission feels that this pernicious practice of retaining money beyond the legally stipulated period needs to stop and the deductor must not be allowed to use the deducted money for any purpose, least of all to augment its working capital. This calls for more effective enforcement of TDS.

It needs to be recognized that the tax deductor's duty and obligations in terms of information compliance and depositing the deducted amount is onerous and they are not compensated for that. TARC is, therefore, inclined to recommend a small percentage of commission, say 0.005 per cent (for large and medium tax deductors) to 0.01 per cent (for small tax deductors) of the tax deducted and deposited in the government account, to be allowed as business expenses by them to fulfil their obligations.

The long-term solution to TDS compliance would be to move towards a system of real-time credits of TDS. Suggestions were received by the Commission on how to institute mechanisms for real time credit of TDS to the government account. Some of these suggestions were in terms of tax deductor buying credits from the banks and recouping them when they actually deduct the

<sup>82</sup> TDS at present contributes about 40 per cent of gross collections of direct taxes. Many countries (28 of 30 OECD countries) apply withholding taxes, but mostly on employment income.

TDS/TCS. While exploring such options, the transaction cost for the tax deductor needs also to be kept in mind.

### **Credit System**

Credit is available only in the year the relevant income is declared. This leads to anomalous situations because there is a difference in the treatment of a transaction by a deductor and taxpayer if the taxpayer follows a cash basis of accounting. For instance, the deductor deducts at the time of payment as it relates to that year while the taxpayer earns that income in the subsequent year(s). Another instance is a situation in which the deductor deducts tax at the time of advance payment while the taxpayer declares the income in subsequent year(s) on performing the contract. Co-relating TDS with income returned requires repeated visits to the tax office giving detailed reconciliations and explanations. This leads to considerable increase in compliance cost for the taxpayers. It also leads to delay in processing of refunds and increases interest cost to the government.

A passbook scheme for TDS may be adopted with some safeguards. Once TDS is deducted from a payment, TDS should get credited to the taxpayer's account. This should be like an account with running balance to be utilized by the taxpayer at his option to set off his tax liabilities. The taxpayer can pay advance-tax, self-assessment tax and regular tax from this account by operating it online. Advance-tax should not be tax liability *minus* TDS but should be calculated over all after taking all taxes paid. The taxpayer may settle an instalment of advance-tax by debiting this account.

### **Reduction of errors**

The TDS deductor (corporate and government) is obliged under Section 206 of I-T Act to file an e-TDS return in form no. 24, 26 or 27 or quarterly statements in electronic media in a prescribed data format and submit them to CPC-TDS. TDS return typically contains the TDS Account Number (TAN) of the deductor, PAN of the deductor, PAN of all the deductees and particulars of tax paid to the central government including book identification number or challan identification number as the case may be. Errors can occur in reporting any of the above information. This impacts the deductee, often small taxpayers, as they are unable to claim refund, particularly if they are below the taxable limit. CPC-TDS has launched a web-site, TRACES (TDS reconciliation, accounting and correction enabling system), a web-based application, providing an interface to all stakeholders. Attention should be paid to reducing errors and if errors occur, to their early rectification. The rectification of errors should be a key taxpayer service, and should be delivered with a clear customer focus.

### **Improvement in rectification process**

It has been reported that a large number of taxpayer requests for rectification are getting rejected due to mismatch of data. Although the CPC-TDS has provided an interface to the deductors for

online error rectification of e-TDS returns, it permits only two types of corrections, namely, PAN correction and challan correction. For all other type of corrections, users have to go through the regular process of generating a correction return file and submit it to the CPC-TDS. The CPC-TDS should allow correction in the name of the deductees to avoid multiple submissions of TDS forms. Even a single error requires the deductor to submit the entire return afresh. The process of uploading the entire file for one or two corrections is cumbersome and disproportionate to the gravity of the error. This adversely impacts taxpayer services. Mistakes can occur. Subject to the required checks and validations, there is a need to widen the scope of the online error rectification service.

### **Help for small deductors**

It has often been stated by taxpayers that the compliance cost for small deductors in filing TDS returns and fulfilling various obligations needed to comply with TDS is high. This often discourages small deductors. The government, therefore, should ask tax return preparers (TRPs) to also assist small and marginal tax deductors to prepare and file their TDS returns. Or else, a separate TDS return preparers (TDS TRPs) programme should be initiated on the same lines as TRPs, with more training and a better remuneration structure than is presently available.

## **VI.8 Foreign tax credit (FTC) in direct taxes**

### **VI.8.a Way forward**

Double tax avoidance agreements (DTAAs) provide methods to remove/reduce juridical double taxation by allocating taxing rights between residence and source countries on various categories of income, by eliminating or limiting source country taxation or by requiring a residence country to grant relief for source country taxation through a credit or exemption mechanism. Typically, Article 23 deals with that. Indian DTAAs have adopted the credit method for providing relief from double taxation.<sup>83</sup> The I-T Act provides for foreign tax credit (FTC) under Sections 90, 90A and 91 – Section 90 provides relief from double taxation of income in India if there is a DTAA between India and the other country, and Section 91 provides unilateral relief from double taxation of income arising from a country with which India has not concluded a DTAA. Section 90A provides double tax relief for specified associations.

### **Rules on FTC**

In many countries, detailed rules on credit for foreign tax already exist in their domestic laws, which describe the computation of foreign tax credit under various circumstances.<sup>84</sup> No guideline for FTC exist in India. It is, thus, necessary for the CBDT to introduce FTC rules in India to provide

<sup>83</sup> DTAAs are not expected to provide rules on the computation and operation of the credit.

<sup>84</sup> Global practices on giving FTC are given in Appendix VI.2.

relief from double taxation. Such rules should clearly specify the compliance requirements in clear and lucid detail and should provide uniform relief from double taxation of income arising from similar circumstances. It would make implementation of FTC rules easy for taxpayers as well as tax administrators and reduce the scope for interpretation and litigations.

FTC guidelines should clearly identify the various types of income taxes in India against which the foreign tax paid can be credited, such as income tax, surcharge on income tax, education cess on income tax and secondary and higher education cess on income tax or any identical or substantially similar taxes if imposed in India at a later date. FTC guidelines should also state the order in which FTC can be claimed in India. Payment of advance taxes in India should be calculated after considering FTC. Otherwise, it often results in payment of excess income tax in India for the taxpayers blocking funds for enterprises till a refund is received.

Coverage of taxes eligible for FTC under the specific DTAA is often a source of taxpayer difficulty. Although Article 2 of the DTAA outlines the eligible taxes, there is variation between the taxes covered. Since DTAA are negotiated keeping mutual interests, the underlying mechanism should be explained to taxpayers. In the absence of that, court cases mount, resulting in varying decisions by the courts and tribunals<sup>85</sup> as taxpayers are left with no choice but to resort to litigation to get clarity on the subject.

How it is computed determines the amount of FTC available to a taxpayer during an assessment year. There is no method to compute FTC in India in the absence of FTC guidelines. FTC regulations should permit taxpayers to aggregate income tax paid in all foreign countries for availing of FTC in India. This will allow pooling of foreign taxes paid on 'low-tax' and 'high-tax' income from 'low-tax' and 'high-tax' countries, thereby optimizing FTC.

### **Timing for claim of FTC**

Tax jurisdictions have different fiscal years. For example, the US fiscal year is from January to December of the year, and tax returns are due to be filed by April 15 the next year. The Indian fiscal year, on the other hand, is from April to March of the next calendar year and tax returns are to be filed by July 31 for individual taxpayers and by October 31 the following fiscal year by the corporate taxpayers. Difficulties are often encountered by taxpayers in claiming FTC for taxes paid in the US between January and March as those taxes are accounted for in a different fiscal year, whereas in India that tax claim would fall under the same fiscal year. An FTC rule to cover such timing differences would bring relief to eligible taxpayers.

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<sup>85</sup> The Mumbai ITAT bench decided in the case of Tata Sons Limited vs DCIT (ITA 4978/MUM /04) that credit for state taxes could be claimed under Section 91 of the I-T Act.

## VI.9 Collection and recovery

### VI.9.a Current status

Chapter XVII of the I-T Act, 1961, deals with the collection and recovery of taxes. Sections 222 to 232, and Schedules II and III of the I-T Act and the I-T (Certificate Proceedings) Rules, 1962, together constitute a self-contained code prescribing various modes for recovery of tax arrears. These provisions have also been made applicable to the recovery of wealth tax arrears under Section 32 of the Wealth Tax Act, 1957. It was reported by the CBDT that the AOs do not initiate action for recovery of tax arrears under their own powers in a large number of cases. This has led to TROs being burdened with an increasing number of recovery certificates.

Under indirect taxes, taxpayers desirous of filing an appeal are required to deposit the duty or penalty imposed before filing the appeal. The deposit may be claimed as a refund if the appellate authority decides in favour of the taxpayer. But, it is often seen that the tax department does not insist on pre-deposits, particularly when the case is before the Commissioner (Appeals). Even, appellate authorities liberally grant stays on deposition of duty, penalty, etc. This system of stays on confirmed demands has resulted in huge uncollected arrears as there are long delays in dispute resolution. This is mainly because no time limit for the disposal of disputes is fixed. Recently, however, the CBEC brought an amendment in all the three acts – excise, service tax and customs – to complete adjudication within one year, and Commissioner (Appeals) to decide appeals within six months. Incorporation of the words ‘*where it is possible to do so*’ and ‘*as far as possible*’ has, however, negated the objective of the legal provisions.<sup>86</sup>

### VI.9.b Way forward

Recovery is one of the most important works of a tax administration. Taxpayers often do not want to pay taxes unless compelled. For better tax compliance, therefore, a system needs to be designed, which automatically collects taxes rather than leaves payment of taxes to voluntary choice and the morality of taxpayers. Global practices of tax recovery have been given in Appendix VI.4.

#### Separate vertical for this function

Currently, the function of recovery and collection is largely carried out by the AOs whose primary job is assessment of taxes. Due to operational constraints and institutional barriers, this function often takes a backseat. The institution of a recovery cell (TROs in the I-T department and recovery cell in indirect taxes) has also not worked well, because of inadequate staff support, lack of resources, lack of training in recovery work and lack of motivation. Often, a job in the recovery cell is considered a punishment job, and there are few takers. All these have resulted in no or very

<sup>86</sup> Even in income tax, the Commissioner (Appeals) has to decide the case within one year according to Section 250(6A) of the I-T Act, but it also says, “where it is possible”, negating the thrust, and resulting in delays as explained in Chapter V of this report.

little focus on tax collection. Considering all these, a separate vertical has been recommended in Chapter III of this report.

As we move towards an administrative structure built around the CPC, the Directorate of Recovery can evolve a mechanism by which an analysis of the risk profile of the taxpayer is carried out at the time of creation of tax demand upon assessment or issue of an order. Building compliance profiles of taxpayers will help tax collectors to classify them under different categories requiring different types of attention and action. Taxpayers identified as least compliant can be subjected to more watchful methods of recovery as against the more compliant variety that may just need mere intimation in a timely manner. This would enable collectors to prioritize their work.

### **Building compliance profile of taxpayers**

To improve the efficiency of debt collection activities, many tax administrations have used risk assessment models to compute risk scores for each new tax debt case that reflects the likelihood of taxpayers paying their debt based on objective criteria, such as historical patterns of payment compliance. Many tax administrations have set up models for tax debt analysis, such as discrete event simulation and system dynamics.<sup>87</sup>

By using segmentation of taxpayers according to size, sector, and past behaviour, among other attributes, tax authorities can also perform a risk analysis that flags any unexpected discrepancies between an individual taxpayer's behaviour or payments and that of his or her group. This approach, apart from helping to establish the predicted tax revenue for each group, also enables effective monitoring of revenue collection performance by establishing whether too little or too much tax has been targeted for payment by an individual taxpayer. This segmentation approach has been shown to yield highly accurate results and is being adopted by many tax authorities in the early stages of improving revenue collection.

The process of enforced debt collection is a highly time-sensitive function, requiring fast access to accurate information concerning all aspects of a taxpayer's affairs, including complete information on tax debts and outstanding tax returns, and other information sources (*e.g.* asset data) that can be utilized to assist enforcement of the law. An ICT system can facilitate these activities by providing a number of tools that improve the efficiency and effectiveness of collection enforcement activities. These include single, complete overview of taxpayers' affairs in general and their tax liabilities in particular, automated issue of reminders at pre-determined points of time, automated identification of risk, automated case identification and management, and automated imposition of penalties and sanctions.

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<sup>87</sup> This has been briefly explained in Chapter III of this report.

## **Use of Information and Communication Technology (ICT)**

The use of ICT in reporting, compiling and collating information about tax arrears and their recovery is a must and will go a long way in saving time and effort. It will also enable senior officers to monitor the recovery process on a real time basis. The quality of data can be made much more robust than it is at present.

### **Tracking of tax demands stayed by courts and tribunals**

Currently, a large portion of total arrears cannot be collected due to stay orders in operation. There is no institutional method of keeping track of such stay orders, which would allow the AOs to recover tax upon the expiry of stay orders. This information needs to be uploaded electronically on the ICT system of the departments so that the tax collectors can have system generated prior intimations regarding the expiry of stay orders. This would also require linking the office of the DRs in tribunals to the ICT system of the department. For stays granted by high courts and the Supreme Court, field officers would need to evolve procedures to upload information received from the standing counsels.

### **Write-offs**

The identification of tax demands that cannot be collected, either on account of taxpayers having gone bankrupt or having become indigent, has to be carried out for the purpose of speedy write-offs. Currently, the process of write-off is quite lengthy and cumbersome. Besides, most officers do not consider it to be a priority work. No doubt, the department's main job is to collect tax revenue, but in case a demand becomes unrecoverable, it is imperative to write them off so that due attention can be given to cases where chances of recovery are high. It is, therefore, important to identify the right cases for write off and for that, due diligence needs to be carried out before writing them off.

It is seen that the present structure is not able to pay due attention to timely write offs. Hence, it is imperative that structures and processes are put in place and adequate delegation made to ensure that tax debts are written off in time. All the data for write-off needs to be put in the system and a comprehensive profile should be attempted to check whether the cases being written off are genuine. Monitoring of the case would have to be done on a continuous basis. An appropriate standard operating procedure should also be developed for early identification of cases turning bad so that pre-emptive action can be undertaken to secure revenue interest. Equally importantly, genuine bad debts should get written off quickly and for that write-off powers should be raised at different levels of the organization and made uniform for both direct and indirect taxes. Full powers may be vested in the respective Principal DGs in charge of recovery in the respective Board. The write off should be done in concurrence with the CFO at the headquarters level and his nominee at the regional/zonal level. Schedule VII of the Delegation of Financial Power Rules, 1978, would need to be suitably amended.



### **VI.10 Documentation requirement for transfer pricing/customs valuation**

The obligation to maintain appropriate documentation in transfer pricing (TP) is contained in Section 92D of the I-T Act, read with Rule 10D of the I-T Rules. The objective of this enactment is to specifically enjoin on the taxpayer the need to keep and preserve all such records as may be necessary and relevant to understand the taxpayer's transfer pricing policy. The obligation to maintain documentation, therefore, rests with every taxpayer entering into related party international transaction. Taxpayers are required to submit Form 3CEB containing a list of transactions with the tax return. Detailed documentation is asked for when the case is picked for TP audit. If at that time, documentation is not seen to have been done, the taxpayer is penalized.

Customs valuation rules framed under Section 14 of the Customs Act, 1962, provides for documentation requirement for related party transactions. This is required for special valuation of the transactions. The documents are submitted as per a questionnaire of the special valuation branch of the customs department. Along with the documents on the questionnaire, the taxpayer is also required to deposit 1 per cent of the assessable value. If the importer fails to submit the documents within 30 days, the deposit increases to 5 per cent of the assessable value.

In both the cases – TP or special valuation in customs – adequate documentation is required. It is often felt that adequate documentation makes it easier for tax authorities to review a taxpayer's analysis, contributes to dispute avoidance and ensuring timely resolution of cases. Adequate documentation is characterized by (a) the sufficiency of the details demonstrating the taxpayers' compliance with the principles of arm's length pricing and (b) the timely manner in which details are prepared and submitted to tax authorities upon their request. It is often stated that maintaining contemporaneous and accurate documentation is advantageous to the taxpayer in reviewing the price of an international transaction. But very detailed and stringent documentation requirements can be burdensome to the taxpayer and will increase the compliance cost. Considering the above, it is recommended that both Boards should frame detailed documentation requirement for TP as well as customs valuation, keeping in view that such documentation should be reasonable. This would bring certainty and predictability for taxpayers.

### **VI.11 Customs Valuation – SVB Process**

#### **Current process**

Imports involving related party transactions in India are subject to an independent process of scrutiny by the 'special valuation branches' (SVB) of the customs located at the five major custom houses at Chennai, Kolkata, Delhi, Bangalore and Mumbai. This is supposed to be a specialised branch for customs valuation. The decisions taken by the SVB in any given case are followed by all other custom houses/formations.



Briefly, the process involves registering a case with the SVB when an importer imports goods from a related party and, prima facie, it appears that the relationship has influenced the price. Upon registration in SVB, assessment is done provisionally and a deposit of 1 per cent, termed extra duty deposit (EDD), of the declared value is collected by customs. The procedure involves time consuming investigation, starting with a questionnaire that is issued to the importer, requiring him to support the valuation methodology adopted, along with the related documentation. There is, however, no standard documentation and this is left to the discretion of the officer. In case the importer fails to reply within 30 days of the questionnaire, the EDD is increased to 5 per cent of the declared value. On the other hand, if a case is not decided within four months of the reply to the questionnaire, customs are required to discontinue charging EDD. In practice, it is reportedly rarely discontinued and instances have been reported where importers have had to go high courts to get the Board's own circular implemented. It has also been reported that importers encounter great difficulty in getting refunds of EDD from customs, when, after years, the cases finally get decided in their favour.

There is a large volume of pendency in SVB – the Mumbai SVB Office reportedly has over 1000 files pending for SVB orders, with cases pending for 3 to 4 years. Consequently, a large number of provisional assessments remain pending and the importers' money, deposited with customs as EDD, remains locked up with the department.

The quality of SVB orders also leaves much to be desired. Often, they are said to be arbitrary and inadequate in the way they deal with critical issues involved in a case. Further, they are characterised by the same revenue bias that we have referred to in Chapter V and have a very low success rate when tested in appeal.

On the whole, the entire process is dissatisfactory for the importers as well as the department and there is an urgent need to revisit the basic approach.

### **Way forward**

India is the only country that continues to adopt the 'gate keeper' approach and is an outlier. No other customs organisation across the globe collects anything equivalent to EDD on imports. Their primary mode of control is post-clearance audit during which they undertake detailed scrutiny of the importer's business accounts for verifying compliance. As a matter of practice, the import value declared by the importer is accepted unless audit identifies gaps/faults in the valuation methodology followed.

There is a clear need to align the process in India with global best practices and this will mean doing away with the current process altogether. Having moved to a regime of self-assessment, customs have no reason not to accept the importer's declaration at the threshold and allow clearance based on that declaration. Import transactions can be subjected to post-clearance audit,

which has in any case been introduced in Indian customs as well. Valuation risks would be an important component of the risk matrix for audit selection.

### **VI.12 Post-clearance audit process in Customs**

There are two initiatives taken in customs for post-clearance audit of transactions of import and export, namely post-clearance compliance verification (PCCV) and on-site post-clearance audit (OSPCA). PCCV is carried out in the customs house, whereas OSPCA is carried out at the importer's premises. PCCV is done on a specific bill of entry, whereas OSPCA is done for a number of imports during a time period. OSPCA is clearly more comprehensive. The objective of both processes is to monitor, maintain and enhance compliance levels, while reducing the dwell time of cargo.

Under PCCV, the risk management system selects the bills of entry for audit after release of goods and sends them to auditors for scrutiny. The auditors are specifically instructed to scrutinize declarations, and the documents submitted for clearance, with reference to risks relating to valuation, classification, claim of exemption etc. and other compliance requirements. Procedurally, in cases of short levies, or other potential errors, a consultative letter setting out the ground for the auditor's views is issued to the importers/customs brokers and if they agree, voluntary compliance is achieved. Otherwise, formal dispute resolution processes follow. With the implementation of a risk management system in exports, a similar process is followed in exports as well.

For PCCV or OSPCA, the Board has issued an instruction that duplication has to be avoided and the same transactions should not be the subject matter of verification. But very often, this is not followed in the field. As a trade facilitation measure, there should be detailed Board guidelines, which should articulate clearly a comprehensive post-clearance audit process. These guidelines can be backed by effective and efficient risk management process to identify high risk importers accurately.

The OSPCA also needs to be developed fully to enable Indian customs to move closer to international best practices. Globally, customs are moving towards greater facilitation of secure cargo and using post-clearance audit process to treat revenue risks. Intervention in cargo clearance is made usually when the risks are of a kind that cannot safely be treated in a post-clearance environment. These typically are security, health or public safety risks and the like. The TARC will deal with this subject elaborately when we take up the terms of reference relating to capacity building in customs, in a subsequent report.

## VI.13 International Taxation

### Documentation requirement for issue of reduced or no TDS

Section 195 of the Income-tax Act, 1961, mandates the deduction of income tax at the rates in force from payments made or on the credit given to non-residents. Non-resident taxpayers often request a reduction or exemption from TDS under Section 197 of the I-T Act because they think they may not have sufficient tax liability in India. Many times, the processing of these applications takes considerable time, leading to complaints and acrimony. The response of tax officers to such complaints is that the documents filed by the non-resident taxpayer are inadequate. In fact, there is no guidance to taxpayers on the documents required, and it is left to the discretion of the tax officer to enumerate the documents required in each case. Often, the requirements listed by tax officers are so elaborate that it is quite cumbersome to fulfil them within a reasonable time.

It is, therefore, imperative to inform non-resident taxpayers *a priori* about the documents required and the time that it would take subsequently to issue a certificate under Section 197. In case the assessee/payer has got a certificate in an earlier year from any other tax office in India, these can also be attached. There should also be a facility for filing these papers on the system electronically so that to the extent possible. The physical presence of the taxpayer is not required.

Similarly, documentation requirements should be made known to non-resident taxpayers for the issue of the Tax Clearance Certificate u/s 230 of the I-T Act.

Section 172 of the I-T Act deals with the shipping business of non-residents. A port clearance certificate has to be given to vessels u/s 172(6) of the Act before they sail out. This often takes an inordinately long time leading to increase in the turnaround time for ships. There should be a facility available for the vessel captains to upload their documents on-line so that they do not lose time. The vessels' identity should be the same as that allotted to them by the International Maritime Organization, and on-line verification should be for trade facilitation. Such *a priori* documentation requirement can help avoid or reduce delays.

## VI.14 Prosecution for tax frauds

The tax administration gathers and processes information on individuals and non-individuals, including property ownership, investments, financial transactions and business operations, and analyses them for assessment and collection of taxes. It also undertakes intensive investigation of suspicious or anomalous transactions and high risk cases. The information gathered on these high risk cases through various sources are intended to identify, detect and punish cases of tax evasion and other tax crimes.

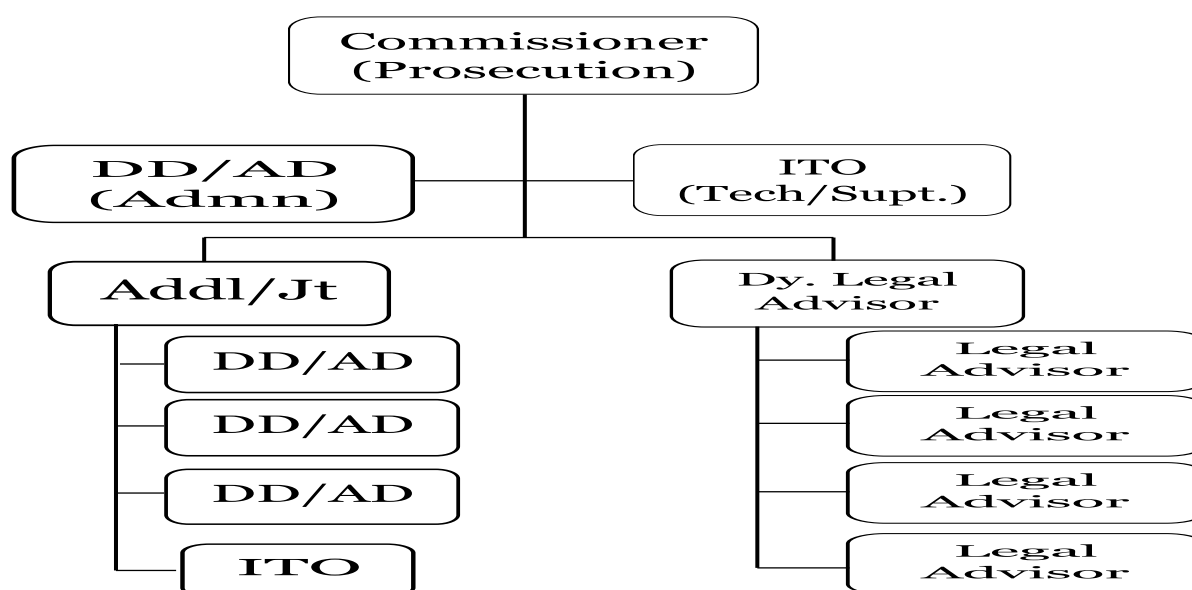
Investigation of tax evasion through search and seizure or tax crime investigations is meant to effectively deter such crimes rather than tax collection, which is any way done by regular scrutiny

assessments. The primary focus of search and seizure is to unearth evidence that is otherwise not feasible to get. The other is to marshal evidence with a view to launch prosecution in very high risk cases to create effective deterrence against tax evasion or tax crimes.

There is a need to set up a dedicated structure for prosecution matters in the enforcement vertical for both the departments so that due and more focused attention is given to this important area. This dedicated structure can be a separate vertical, assisted by lawyers embedded in the organization (may be through a deputation or appointment) so that the drafting of prosecutable issues, and highlighting the offence and the evidence to be adduced, is done in a professional manner. This wing should also be responsible for initiating prosecution in the courts and for co-ordinating the appearance of officers before courts along with the maintenance of case records and other logistical requirements.

The recommended structure is given in Diagram 6.1.

**Diagram 6.1: Structure for Commissioner (Prosecution)**



### VI.15 Intelligence and Criminal Investigation

In May 2011, the CBDT also set up a separate Directorate of Intelligence and Criminal Investigation into which the Directorate of Intelligence, in addition to the central information branch (CIB), was integrated. The objective was to investigate criminal matters having any financial implication punishable as an offence under direct tax laws as also to augment intelligence gathering and investigation capabilities, which also functions under the supervision and control of the Member (Investigation), CBDT.

At present, the work of this directorate is not properly delineated. Further, there is need to improve the overall capacity of the directorate to gather intelligence and information, improve the completeness and accuracy of information, and unify the information for developing actionable cases for appropriate action by the jurisdictional officers. The overall strategy should be to develop this into an intelligence hub for the I-T department and develop the ability to take action on a real-time basis. This will enhance the impact of investigation and detection of tax frauds.

While analysing information/intelligence collected from various sources, a geographical risk analysis/profiling sectoral risk analysis could also be carried out to identify major offenders and refer these cases to the investigation directorates for investigation, assessment and prosecution. Training and skill development (of tax investigators, tax auditors, and prosecutors), of course, would be required. A critical area for training would be ICT. ICT training would include training in internet and computer technology concepts relevant to electronic manipulation of accounts/business details and related crimes including cyber-crime, computer forensics and online investigative tools. Besides, training would include developing skills related to documenting and presenting documented evidence to courts, knowledge of laws relating to electronic manipulation of accounts/business details and related crimes, and skills related to developing strategy and standard procedures to maintain the secrecy and security of intelligence/information collected as well as to draw up computer security compliance strategies.

At present, there is a separate on-going project of data-warehousing and business intelligence (DW&BI). Further, a separate directorate of risk management is also proposed to be established under the approved schemes of restructuring. The functions and activities of the DW&BI project and the directorate of intelligence are closely integrated and linked, which may provide vital inputs to the directorate of risk management. It is imperative to ensure very sound and seamless forward and backward linkages amongst these projects/directorates so that the intended objectives are achieved in the desired manner. In this context, the issue relating to the merging of the activities of DW&BI project with the Directorate of Intelligence and Criminal Investigation needs to be considered.

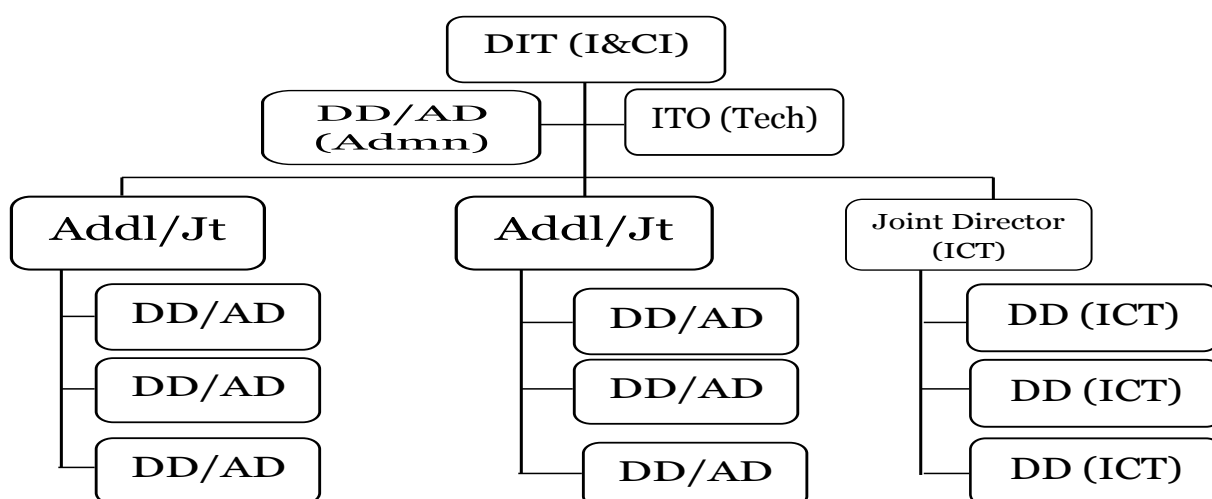
Officers will also need to have the ability to trace flows of money through complex financial arrangements and use sophisticated techniques to identify links between suspects and illicit financial activities. We suggest that customized training modules, both at the domestic level and the international level be introduced to ensure exposure to international best practices. The training courses may include short term specialized courses (of 2 weeks duration) and long duration broad courses (of between 1 and 6 months duration), covering various areas including modern investigative techniques, maintenance of secrecy and security of intelligence/information, role of ICT in the conduct of business and tax crimes, use of ICT in investigation, collection and analysis of electronic evidence, sources of information including banks and FIs, effective ways of intelligence/information collection and role of ICT, collation, analysis of intelligence and its use in risk profiling particularly with the use of ICT, tracing the movement of money, planning,

conducting and recording of statements, instruments available for obtaining information from overseas and for conducting investigation overseas and effective ways thereof.

The working of the directorate has to be ICT-based; therefore the directorate would need to have a good complement of personnel from the ICT vertical. This assumes significance in view of the increasing use of ICT in the actual operation of businesses, especially large businesses, and maintenance of accounting/financial information thereof. An investigating officer cannot be expected to be an expert in the area of ICT and will require the support and assistance of ICT personnel in various areas including in collection of electronic evidence, forensic examination and analysis of such evidence, its effective utilization and safe keeping for the purposes of appellate and other proceedings. Any proposal to outsource this functioning to some expert agency may not be a good idea as investigation functions are very sensitive and secrecy and data security are vital. Thus, an appropriate accountability structure needs to be put in place; hence, it is suggested that there should be a specialized ICT vertical as an integral part of the investigation set up. Drawing personnel deployed for this purpose from an overall comprehensive pool of systems/technology personnel required/deployed for direct taxes administration as a whole may be considered.<sup>88</sup>

In the light of the above discussion on the increasing use of ICT in the operation and conduct of businesses, a similar dedicated vertical is also needed for investigation directorates, inter alia, to assist in the collection, examination, analysis and documentation of electronic evidence as also in computer forensics and cyber-crimes. Based on the above, its structure should be as given in Diagram 6.2.

**Diagram 6.2: DIT (Intelligence and Criminal Investigation)**



<sup>88</sup> US IRS has a separate division 'Operations Support' which has a dedicated post of Chief Technology Officer and technology related structure. US IRS boasts one of the largest and most ambitious Information Technology (ICT) organizations in the world -- the Modernization and Information Technology Services (MITS) Division which is there for the core activities of the organization.

## VI.16 Non-Profit Sector

The non-profit sector, including NGOs, trusts and charitable institutions and companies incorporated under Section 25 of the Companies Act have grown significantly during the last few years. The sector has expanded the extent of its coverage, scope of its activities and has also been attracting increased resources, including funding from foreign organizations/private individuals.<sup>89</sup> Tax administration of the non-profit sector, therefore, assumes importance.

Tax Administration of trusts and charitable institutions (tax-exempt entities) and other entities like provident funds and other funds are facilitated through Sections 10, 11 to 13 and Section 80 G of the I-T Act. The CAG report of 2013 stated that the I-T Department received 1.75 lakh applications for registration for claiming exemption during FY 2008-09 to FY 2010-11. Registrations/approvals/notifications in 0.90 lakh cases were granted and rejected in 0.36 lakh cases; 0.49 lakh cases were pending. During the audit, CAG also found that 3 per cent of assesseees (approximately 51,000 trusts) claimed and received 96 per cent of all exemptions/deductions in FY 2010-11.<sup>90</sup> In this report, the CAG raised concerns on the registration/exemption process for the tax-exempt sector, non-linkage with PAN, inadequate and non-uniform processes for granting exemption, and non-existence of a reliable and comprehensive database. The CAG made the following recommendations: (a) quoting PAN to be made a pre-requisite for registration for claiming exemption under the act (b) e-filing of returns by tax exempt entities (c) development of a reliable, comprehensive and usable database/register of tax-exempt entities (d) verification and monitoring of donations received by such entities under Section 80G of the IT Act (e) extension of TDS provisions to such entities and (f) audit reports submitted by tax-exempt entities to include clauses on proper disclosures.

### VI.16.a The way forward

The I-T department does not have a national database of the non-profit sector. It is, therefore, imperative that a database is prepared and made available to the public. Their activities should also be indicated. This would create grass-roots pressure on non-functioning entities or those entities, which are exempted but not fulfilling their objectives, and provide an opportunity to remove those entities. This is particularly so as the sector is diverse, complex and dispersed, with different modes of governance, funding and a wide range of activities. If the need be, the I-T department can link

<sup>89</sup> According to the India Philanthropy Report, 2011, charitable donations to the Indian non-profit sector in 2010 totalled between 0.3 per cent and 0.4 per cent of GDP, up from 0.2 per cent in 2006. The number of NGOs also grew at an average annual rate of 10 per cent between 2006 and 2009 with 33 lakh NGOs in 2010 – about 700 NGOs opened every day over the past three years. It is expected that with the new Companies Act making it mandatory for Indian companies to spend 2 per cent of their profits on CSR activities, and with the increase in number of high net worth individuals (HNWIs) in India, funding to the non-profit sector will increase further in the coming years.

<sup>90</sup> CAG Report No. 20 of 2013



with the Charity Commissioner of each state.<sup>91</sup> This would also help the donor check the status of the charity. The information could be in terms of PAN and TAN, whether the entity enjoys the benefit of exemption u/s 11 of the I-T Act, *i.e.*, whether it is registered under Section 12A/12AA of the I-T Act, whether the entity has obtained registration under Section 80 G of the act for donors to claim deduction under that section, and whether the entity is registered under the Foreign Contribution (Regulation) Act.

It may also be stated here that there is no facility to condone delay in obtaining registration and if that is not obtained, the income automatically becomes taxable. Large, organized charities usually do not have much problem as they apply for 80G. Difficulty arises in the case of small charities doing good work but not aware of these requirements. 80 G certificates are now valid till cancelled and it has reduced hardships significantly. Making this information available online will be of great help to donors to check on the registration status of charitable institutions.

#### **VI.17 Departmental manuals**

The CBEC has released various manuals from time to time on legal provisions, procedures and instructions. However, many of these manuals have not been updated for long. Besides, some of these manuals are available only in paper form, that too only in a few offices at regional/field levels. Most officers do not have easy access to these for ready reference. These manuals are useful to officers for their assessment and adjudication work. It was also been mentioned during various interactions that the same topics are covered in more than one manual and there are contradictions between two manuals on the same topic. This creates confusion.

The Commission recommends that there should be one basic manual for all indirect taxes. This should cover all machinery provisions and procedures such as those relating to registration, returns, refund, classification and valuation, etc. A supplementary manual can be released for common or specialized issues, like intelligence and investigation, adjudication, eligibility, availment and utilization of CENVAT credit, valuation of related party transactions, negative list of services, etc. The manuals should be updated annually and put up on the website for easy downloading by both taxpayers and tax officers.

The same practice needs to be followed in the case of direct taxes.

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<sup>91</sup> Charitable institutions in some states like Maharashtra, Gujarat, and Rajasthan are required to be registered with the Charity Commissioner. The Charity Commissioner essentially administers charities and details/changes in trustees, immovable properties, borrowings, etc are required to be filed with the Charity Commissioner. The Charity Commissioner allots a number to a charity so registered. But so far, these details are not available to the public.



## VI.18 Recommendations

The Commission recommends the following:

### a) Registration

- i) The present permanent account number (PAN) should be developed as a common business identification number (CBIN), to be used by other government departments also such as customs, central excise, service tax, DGFT and EPFO. A better regulatory system should be put in place to enhance its robustness and reliability.
- ii) Both central excise and service tax should be covered under a single registration as both the taxes are administered by the same department and cross utilisation of credit is permitted between central excise and service tax under the CENVAT credit rules.
- iii) It is necessary to provide for de-registration, cancellation or surrender of registration numbers and PAN.

### b) Tax payments

- i) Banks should be left to authorize their branches to collect taxes, and the present process of selection of banks needs to be purely standards-based and transparent.
- ii) Payment gateways should be increased for better customer convenience.

### c) Filing of tax returns

- i) I-T returns should also include wealth tax return so that the taxpayer need not separately file wealth tax returns. These returns should also be processed together in the CPC at Bengaluru.
- ii) The disclosures in the return should include a brief mention of the issues on which there has been an on-going litigation between the tax administration and the taxpayer, and should indicate the factual and legal position adopted while computing taxable income for a year. This is to protect taxpayers from allegation of non-disclosure, suppression, escapement of income, etc., which often results in the initiation of penal provisions.
- iii) Taxpayers should give information on their compliance experience at the time of filing returns; this information should be used to improve taxpayer service bringing in customer focus.
- iv) Territorial jurisdiction should be dispensed with and industry-based assessment should be introduced in line with the recommendations in Chapter III of this report.
- v) CBEC should set up centralized processing units in line with the CPC, Bengaluru, and CPC-TDS at Ghaziabad for processing central excise and service tax returns.

- vi) There should be common return for excise and service tax.
- vii) The CBEC should set up an e-portal and all invoices should be issued from that portal. This portal should be linked and made compatible with SAP ERP systems, which a majority of the companies use for their own invoicing. E-invoice would simplify credit/refund procedures, which would become automatic.

#### **Scrutiny in direct taxes and audit in indirect taxes**

- i) Hearing in all tax cases by personal presence should be avoided, and data can be sought through an e-system. The taxpayer can upload the data on the e-system. Personal hearing should be sought only in complex cases.
- ii) There should be specialization in scrutiny/audit work as recommended in Chapters III and IV of the report. Capability should be developed through training and re-training. The two Boards should also develop a standard audit protocol, with clear emphasis that the AOs must follow the principles of natural justice and respect the taxpayer rights to privacy and dignity.
- iii) Audit Commissionerates in the CBEC should undertake integrated audit covering central excise and service tax together and the onsite customs post clearance audit (OSPCA) in case of accredited clients (ACP), as the records and books to be verified are common to all the taxes administered by the CBEC. In major cities where exclusive Central Excise or Service Tax Commissionerates are functional, the audit function should be assigned to a specific Audit Commissionerate for carrying out integrated audit of customs, central excise and service tax.
- iv) Joint audits should be undertaken by field formations of the CBDT and the CBEC to shorten the examination processes and reduce costs, both for tax administration and for taxpayers. This may require a change in procedures for the CBDT as at present, the I-T Act does not have a provision for open audit as is done in indirect taxes.
- v) Broad-based selection filters for the risk assessment matrix should be put in place. There is also a need to set up a standard operating procedure which recognizes the iterative method, testing them ex-post, to develop effective and efficacious parameters for the risk assessment matrix.

#### **d) Tax deducted at source**

- i) The insistence on manual filing of TDS certificates before AO for verification of refunds claim should be done away with.
- ii) The tax deductor's duties and obligations in terms of making information compliance and also depositing the deducted amount is onerous and they are not compensated for that. Therefore,

some compensation for them should be considered. This can be in terms of a small commission to be deducted as business expenses by them to fulfil their obligations.

- iii) The CPC-TDS should allow correction in the name of the deductees to avoid multiple submissions of TDS forms. Even a single error requires the deductor to submit the entire return afresh. The process of uploading the entire file for one or two corrections is cumbersome and disproportionate to the gravity of the error. This adversely impacts taxpayer services. Subject to the required checks and validations, there is a need to widen the scope of online error rectification service.
- iv) A passbook scheme for TDS may be adopted with some safeguards. Once TDS is deducted from a payment, TDS should get credited to the taxpayer's account. This should be like an account with running balance, to be utilized by the taxpayer at his option to set off his tax liabilities.
- v) To assist small and marginal tax deductors in preparing and filing their TDS returns, either existing tax return preparers or a separate system of TDS return preparers should be initiated with more training and a better remuneration structure than at present.

**e) Refunds**

- i) Refunds should be issued within a strict time frame. There should be a separate budgetary head for refund of direct tax and indirect taxes in the annual budget out of which refunds should be issued so that there is transparency. Adequate allocation should be made by the government under this head.
- ii) Refunds sanctioned should be paid along with the applicable interest automatically as is done in the case of income tax and not on demand by the taxpayers. As in the case of direct taxes and customs duty drawback, the refund and interest payment should be directly credited to the bank account of the taxpayer.
- iii) The rate of interest on refunds should be the same as the interest charged by the tax department. This would ensure equity between the two interests and would not disadvantage the taxpayer unduly.
- iv) Refunds arising after a favourable appeal should be paid in time or the tax payer should be allowed to set-off against the advance tax liability or self-assessment tax liability of the subsequent years against the refunds due.
- v) The test to determine whether there is unjust enrichment in indirect taxes should be limited to cases of refunds where there is direct passing on of amounts claimed as refunds. In any other situation, this concept should not be applied.

- vi) Refund claim subjected to pre-audit verification should be issued within a specified time. The post-audit verification of refund claim should be risk-based.
- vii) An easier and simplified scheme should be introduced for service exporters. The entire refund filing and processing mechanism should be online.

**f) Foreign tax credit**

- i) The CBDT should come out with clear FTC guidelines, which should also cover the timing differences between different tax jurisdictions.

**g) Tax collections**

- i) There should be a separate vertical for tax collection as recommended in Chapter III of this report. To improve the efficiency of debt collection activities, both the Boards should work on setting up risk assessment models to compute risk scores for each new tax debt case that reflects the likelihood of the taxpayer paying their debt based on objective criteria.
- ii) Stay of demand information should be uploaded electronically on the central server of the departments so that tax collectors can have system generated prior intimations regarding the expiry of stay orders.
- iii) The power to write off dues should be raised at different levels of the organization and made uniform for both direct and indirect taxes. Full powers should be vested in the respective Principal DGs in charge of recovery in the respective Boards. Write off should be done in concurrence with the CFO at the headquarters level and his nominee at the regional/zonal level.

**h) Related party transactions**

- i) Both Boards should frame detailed documentation requirements for transfer pricing as well as custom valuation, keeping in view that such documentation should be reasonable, to bring certainty and predictability for the taxpayers.
- ii) There is a need to align the process in India with global best practices and to do away with the current process. With self-assessment in place, import transactions should only be subjected to post-clearance audit. Valuation risks would be an important component of the risk matrix for audit selection.

**i) Trade and business facilitation**

- i) As a trade facilitation measure, on-site post clearance audit should be developed fully to enable Indian customs to move closer to international best practices. Intervention in the cargo clearance should be made on the basis of a risk matrix.

- ii) Documentation requirements for non-resident taxpayers for a certificate under Section 197 of the I-T Act should be well-publicized. The taxpayer should be told *a priori* the time that will be taken for the issue of the certificate. That time period should be reasonable. A certificate issued in an earlier year from any other tax office in India to an assessee/payer should be attached with other documentation. There should also be a facility for electronic filing of these papers so that the need for the physical presence of the taxpayer is, to the extent possible, obviated.

**j) Enforcement Administration**

- i) There should be a dedicated structure for prosecution matters for more focused attention to this important area so that the unexploited potential for creating deterrence against tax evasion is realized.
- ii) The working of the Directorate of Intelligence and Criminal Investigation should be ICT-based and should be given a good complement of personnel and other resources to make it realize the potential.

**k) Non-profit sector**

- i) CBDT needs to put in the public domain a national database of the non-profit sector to bring transparency.

**l) Manual of tax departments**

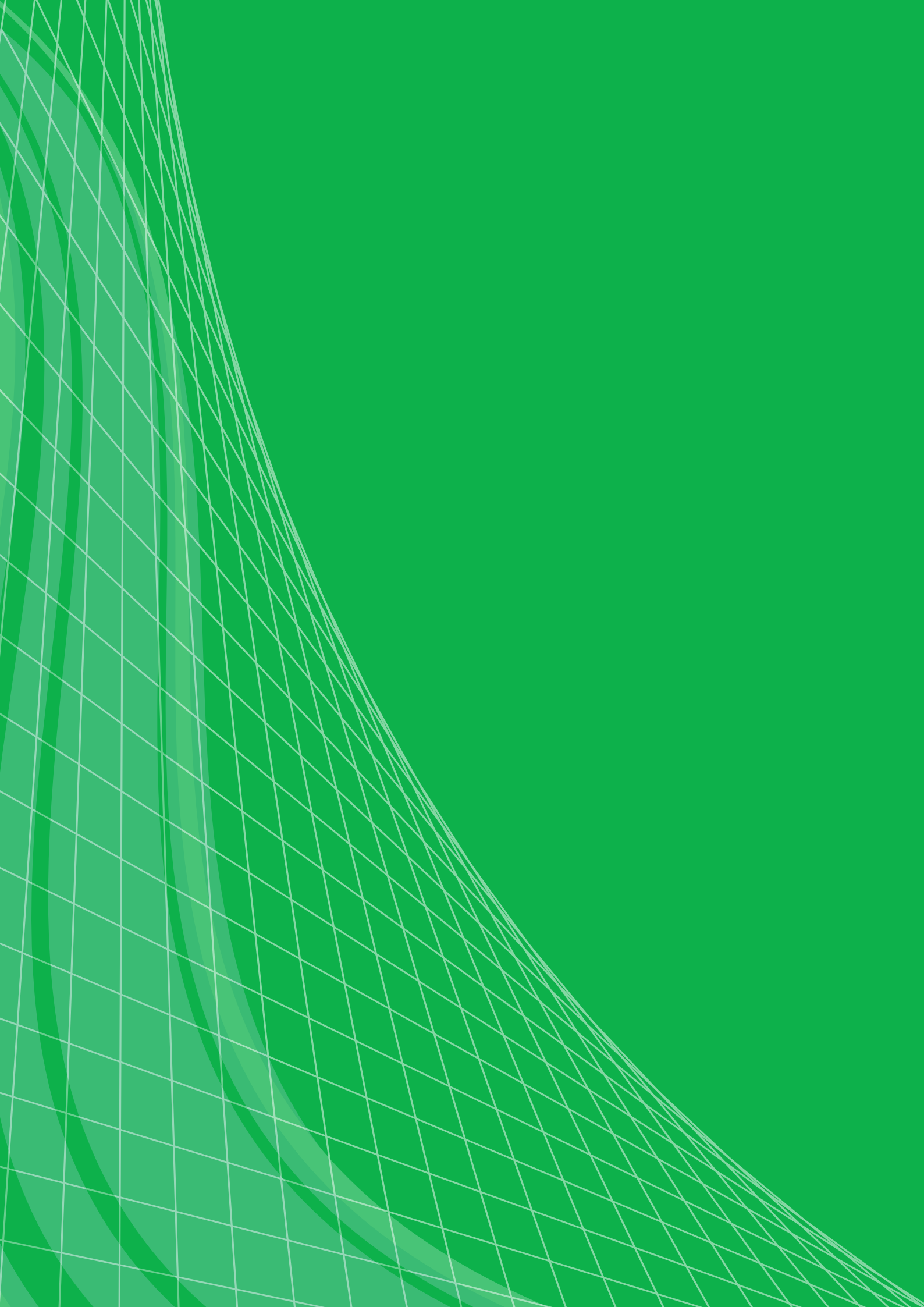
- i) Departmental manuals should be annually updated and put up on the website for easy downloading by both taxpayers and tax officers.



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# **CHAPTER VII**

## **INFORMATION AND COMMUNICATIONS TECHNOLOGY**





# Chapter VII

## Information and Communications Technology

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# Chapter VII

## Information and Communications Technology

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### VII.1 Existing use of technology in tax administration

#### VII.1.a Review of present ICT implementation

In India, CBEC and CBDT have pioneered the adoption of ICT in government departments. Both these departments have established exclusive directorates to deal with computerization initiatives and have benefitted significantly in terms of better compliance, more efficient processing and improved taxpayer satisfaction. Both have over time moved from systems designed primarily to capture data to on-line transaction processing systems. They have also evolved from distributed systems to 2nd generation centralized ICT systems and now are looking at the next generation of ICT systems. Both now host their computing resources in professionally managed data centres and disaster recovery and business continuity centres. These are connected to the departmental offices via wide area and local area networks, which are leased from service providers. Both Boards lease data centres for projects (some projects of the CBDT are also hosted on supplier-arranged data centres). This has enabled infusion of modern technology, improved security and helped improve management of the departments' hardware and software resources. Both have also set up help desks to help users solve problems in accessing departmental systems.

The implementation so far been project based *i.e.* various projects are identified and project execution entities selected through a tendering process as per Government procurement procedures and different major projects are being executed by various service providers who are responsible for different aspects of the project including application software, ICT infrastructure projects etc. Some of the CBDT projects are being executed on an outcome based model in which the vendor takes the entire responsibility for the hardware, software etc.

The main ICT systems which are being operated by the two Boards are indicated below.

#### i) CBDT

##### **Issue of Permanent Account Number PAN**

The income tax department assigns a permanent account number to each assessee through its assessee information system (AIS). PAN acts as an identifier for the “person”, not just for the income tax department but for various other entities such as banks. It is now required for various activities like opening a bank account, opening a DEMAT account, obtaining registration for service tax, sales tax/VAT etc.

The receiving and processing of PAN applications have been outsourced, while the PAN is generated through the Assessee Information System (AIS) of I-T Department's system. A PAN verification facility is provided through CBDT's e-filing server to various Government and Non-Government agencies.

### **Income Tax Department (ITD) Application**

The core components of the ITD application are the assessee information system (AIS), for PAN, and the assessment modules (AST) for assessment of returns and related work. It has a number of other modules:

- a) Tax Accounting System (TAS)
- b) TDS Information System (TDS)
- c) Individual Running Ledger Account System (IRLA)
- d) Enforcement Information System (EFS)
  - a. Search and Seizure
  - b. Survey
  - c. Tax Evasion Petition
  - d. CIB System
- e) Resource Management System (RMS)
  - a. Financial Resource System (FRS)
  - b. Physical Resources System (PRS)
  - c. Payroll System
  - d. Manpower Management System (MMS)
- f) Management Information System (MIS)
- g) Judicial Reference System (JRS)

The ITD application was designed as an integrated system providing for all the functionalities for end-to-end working at all levels. However, barring the processing of returns and tax payment accounting, the use of information technology in subsequent work is patchy for various reasons and the other modules have not been fully used.

### **Income Tax Business Application (ITBA)**

To replace the ITD application, which is nearly 20 year old, CBDT is developing a new flagship business application, ITBA, with enhanced capabilities. The new application is intended to comprehensively cover all core processes of the department, including those which are not

currently automated. It will also integrate work that is currently being done in different systems. The project is scheduled to be completed by mid-2015. It is planned to be integrated with another important application under development, the Human Resource Management System (HRMS).

### **E-filing of Income Tax Returns**

This portal enables e-filing of income tax returns, audit reports and other forms of the income tax over the internet directly by taxpayers and through e-return intermediaries (ERIs). The project also provides other web-enabled services to facilitate public private participation in the filing of returns. CBDT has successfully extended the coverage of e-filing over the past few years and currently a total of 58 forms, including all 8 income tax returns (ITRs) are available for e-filing. The number of returns e-filed has risen from around 4 lakhs in 2006-07 to nearly 296 lakhs as on March 31, 2014.

### **e-Payment**

The e-payment project enabled online payment of all direct taxes using the net banking facility. The scheme provides for ease of payment anytime, anywhere. With effect from April 1, 2008, e-payment of direct taxes has been made mandatory for all companies and 44AB<sup>92</sup> cases. The e-payment facility has now been extended to 30 agency banks collecting direct taxes. SBI has started the e-payment facility online through its debit cards as well. A facility has also been introduced that allows taxpayers to pay direct taxes through ATMs of the Corporation Bank, Bank of Maharashtra, Axis Bank, Central Bank, Bank of India, HDFC Bank, Canara Bank, Union Bank of India, Punjab & Sind Bank, Punjab National Bank, Indian Bank, UCO Bank, Andhra Bank, Bank of Baroda and Oriental Bank of Commerce. In financial year 2013-14 (until December 31, 2013), 64.41 per cent of the tax payment transactions happened through e-payment and 87.48 per cent of the tax collected was paid via e-payment.

### **OLTAS (Online Tax Accounting System)**

The OLTAS project integrates tax payments made by tax payers with the running ledger accounts of tax payers maintained by the income tax department for tax credit. OLTAS is being implemented in close co-ordination with the RBI, agency banks and Tax Information Network (TIN).

The objective of OLTAS project was to do away with the paper trail for tax credit and the paper validation system. Under the project, information relating to all payments made in a bank is

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<sup>92</sup> These are companies for whom tax audit is mandatory under the provisions of Sec. 44B of the Income Tax Act, 1961.

uploaded on T+3 basis.<sup>93</sup> This is used for tax accounting and reconciling the tax payments with the returns filed by tax payers and provides the administration with real time information about tax collections. A country wide network of 30 agency banks with 13,000 branches including three private sector banks are authorized by the RBI to collect direct tax payments under OLTAS.

NSDL extracts the data, prepares OLTAS files and transmits them to the OLTAS server maintained at National Computing Centre (NCC), New Delhi. From there, the data is transferred into the ITD's OLTAS database, enabling assessing officers to credit the taxpayers for payments made by them, and to generate the collection reports for AO/ Range Head/CIT/CCIT based on PAN/TAN jurisdiction, irrespective of the place or mode of payment.

OLTAS dashboards enable monitoring direct tax collections on a daily basis.

### **Centralized Processing Centre (CPC) at Bengaluru**

This was established in 2009 when the computation and financial accounting system was tested and the first set of I-T returns were processed. The digitization and processing of paper salary returns for the assessment year 2008-09 was started by January 2010 and the processing of e-filed returns of assessment year 2009-10 was taken up by April 2010. The project is being managed with support from M/s Infosys on a transaction model basis.

The CPC has been a success story as seen from the scale of its operations. It has processed 5 crore e-filed returns in its 4 years of operations as against the 2.7 crore e-filed returns it was expected to process in 5 years according to initial projections. In FY 2013-14 itself (till 31st December, 2013), it processed 1.76 crore e-filed returns, achieving a peak processing capacity of 2.80 lakh returns per day. The average processing time for returns has been reduced to 66 days from the approximately 14 months it took when they were manually processed.

The overall percentage of e-filed returns for assessment years 2010-11 to 2012-13 processed at CPC as on December 31, 2013 is about 88 per cent.

CPC also provides tax payer assistance and a mechanism for grievance handling through an exclusive call centre. Sixty call centre agents attend to over 5,000 calls daily in 3 languages now, with over 25 lakh calls attended to as on December 31, 2013.

CPC also processed over 16.28 lakh rectification requests out of the 16.59 lakh requests filed (over 98 per cent completion) as on December 31, 2013. CPC has provided facility for on-line request for rectification, which has resulted in quicker handling of such requests. The average time taken for rectification at CPC is around 45 days from the date an on-line request is filed.

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<sup>93</sup> This denotes that the settlement must happen within three days of the transaction - excluding the date of the transaction.

**CPC (TDS) at Vaishali, Ghaziabad**

The CPC (TDS) project marks a major step in ensuring TDS compliance through the processing of TDS statements and comprehensive data cleansing of TDS statements using technology driven end-to-end processes. It has helped reduce TDS mismatch cases, which is apparent from the fact that in more than 96 per cent of the cases processed at CPC-ITR (Bangalore) during this year, there was no TDS mismatch.

CPC (TDS) has also provided taxpayers the facility to view their tax credit statement (Form 26AS) online on an “anytime, anywhere” basis. It has also help improve TDS administration by providing information support through MIS and analytical reports.

CPC (TDS) has enabled faster processing of income tax returns and issuance of speedy refunds, thus reducing the expenditure on interest paid on account of delayed refunds.

**Data Warehouse and Business Intelligence (DW&BI) Project**

The income tax department initiated the Data Warehouse and Business Intelligence (DW&BI) Project in 2013 to develop a comprehensive platform for effective utilisation of information. The project is currently in the design phase.

**Income Tax Website ([incometaxindia.gov.in](http://incometaxindia.gov.in))**

This is the information portal of the CBDT for dissemination of information to taxpayers on the department and its activities. It provides tax law related information like Acts, rules, circulars, notifications, return and challan forms etc. Tutorials on filing income-tax returns and TDS statement, taxpayer information booklets and pamphlets etc. have also been made available on this website. It provides links to various services like e-filing of returns, PAN, TAN, TDS, online tax payment, view of tax credit, refund status, direct download of Form 16A etc. Further, online services, like tax return preparer locator, bank branch locator for tax payment, challan correction mechanism, TIN facilitation locator and public grievances have also been added.

Apart from these, CBDT has also implemented other projects like the refund banker scheme, ASK and the non-filers monitoring system (NMS) pilot project, in which technology has played a crucial role and which have contributed to improved compliance as well as taxpayer services.

**ii) CBEC****Indian Customs EDI System (ICES)**

This is an on-line transaction processing system that caters to import and export clearances in customs. All declarations are filed either online through ICEGATE or through service centres attached to customs formations and are processed by officers on the system.

The salient features of ICES are as follows:

- i) Electronic filing of cargo declarations by shipping lines/airlines and other transporters and agents and goods declarations by importers/exporters/custom house agents
- ii) Electronic processing of such declarations on a 'first come, first served' basis.
- iii) Electronic messaging with banks for the collection of duties and disbursal of duty drawback.
- iv) Electronic messaging with custodians and other agencies concerned with cargo clearance.
- v) Single point of interface of trade with customs.

The declarations can be filed in the ICES either through service centres attached to customs offices or remotely via ICEGATE.

ICES is now operational at more than 120 customs locations covering over 95 per cent of the country's international trade and has succeeded in automating all key clearance operations in imports and exports. Annual filing in the customs system has now reached about 1 crore documents. It has significantly reduced physical interface in customs, enhanced transparency and reduced the number of steps in the processing of clearance documents.

#### **ICEGATE (Indian Customs and Excise Gateway – [icegate.gov.in](http://icegate.gov.in))**

**ICEGATE** is the e-commerce portal of Indian customs. It enables remote filing of declarations and payment of duties on a 24×7×365 basis and provides seamless message exchange between customs and its trading partners. On an average 80,000 messages are exchanged with CBEC's trading partners.

Using the tracking facility in ICEGATE, importers/exporters/custom house agents etc., are able to track the status of their transactions via multiple channels such the World Wide Web, e-mails, SMS and touch screens. ICEGATE also provides the facility of e-payment of customs duty for the convenience of trade.

#### **Customs Risk Management System (RMS)**

This works in conjunction with the ICES and is designed to enable the department to strike an optimal balance between facilitation and enforcement and to use its resources effectively. At its core is a risk engine that enables risk managers to adopt a selective approach and categorize import and export consignments according to risks and adopt suitable treatment for risk. Thus, low-risk consignments may be facilitated while high-risk consignments are subjected to tighter checks. Customs clearance in India had traditionally been based on physical control where each consignment was examined and assessed to duty. This is no longer feasible because of rapidly increasing volumes of international trade, which necessitated the move to a risk-based approach



to customs control. As the country faced increasing global competition, there was need to enhance the levels of facilitation provided by customs. As part of the RMS implementation, the CBEC also implemented an accredited clients programme under which clients who had a clean track record of compliance and demonstrated willingness and capacity for compliance were granted assured facilitation. This is an application-based programme under which clients meeting published criteria are taken on board. Barring a small percentage of random checks or cases of specific intelligence, their consignments are cleared without assessment or examination and the main control mechanism is post-clearance audit.

RMS is now running in 89 customs locations. The CBEC also set up a formal structure for risk management in 2007 by setting up the Risk Management Division (RMD) in the Directorate of Systems. Apart from the management of the RMS, the RMD is responsible for conducting a constant review of data and information from internal and external sources to track existing and emerging commercial and contraband risks. This is primarily a research and analysis function, leading to the development of risk profiles. The main operational responsibilities of the RMD include writing and reviewing risk rules, management of targeting and interventions (particularly at the national level), management of the Accredited Clients Programme (ACP), managing Post-Clearance Audit (PCA) and liaising with other agencies. Besides that, it has to perform strategic and tactical co-ordination functions. Periodic reviews of performance are carried out through the National Risk Management Committee, which has important functionaries of the CBEC as members. Similarly, there are local risk management committees in custom houses that review risk management at the local level, thereby enhancing facilitation as well as increasing the effectiveness of interventions.

### **ACES (Automation of Excise and Service Tax – [aces.gov.in](http://aces.gov.in))**

This is a workflow based system designed to automate all core processes in central excise and service tax departments in order to reduce physical interface and enable the taxpayer and tax administration to interact with each other almost completely in a digital environment. Its development followed a Business Process Re-engineering (BPR) exercise, as a result of which some processes were re-engineered, forms revised and an entirely new methodology for audit developed. It followed an earlier system called SERMON, which was largely data entry driven and did not provide for workflow automation.

ACES has modules for:

- i) Electronic registration of central excise and service tax taxpayers
- ii) Electronic filing of central excise and service tax returns
- iii) Electronic filing of various claims, permissions and intimations submitted by taxpayers in the course of business with the department
- iv) Risk- based selection for scrutiny of central excise returns

- v) Dispute resolution, which provides for tracking of show cause notices, adjudication orders, appellate decisions and related workflows
- vi) Processing of claims, permissions and intimations filed by the taxpayers
- vii) Revenue reconciliation (matching tax payment information received from banks via the EASIEST system with that furnished in the taxpayers' returns)
- viii) Automated report generation
- ix) Audit module involving selection of units based on risk parameters and tracking of audit results
- x) Central excise processes related to export
- xi) Examination of service tax returns and their risk-based selection for scrutiny
- xii) A taxpayer ledger that is regularly updated based on the activities of the department or the taxpayer.

ACES provides unique features that were not available earlier. It has facility for on-line PAN validation with the CBDT database. This ensures that registration is granted only to applicants who have a valid PAN. Further, it generates an automated acknowledgement on the successful submission of an application, enabling businesses to commence operations without waiting for physical verification, which happens post facto. It also enables tax payers to track the progress of their claims online and has a provision for ledger maintenance that allows tax payers to view the status of their liabilities and dues, etc.

To help users, both internal and external, the CBEC also invested in a learning management system, which is an audiovisual tutorial that guides the user through the system. This is available on the ACES website. CBEC has also set up a helpdesk with a toll free number for problem resolution.

To promote e-filing, several measures were taken. The ACES website provides downloadable utilities to prepare returns. For taxpayers who might require help, the Directorate of Systems (DoS) has entered into MOUs with the Institute of Chartered Accountants, the Institute of Cost and Works Accountants and the Institute of Company Secretaries. Under the MOUs, members of the three institutes, who meet the standards specified by DoS and who are vetted by the Institutes, can set up certified facilitation centres (CFCs) to help taxpayers digitize paper returns and e-file them in ACES for a small fee. Over 1100 such CFCs have been set up across the country.

Although ACES provides a workflow-based solution for all core processes, for various reasons, only the registration and returns modules have been fully used, with the use of other modules being patchy and uneven.

### **Electronic Accounting System in Excise and Service Tax (EASIEST)**

EASIEST aims at reconciling the duty paid in banks with the data furnished in central excise and service tax returns. Like OLTAS of the CBDT, it has been set up and managed by the NSDL within the framework of an MOU between the CBEC and the NSDL. All banks authorized to collect indirect taxes participate in EASIEST. Under this project, all tax payment challans are uploaded on a daily basis by the banks on the NSDL site. The dashboards of EASIEST provide the latest revenue collection figures to CBEC officers. They also provide daily statistics of the fund settlement of banks with the Reserve Bank of India.

EASIEST sends a daily feed to ACES to match the payment particulars with those mentioned by taxpayers in their tax returns. It is one of the source systems for the CBEC's data warehouse.

The EASIEST portal also facilitates e-payment of central excise duty and service tax. Currently, over 95 per cent of central excise and 80 per cent of service tax collections are via e-payment.

### **CBEC Website (cbec.gov.in)**

As part of the communication strategy, the CBEC website, which is primarily an information website, was launched in the year 2000. It gives information about all aspects of CBEC, the relevant enactments, rules, procedures and the latest government notifications and forms. It also provides links to the other CBEC portals for e-services. Although it was designed as a passive website, a degree of interactivity has been introduced recently to enable users to view the effective rates of customs duty on imported goods.

### **Data warehouse**

Another major project CBEC undertook was to set up an enterprise data warehouse (EDW), which has been operational from January 2011. The EDW takes regular data feed from the major transaction processing systems of the CBEC, namely, ICES 1.5, ACES and EASIEST, and provides powerful data mining, reporting and analytical tools to users. It has enabled users to take a 360° view of taxpayers across customs, excise and service tax. It enables multidimensional analysis of tax data to look at the data across various combinations of data items and to explore the relationships between them and has the capability of performing “what if” analyses. It also provides reports in a variety of formats such as the following:

- Pre-defined static reports that give the output in a fixed format generated at a fixed frequency.
- Prompt-based pre-defined reports, with users selecting the parameters for which they wish to generate the report (e.g., financial year, month, zone, Commissionerate, tax payer name, etc.).

- Ad hoc queries/reports give users the ability to create customized reports spontaneously and on-the-fly and select the content and format of the reports.

### **GST Network (GSTN)**

The CBEC played a crucial role in the creation of GSTN, the SPV for providing the ICT backbone for the proposed GST implementation.

#### **VII.1.b Analysis of the current situation and key risks**

As would be seen from the brief summary of ICT implementation above, the strides made by both the Boards in ICT implementation are impressive. The contribution of the respective ICT projects has received wide acknowledgement from stakeholders as they have simplified many processes, reduced cycle times and significantly enhanced transparency.

The operationalization of the CPCs at Bengaluru (for I-T returns), and Ghaziabad (for TDS returns), has given a fillip to e-filing and resulted in considerable cost savings. CPC (TDS) has successfully brought about a significant reduction in mismatches as apparent from the fact that in 96 per cent of the I-T returns processed in CPC (Bengaluru), there was no TDS mismatch. High e-filing of I-T and TDS returns, coupled with the refund banker scheme, has also resulted in speedier settlement of refunds. The facility for electronic filing of rectification requests has also led to quicker handling of these requests.

In customs, the ICES has reduced a large number of steps in the clearance process and made it transparent and smooth. Similarly, the risk management system has significantly reduced the need for physical interface and enhanced facilitation, reducing the dwell time of cargo in ports and airports. It has enabled accredited clients manage their import-export operations on “just-in-time” basis, improving their logistics operations. Exporters have been getting their drawback directly credited to their bank accounts. For excise and service tax assesseees too, ACES has provided convenient e-filing and e-registration and the facility to file most of their claims, intimations etc. on line.

For an average taxpayer, with facilities like e-filing, e-payment, etc., available life has become much simpler. Not only has it reduced the need for physical interaction with the departments, the enhanced transparency through ICT systems ensures that the taxpayer is able to track his documents, refunds, etc., remotely via the Internet.

There is, however, a long road still to be travelled towards fully integrated ICT solutions covering all departmental functions and comprehensive workflow automation to help achieve paperless administration, robust document and information management systems, the use of data mining tools for risk management and so on. The overall picture that emerges is that while in many areas, ICT has transformed the operations of the two Boards, a number of other important areas remain

outside ICT coverage and continue to remain in a paper environment. Some key gaps are the following:

- In customs, while the basic transaction processes have been fully automated in ICES, a number of important processes, such as enforcement processes, dispute resolution and refunds remain in a paper environment. There are other important areas such as SEZs for which no ICT system has been developed.
- In excise and service tax, while the ACES application provides for automation in all key areas, the actual performance in areas other than e-registration and e-filing of returns and e-payments remains far from satisfactory. There is also a great deal of variability across different field formations as performance depends on the interest taken by the leadership in field formations. In the absence of a comprehensive implementation of all modules, a large part of the operations continue in a paper environment.
- There is a need to integrate the ICES and ACES in the area of export processing. This will avoid re-filing of the same data in two systems and control the potential for fraud.
- A similar picture exists in the case of income tax, in which the use of many of the modules of the ITD application, other than the core AIS and AST modules, has been patchy and uneven and many have not been operationalized at all. For example, the CIB system has been operationalized but the entire EFS module has not been operationalized. The resource management system comprising FRS, PRS and MMS was not operationalized at all. Further, IRLA, not being integrated with AST, requires to be populated externally, rather than through the work process. This has led to considerable errors. External uploading of the data in IRLA has been done without updating the status of demands being corrected or verified. All these have led to there being incorrect demands in the system – causing hardship to taxpayers, particularly at the time refunds are to be issued to them. The CBDT, however, plans to overcome the major gaps through the ITBA.
- Similarly, large gaps remain in the area of office automation. Most of the administrative, financial and HR management functions continue to be handled in the traditional paper-based manner. Consequently, the opportunity to substantially improve the internal management of the two organizations and make huge productivity gains is being missed.
- Another unmet need is that of a comprehensive intranet incorporating a knowledge management system that would enable and empower officers with the required knowledge and dramatically improve the quality of performance. No doubt, departmental websites provide access to the latest enactments, circulars, instructions etc. But there are deficiencies in the way the information is presented and the access to knowledge is fragmented. Most importantly, access to expert knowledge and a platform for collaboration that could assist officers grappling with complex issues is not available via a single knowledge management portal.

The missing components mean that key activities such as adjudication, appeals and litigation, and enforcement action still happen in the traditional paper environment. For performance reporting and monitoring, both Boards still have to depend upon reports compiled by field formations, which while adding to the unproductive workload, are not always reliable. In fact, three refrains we heard in our interaction with industry as well as officers were that (a) officers and staff had to expend considerable energy and time in compiling reports for their superiors that affected adversely their performance of other functions; (b) the required information was not always available with the assessing officers for them to perform their functions efficiently and (c) the system lacked user friendliness, suffered from poor connectivity and responded slowly. Consequently, departmental officers perceive hardly any benefit from automation.

Another key weakness we found from our interaction with field officers is that there is lack of effective communication between the teams of DG (Systems) and users in the field. Perhaps greater user involvement is needed in the development process and a big communication effort is needed to both sensitize officers to the importance of ICT and impart the requisite training in using ICT systems to generate the required involvement on their part.

Incomplete automation also means lack of transparency in the areas not covered by ICT, which has an impact on efficiency at the taxpayers' end. Businesses are often required to maintain legacy paper systems, adding to their costs, because the tax administration is not ready to interact with them digitally.

There are a number of factors that have contributed to these shortcomings, which pose risks to continuing digitization. Salient among these risks are the following:

**(a) Inadequate ICT governance**

The fragmented nature of the systems arises from the fact that there is no clearly articulated ICT strategy and vision, under the umbrella of an overall business vision driving ICT implementation. Hence, the implementation has happened in the form of discrete projects, covering components of tax administration that are executed through different vendors. As the implementation in both the Boards has been driven by individual projects, relatively little attention appears to have been paid to the aspect of sound ICT governance. The piecemeal manner in which digitization has been implemented as discrete projects without an overarching ICT strategy also makes the implementation extremely complex. Further, the project-based approach has meant that computerization is mostly in silos and business processes are not fully re-engineered to effectively utilize ICT enablement and to bring about a taxpayer focus in service delivery. The disparate nature of current ICT systems also means that information is stored and analysed differently in different areas and under different systems, with 'no single point of truth'. As the different systems have been developed at different times through different vendors, there is lack of coherence in their design. Their integration with each other proves a tortuous process and they fail to address the



problems of (a) multiple data entry of the same data for the same tax payers (b) mismatches between different systems (c) complicated processes and (d) control of opportunities for fraud.

The absence of an overall implementation strategy has meant that over time, the approach to implementation has also changed. For example, after the three site and system integrator-based implementation earlier, the later projects of the income tax department, such as the CPCs, took a different route via a Managed Services Provider (MSP) model, based on transaction-linked payments in which the vendor is responsible for the entire solution including hardware and software. While this is undoubtedly a good model for implementation, the risk that arises from the heterogeneity of platforms it could lead to needs to be addressed adequately. Similarly, CBEC has faced complexity arising from the multiplicity of vendors and the challenges of integrating between the system integrator and software solutions providers has created its own problems. Lack of synchronization in contract timelines leads to situations in which systems that are interrelated and interdependent have different project timelines. A delay in execution or the expiry of a contract will adversely impact the schedules and management of other systems. Some of these risks could have been mitigated had there been a strategic approach to ICT implementation. This has been aggravated by the relatively short tenures of members in charge of ICT and the DG (Systems), coupled with the fact that selection for these positions is not necessarily based on suitability and prior experience in the ICT domain.

#### **(b) Absence of a rigorous programme and project management framework**

The gap in this area has largely been supplemented by the use of consultants, mainly in the area of project management. However, that is no substitute for rigorous project management by project managers. The weakness is largely due to the lack of an adequate number of officers as also the absence of the required skills internally. Proper programme management and project implementation would ensure that a) the design of the projects is clearly aligned with the relevant business goals, b) the critical dependencies and project risks are properly mapped and articulated and c) the resource requirements and implementation schedules are defined in a realistic manner. It would also ensure that adequate consultation is a part of project formulation so that the interests and priorities of internal and external stakeholders are properly factored in.

#### **(c) Complex budgetary and financial process**

Another constraint that has been faced by both departments is in terms of the time and effort required to secure financial approvals. The complex and multi-layered process required implementers to spend considerable time and energy convincing the internal financial unit, which does not always have insight into the departments' needs and ICT requirements, for securing approvals. This is always a risk in large multi-year projects in which it is very difficult to project requirements over a long time span. Even in the best of circumstances, some assumptions do not hold, especially in a highly dynamic ICT environment and governmental processes are not geared to handle this. It becomes particularly difficult when changes need to be made in the projects under

implementation because some assumptions prove to be incorrect or on account of changed circumstances due to factors such as changes in law or business processes. Consequently, there are delays in implementation. The process of approval also considerably cramps the flexibility that is needed to respond quickly to emerging needs.

#### **(d) Human Resources**

This is possibly the most critical risk. While, among the officers in the DG (Systems), there is awareness of the need for proper ICT governance, in reality what happens is that the human resources available to the DG (Systems) are so limited that the scope to ensure rigorous adherence to project implementation methodology (which is often seen as secondary at best and a luxury at worst) just does not exist. There is no systematic effort to train concerned officers in this discipline. Further, in terms of resource projections, the focus is exclusively on getting financial sanctions. The requirement of human resources, of the right quality and in the right quantity does not form a part of the project plan, and even if mentioned, is consigned to a footnote. The implementation schedules are often driven by timelines dictated from the top and bear little relation to the realities of complex implementation. For proper execution of projects, it is essential that this must change. It is important that project planning must necessarily take into account the human resources required as a part of the project resources/cost and they must be made available to the DG (Systems) as a part of project sanction. Resources must be adequate to support proper management of projects and the timelines should be realistic. There should also be formal reviews of implementation on a regular basis by steering committees comprising both ICT and business personnel.

The implementation has been led by a handful of dedicated officers in the two directorates of systems. These are career IRS officers. While the DG (Systems) of CBEC depends entirely upon departmental staff, the DG (Systems) of CBDT has a small EDP cadre that is supplemented by departmental officers. The leadership in both, however, comprises IRS officers. The numbers are totally inadequate compared to the scale and complexity of systems in the two departments. Major projects that require large teams are executed through a small number of officers performing multiple roles, affecting implementation and exposing them to undesirable levels of stress. There is no systematic effort towards capacity building in key areas of technology, programme and project management, vendor and service level management, contract management etc. Officers assigned to the two DG (Systems) usually learn on the job. The knowledge so acquired is, however, lost to the organization when the officers are transferred out. There needs to be a link between the tenure of officers and the implementation of projects they are associated with, besides an institutionalised process of knowledge transfer when such movement does occur.

The transfer policies of both Boards continue to pose risks arising from movement of officers out of the directorates on timelines not linked to project timelines. The policy does not recognize the special requirements of ICT implementation. While lip service to the importance of ICT



implementation is paid in both the departments, it is not seen as a core function. Therefore, often the posting of officers is not guided by their attitude or aptitude for this specialized function. This continues to be a major risk. Apart from the availability of the right type of officers, relative to the scale and complexity of projects, the DG (Systems) organizations are grossly understaffed.

### **VII.1.c Unrealized potential**

The most striking shortcoming is that ICT enablement by both these departments is completely isolated from each other with very limited application of technology for an integrated risk model or even seamless sharing of data. The most important area in which the potential remains untapped lies in the area of data sharing. Both departments hold huge amounts of data in their systems which can be put together using the PAN to create a comprehensive profile of the taxpayer. There is huge potential to plug revenue leakage by doing so. Some efforts have commenced in this direction as part of the GST pilot under the CBEC in which data from the CBEC and CBDT systems were combined with data from the Maharashtra VAT system. The value of integrating data was immediately apparent when the Commissioner of Commercial Taxes, Maharashtra, reported that he was able to recover Rs. 500 crore of VAT from traders who had evaded it. As noted earlier, both the Boards have undertaken data warehouse projects. While the CBEC's data warehouse is already in operation, the CBDT is in the process of setting up its project. However, one can well imagine the gains to the two administrations if, instead of being set up in two separate silos, a single data warehouse covering both direct and indirect taxes had been set up in a collaborative manner. Not only would it have resulted in considerable cost savings by providing economies of scale and avoiding duplication, the availability of comprehensive, cross tax data would have added significant muscle to their enforcement efforts.

The one major opportunity that has not been exploited in the two Boards is giving a functional orientation to the organizational structure. The absence of a functional orientation also contributes to the weakness in ICT governance. Even though their investments in ICT give them this potential, the processes by and large remain embedded in physical jurisdictions. By going in for CPCs, the CBDT has taken a major step in more fully exploiting the efficiencies that ICT provides. However, other areas of operations continue to remain fragmented. The CBEC, on the other hand, is yet to consider such steps in areas where such potential exists even today, namely CPCs for excise and service tax returns and centralized processing of bills of entry/shipping bills.

The ICT function is also not fully integrated with top-level decision making in the two Boards, leading to sub-optimal realization of its potential. While the two Boards have succeeded in automating many of the transaction-level processes, huge potential remains unrealized in strategic use of the rich data lying in silos in different systems. There is, for example, little analysis being done to improve the selection of cases for scrutiny, audit or enforcement. Attention has not also been paid to meaningful segmentation of taxpayers for appropriate compliance initiatives.

There is a clear need to adopt international best practices and develop a robust approach towards ICT-enabled reforms for tax administration.

## VII.2 Global practices

The strategies of modern tax administrations that are centred on some key principles such as the promotion of voluntary compliance, effective taxpayer services with a clear customer focus, focused and effective audits and enforcement, efficient and effective internal processes and collection mechanisms, and informed decision making and policy formulation based on careful analyses are buttressed strongly by advancements in ICT.

These strategies are founded on a sound risk management framework, which promotes effective segmentation of taxpayers and the customization of responses appropriate to particular segments, backed by sharply focused interventions intended to promote and maintain compliance. This is enabled by extensive use of analytics and statistical modelling in key areas such as the measurement of the tax gap, compliance levels across different sectors of the economy and impact assessments of policies and initiatives.

Studies across the world underline the criticality of information technology in organizational transformation and its huge potential to unlock hidden value and eliminate waste. A study estimated the potential value to be unlocked by the exploitation of big data, through gains in efficiency and effectiveness in Europe's public sector, to be of the order of \$250 billion annually. According to the study, the potential to reduce the tax gap with appropriate ICT-supported interventions is of the order of 20 per cent of the gap.<sup>94</sup> Another paper published by ACT-IAC Institute for Innovation estimated that appropriate ICT based interventions in the area of fraud and abuse prevention and elimination of waste could enable the US IRS to reduce tax losses through uncollected taxes and improper payments by as much as US\$50 billion annually.<sup>95</sup> The untapped potential is thus immense.

The private sector has been far quicker to grasp this opportunity and has led in innovating new ways of doing business while governments have tended to be much slower in recognizing the potential and new opportunities. Successful firms have been proactive in their engagement with rapidly transforming technology, and have aggressively sought to exploit the potential of Big Data and other defining trends like social media technologies, internet of things etc. There are, therefore, a number of lessons to be learnt from the private sector. And the key lesson is that ICT can no longer be seen as a mere support function but must be viewed strategically.

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<sup>94</sup> Big Data: The next frontier for innovation, competition and productivity, McKinsey Global Institute, May 2011

<sup>95</sup> Unleashing the Power of Information Technology Innovation to Reduce the Budget Deficit, Institute for Innovation, American Council for Innovation – Industry Advisory Council, 2012

Globally, all good tax administrations have been investing heavily in ICT and deploying it in a strategic manner. A number of benchmarking studies highlight the benefit of focusing on enhanced use of technology to increase efficiency and effectiveness. International studies show that the use of ICT combined with focused performance management can result in significant improvement in compliance and reduce the tax gap. A benchmarking study of 13 tax administrations in 2009 estimated the size of the prize at US\$86 billion in additional revenues through improved effectiveness in performance and a saving of costs at around US\$6 billion through improvement in efficiency in four core functions of the tax administration, i.e., returns processing, examinations and audits, collections and taxpayer services.<sup>96</sup> The study found the following four best practices, involving extensive use of ICT, as key drivers of performance:

- a) **Proactive demand management:** Best performing administrations extensively used technology to limit the amount of work coming in to what was truly necessary. Strong validation checks, guidance and self-help, certification programmes for software vendors etc., minimize the error rate in returns and payments, thereby reducing the workload on scrutiny and examinations. Pre-population of returns adopted by some of the advanced tax administrations was found to be highly helpful.
- b) **Sophisticated taxpayer segmentation:** The quality of taxpayer segmentation, based on data mining techniques and tracking taxpayer behaviour, was found to be highly correlated to the effectiveness of different areas of operations such as taxpayer services, audit and enforcement. It is also noteworthy that leading administrations rely on practices and models in other sectors, such as consumer goods and financial services, for innovation and fine-tuning their segment portfolios.
- c) **Streamlined operations:** The study found that the best-performing administrations had streamlined their operations in two key ways – investing strategically in ICT and adopting “lean” management techniques. It found that when the e-filing rate increased to virtually 100 per cent, the efficiency improvement was significant. It also found that maximum gains were obtained where the administration had managed to automate all their key processes and invested in advanced screening techniques and sophisticated risk engines. The best administrations also resorted to “lean” techniques to eliminate waste by reducing or eliminating activities that did not add value and by multi-skilling their workforce.
- d) **Rigorous performance management:** High-performing administrations were found to have adopted a number of best practices for performance tracking, using both output and outcome metrics. Thus, they measured both the quantitative as well as qualitative dimension of performance. They developed a wide range of key performance indicators and used diverse data, such as results of quality audits and closed file reviews, to constantly track performance.

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<sup>96</sup> The Road to Improved Compliance, A McKinsey benchmarking study of tax administrations – 2008-09, McKinsey and Company, Sept. 2009

OECD's Tax Administration 2013 reports that ICT-related costs are a significant component of the overall expenditure budget of many revenue bodies; across all revenue bodies, total ICT-related costs were reported by 18 revenue bodies as exceeding 10 per cent of total expenditure in 2011 (with 14 reporting amounts in excess of 15 per cent). The survey also showed that the countries whose expenditure on ICT exceeded 15 per cent of their administration budgets happened to be high performers in a series of performance-related measures such as e-filing rates, e-payment rates etc.

The combined expenditure on ICT by the CBDT and CBEC was well below these levels. A brief discussion on the relative expenditure of some revenue bodies and the CBDT and CBEC is given in Appendix VII.1. Considering the large scope of the work that lies ahead of them, it is necessary that fund allocations for ICT be increased to at least 15 per cent.

In terms of approaches to ICT implementation, different administrations have adopted different approaches. All resort to varied degrees of outsourcing. Some have chosen strategic partners to meet the full range of their ICT requirements (e.g. HMRC); others have set up specialized organizations to service their needs (e.g. SERPRO in Brazil). However, irrespective of the choices they make, all modern tax administrations maintain a strong ICT skill-set in house. This is clearly an acknowledgment of the strategic importance they attach to the ICT function. Details may be seen in Appendix VII.2.

### **VII.3 The road to sustainable ICT governance**

#### **VII.3.a Embedding ICT at the strategic core for harnessing its transformative potential**

Rapid digitization in all spheres of activity, economic, social, cultural and so on is transforming the world. These forces are making the paradigms of business in the physical world obsolete and opening new opportunities for conducting business in radically transformed ways. The old structures and paradigms appear unable to cope any longer with these fundamental changes and need to be replaced with models that are congruent with the digital world.

This rapidly changing environment is adding immense complexities in tax administration. Growth in international trade and commerce driven by globalization is a major contributor to this complexity. Goods and services are produced in one country using inputs from a number of other countries and are being consumed in a third set of countries. The management and ownership of these entities are also spread across the world. Identifying the taxability and fair computation of taxes is an ever increasing challenge.

The other challenge is related to the huge growth in online transactions. With trade happening completely in the virtual and borderless world, radically altered business models have emerged. Similarly, the development of tax shelter products and the use of tax havens is another challenge,

which emanates from globalization. New technology solutions and boundary less commerce open new opportunities for fraud and tax evasion for the unscrupulous.

Equally, as the world has become increasingly digital, more and more people are using ICT in increasingly diverse ways to communicate and conduct their lives. Businesses are going digital and can ill-afford the costs associated with old manual methods of working. Increasingly, the inability of tax administrations to provide convenient channels for online interaction adds costs to businesses and impairs their competitiveness. This is currently true because only parts of the direct and indirect tax administrations are automated. While e-registration, e-filing of returns and e-payment facilities have considerably increased efficiencies and reduced the need for physical interaction, business have to deal with the department physically and file large volumes of paper for a large number of critical functions. There is very little use of channels like e-mails and hardly any use of social media in communicating with clients. Further, the governance processes adopted by the tax administration, which has failed to keep pace with the digitizing world, constrain the ability of businesses to achieve fully automated working. The consequence is that while many businesses have become highly automated, they have to resort to old world means to interact with the administration, adding to their costs.

As an example, the conclusions in Deloitte India's Indirect Tax: Burning Issues Survey 2012 may be cited.<sup>97</sup> The report states that "the existence of multiple indirect taxes accompanied by periodic changes appears to make indirect tax compliance automation a difficult task in India. Majority of the respondents polled confirmed that moderate (54%) to significant (33%) manual intervention was necessary to ensure indirect tax compliances and only 8% of the respondents confirmed the existence of a fully automated indirect tax compliance system in their organization."

And as businesses more fully immerse themselves in the digital universe, this mismatch between the tax administration in India and its clients can only increase.

### **Lessons for India**

As noted above, the general perception about ICT in the two departments is that it is not at the core of the organization. This is clear from the relative unpopularity of postings in DG (Systems), the relative unimportance in the eyes of the senior management of the HR policy for staffing DG (Systems) as reflected in the lack of care in posting suitable, willing and qualified officers in the directorate, and the patchy and uneven implementation of ICT in the organization.

If success is to be achieved in exploiting the potential of ICT fully, this paradigm must change. Technology must get embedded in the administrations' DNA. Experience across the world

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<sup>97</sup> [https://www.deloitte.com/assets/Dcom-India/Local%20Assets/Documents/Indirect%20Tax%20documents/Burning\\_Issues.pdf](https://www.deloitte.com/assets/Dcom-India/Local%20Assets/Documents/Indirect%20Tax%20documents/Burning_Issues.pdf)  
- accessed on 29/4/2014

indicates such success is possible only if certain key conditions are met. Important among these are the following.

- (a) ICT must be at the core of organizations' decision making and operations, and their leaders must take a very strategic view of ICT investment and deployment
- (b) The coverage of ICT must be comprehensive and complete and all key functions must be ICT-based
- (c) Systems must capture in a reliable and secure manner a wide diversity of data to support high quality decision making
- (d) The required human capacity in terms of awareness of the potential of ICT in the leadership, data savvy managers and data analysts, for meaningful use of data must be created and sustained.

The way to bridge the gap between the present reality and the potential future state cannot be simply to “catch up” through an incremental approach. What is needed is “boot-strapping” – a strategic approach that is aimed at being ahead of the game. And that requires that ICT, instead of being seen as merely a support function, must be seen as a key lever that enables the achievement of the tax administration's goal to maximize compliance and minimize the tax gap in a fair, transparent and customer focused way. The process of digitization should not be confined merely to automating the current ways of doing business or paving the “cow path” so to speak. It should fully take note of the way the digital universe is evolving and exploit the potential that ICT gives to transform business processes. In other words, automation should follow re-engineering of business processes to avoid the danger of getting trapped in governance that is not in sync with the environment.

The design of policies and operations must take note of the realities of the digital world. At the policy level, this means that full use of information and analytics is made while arriving at decisions; legislation is drafted in such a way that it is ICT compatible and, as far as possible, the requirements and obligations are framed in such a way that they can be converted into business rules that drive ICT systems. Changes should be made in an organized manner after due impact analyses and with adequate time allowed for systems to be changed before they are given effect. At the operational level, this means that reliable ICT systems are built that are comprehensive, cover all processes and are user friendly, both staff and taxpayers have access to the information they need for making decisions, and staff are enabled by a knowledge management system that empowers them and provides guidance where needed. Finally, the system must have the capability to track performance matrices at as granular a level as possible. All administrative functions also should be performed on the digital platform. In short, the ultimate aim should be to bring the entire office on the desktop. The leadership must also ensure that where the ICT system is available, employees should not have the option of working in a paper environment.



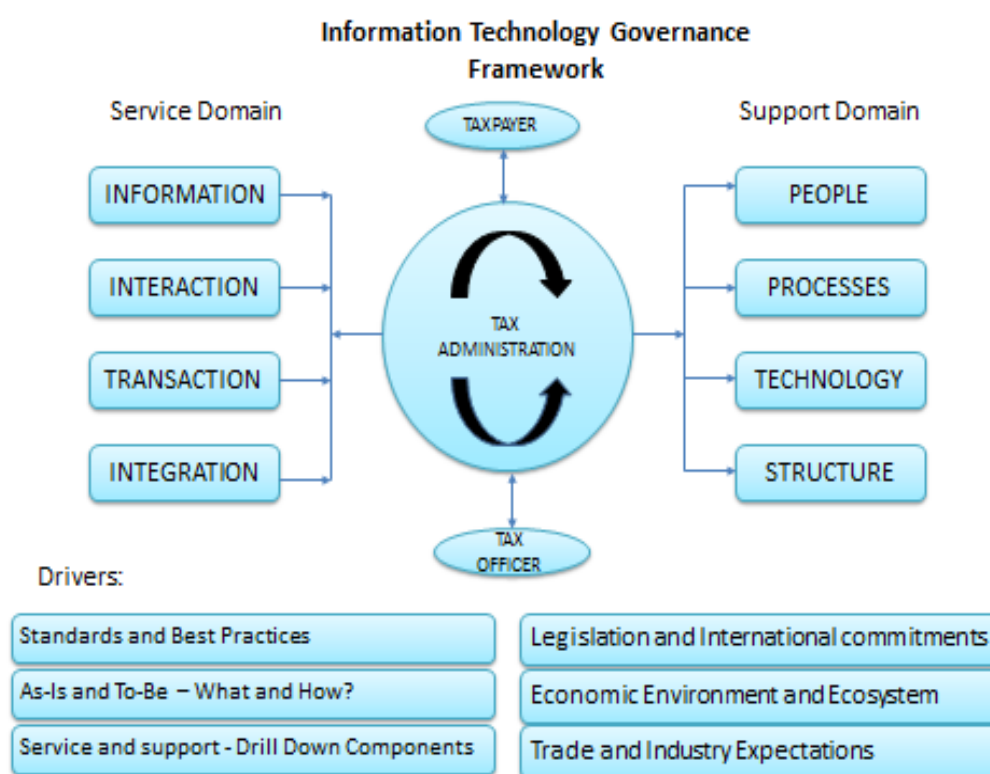
It is only when the use of ICT becomes the default mode in people’s working that it will be fully embedded in the organization. Even today, it is possible to take a number of small measures that together will influence the work culture in this direction. Reliance on e-mail as the preferred mode of communication is one example. Stopping the issue of notifications, circulars etc., on paper copies and relying exclusively on the website, by adopting “what is not on the website does not exist” principle, is another example.

Both the Boards must commit themselves to achieve a fully digitized and paperless environment and work towards creating comprehensive ICT system(s) in which everyone from the top leader to the last person on the frontline works in a digital environment.

**VII.3.b Structures and processes to ensure business-ICT integration and effective change management and security management**

This requires a close alignment of people, processes, structures and technology with business strategies and goals and user needs as illustrated in Diagram 7.1 below.

**Diagram 7.1: ICT Governance Framework**



To do this, it will be essential for them to embrace a robust ICT governance framework and rigorous programme and project management methodologies. ICT governance is a sub-set of wider

organizational governance and its importance lies in the fact that it puts in place structures and processes that enables organizations to achieve greater business-ICT integration, get better value from ICT investments and manage ICT risks. It transforms ICT departments from being mere suppliers of solutions and devices to becoming providers of end-to-end services that contribute to achieving the organization's strategic goals. A sound ICT governance framework covers all domains of ICT implementation such as enterprise wide ICT architecture, ICT strategy, coordination, operations, services (including business applications) and security and business continuity. Improved governance will also ensure that projects are executed through a structured and meaningful programme management and project execution process. This will mitigate project risks and delays and ensure coherence between business goals and ICT execution. It will enable more realistic project planning, including the provision for required human resources, realistic implementation schedules and formal reviews at both the programme and project management level. Over and above this, high level reviews must occur at the level of the Board and the Governing Council to ensure involvement at the highest level in ICT implementation.

Proper and structured governance will ensure smooth and effective implementation of projects and effective management of security risks. If both organizations are to move to as nearly complete a digital environment as possible, it would be essential for them attain a higher level of ICT maturity by implementing one of the widely accepted ICT governance frameworks such as ISO 27001 (which certification CBEC's DG (Systems) has secured in respect of its data centre implementation) and COBIT etc.

Having regard to the financial and technology risks involved in large multi-year implementations, some agencies recommend a modular approach, which is incremental and more flexible.<sup>98</sup> This focuses on more agile developments to deliver releases in shorter, well-defined time cycles instead of "big bang" releases at the end of multi-year development cycles. However, such a strategy requires even greater emphasis on robust ICT governance, calling on programme managers to meet the challenge of managing multiple pieces and dependencies among them.

The importance of robust governance in successful ICT implementation is sharply underlined by experience across the world. As an example, the review by the National Audit Office, Australia, (ANAO) of the Cargo Management Re-engineering Project (CMR) holds important lessons for implementers in India. CMR was an ambitious project that suffered cost and time overruns.<sup>99</sup> The project cost, originally estimated at Aus\$30 million in 1999, rose to Aus\$205 million in 2006. The implementation was also marked by significant disruptions for trade in many instances.

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<sup>98</sup> <http://www.whitehouse.gov/sites/default/files/omb/procurement/guidance/modular-approaches-for-information-technology.pdf>

<sup>99</sup> ANAO Audit Report No.24 2006–07 Customs' Cargo Management Re-engineering Project



The broad conclusions of the ANAO are summarized below:

- The outcomes and the expected benefits were never clearly defined.
- There was no overall CMR project plan, financial management plan, project budget or proper assessment of the risks for the project.
- There was lack of supporting documentation surrounding contractual arrangements.
- Delays in the early years of the project had major repercussions for later stages of the project.
- Project teams were continually under pressure to meet tight deadlines, which were not achieved.
- The complexity of the project and risks were underestimated.
- There was insufficient understanding of the industry's capacity for change and inadequate change management efforts.
- There was insufficient end-to-end testing.
- Adequate attention was not paid to industry feedback.


### VII.3.c Use of Maturity frameworks

As they say, if you want to go where you want to go, you must know where you are. There is a significant gap that exists between tax payers' expectations and the reality of the current ICT implementation. Broadly, the tax payer's expectation from an ICT perspective is a single point web interface which (i) provides information and knowledge about law, procedures, clarifications and organization; (ii) furnishes a step-by-step guide on procedures, help and guidance on tax compliance, which includes determination of tax liability, exemption benefits available, if any, and matters related to dispute resolution; (iii) facilitates automation of tax operations such as registration, filing of returns, payments and refunds, tracking the status of assessments, disputes, documents submitted and ledgers of discharge of tax liability, arrears etc.; and (iv) offers integrated services across multiple regulatory authorities.

The current systems can only meet a part of these expectations. To continue to meet these expectations, which can only increase, the two Boards must continually assess their IT maturity, take proactive measures to progress up the maturity path by capacity building and aligning their policies and goals to changing needs.

There are many frameworks available for assessing an organization's ICT maturity. Diagram 7.2 below, adopted from HMRC and based on the European Digital Capability Framework, broadly indicates the journey towards fuller maturity in ICT. Measured against this, both the CBDT and CBEC would seem to be between level 2 and 3 – a little higher than level 2.

Diagram 7.2: Digital Capability Framework

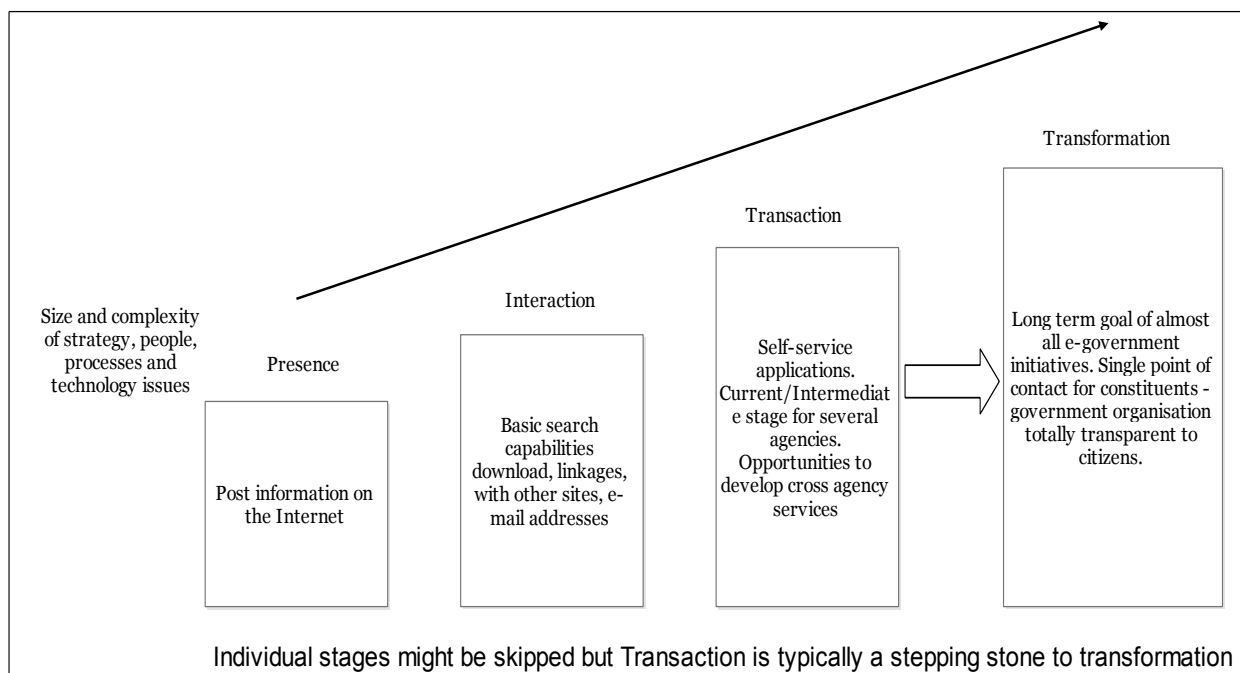
M A T U R I T Y	HIGH  LOW	5	Digital is at the heart of policy and strategy. Services are digital by default. Digital culture is strong: agile, user-centred, innovative, and responsive
	4	Senior management have made significant progress in delivering the vision and plan, implementing new capability and trialling it successfully by re-engineering a range of services to be digital by default.	
	3	Senior management in place with a remit to set targets, develop over-arching vision and plan, and develop necessary capability and culture. Digital is seen as a key transformation and advocacy is strong at key parts of the organisation.	
	2	Some digital services, but often of limited quality. Digital teams in place but tend to be silos in business units or programme teams and have limited budget and remit. Senior (Board level) digital management not in place.	
	1	No awareness of digital capability, no resources allocated, no digital strategy, plan or metrics, no understanding of best practice, no digital services	

Ref: [http://ec.europa.eu/information\\_society/events/cf/dae\\_1009/item-display.cfm?id=5379](http://ec.europa.eu/information_society/events/cf/dae_1009/item-display.cfm?id=5379)

As is obvious there is a long road ahead to be travelled. It is necessary for the Boards to develop a coherent and comprehensive framework for an enterprise wide ICT enablement that will cover all key functions and all dimensions of performance.

One of the more elegant frameworks is the UN/OECD framework that describes an e-government maturity model as depicted in Diagram 7.3 below.

**Diagram 7.3: e-government maturity model**



Source: OECD, 2010<sup>100</sup>

This framework describes four progressive stages in ICT maturity in tax administrations as described in Table 7.1 below.

**Table 7.1: ICT maturity in tax administrations**

Category	Description	Confidentiality of data & Access Considerations
<b>Information (Presence)</b>	One-way information flow providing static information about the agency. Includes	Publicly available/non-confidential data

<sup>100</sup> Framework for the Provision of Electronic Services to Tax Payers, Centre for Tax Policy and Administration, OECD, March 2010

Category	Description	Confidentiality of data & Access Considerations
	publications (e.g. legislation, policy documents), instructions, and education/marketing materials. Interaction is limited to inquiry and search function.	No access restrictions
<b>Interaction</b>	Two-way information flow, which does not alter systems or data. This includes expanded search and filtering capabilities and services such as calculators where all data is entered by the user (e.g. to assess eligibility for benefits or determine tax payable).	Publicly available/non-confidential data No access restrictions
<b>Transaction</b>	Any exchange which alters data holdings or provides access to taxpayer data. Includes activities such as enquiries involving taxpayer data, use of calculators pre-populated with taxpayer data, filing returns and making payments.	Confidential data Access restricted to specific individual taxpayers (or their nominated representatives).
<b>Integration/ Transformation</b>	Exchange of information between different government agencies regarding a specific user (individual, business, organisation). For example, change of address advised only once by user and then shared across agencies.	Confidential data Access restricted to specific individual taxpayers (or their nominated representatives).

Source: OECD, 2010<sup>101</sup>

Briefly, the stages can be described as follows.

**Information:** At this stage, the IT system is limited to making available information with respect to laws, rules, procedure etc. in electronic form. It could be online through websites or through offline media like CDs. This largely consists of passive dissemination of information and most of the organizations start their IT enablement with these kinds of elementary measures.

**Interaction:** At this stage, the organization provides for online interaction like the facility to ask questions, do some online computation of liability/fees, and limited search facilities.

<sup>101</sup> ibid

**Transaction:** In this stage, the ICT system matures to have facility for online transactions such as return filing, form filling and submissions, tax payments etc. It enables paperless transactions and e-governance.

**Integration and transformation:** In this stage, the department would have an integrated system that combines various subsystems and integrates with other related systems. At its fullest, it will lead to government wide systems. This is the stage at which the full power of ICT is exploited in terms of using advanced data warehousing and mining tools and techniques, data analytics etc. to promote a much higher degree of sophistication in policy making as well as in operations.

We believe this framework provides a powerful tool to map the current state of ICT implementation and develop a roadmap to the future “to be” state by approaching it along three axes that represent three key dimensions of a tax administration’s performance.

- i) **Tax Payer Service:** Tax departments have traditionally seen their role as that of a regulator and enforcer with limited attention to tax payer service. A modern tax administration brings a customer focus and attempts to make the interaction between the taxpayer and tax administration easy, convenient and friendly. ICT systems can contribute to this significantly through (i) online dissemination of information (ii) online payment of tax (iii) online filing of tax returns (iv) electronic processing of returns (v) on line interaction obviating the need for in-person interaction (vi) direct credit of refund and so on that marries convenience with efficiency. Technology also enables greater customization leading to better customer service outcomes.
- ii) **Enforcement:** While taxpayer services make life easy for an honest taxpayer, enforcement attempts to makes non-compliance costly. This requires focused intervention, effective supervision, data driven scrutiny and examination, sharper selection for audit and enforcement actions and more effective risk management. Only a robust and comprehensive ICT system can enable this.
- iii) **Research:** Policy making should be grounded on extensive research on trends and patterns, taxpayer behaviour in different segments, what-if analysis and ex-ante and ex-post impact analysis that have a better chance of success and of ensuring a more meaningful outcome. ICT systems provide assistance in each of these areas to a level that was never possible with manual systems.

Based on the OECD framework, the framework suggested by us and illustrated in Table 7.2 below, provides for an analysis of ICT capabilities in these three areas from both the external customer’s (taxpayer’s) and internal customer’s (tax administrator’s) points of view. It can be used for mapping the current level of ICT services to those that are needed both by internal and external users (customers’ and tax administrators’ wish lists, in a manner of speaking) and this can help identify the way to move ahead.

**Table 7.2: Framework for analysis of ICT capabilities****i. Information**

<b>Tax payer perspective (external customer perspective)</b>	<b>Departmental Perspective (internal customer perspective)</b>
User friendly website covering	User friendly website covering
<ul style="list-style-type: none"> <li>All relevant information about laws, procedures, who to contact for what etc.</li> </ul>	<ul style="list-style-type: none"> <li>All relevant information for laws, procedures, who to contact for what etc.</li> <li>Additional internal information on intranet</li> </ul>
<ul style="list-style-type: none"> <li>Regular updating to ensure complete reliability – “what is not on the website, does not exist” principle</li> </ul>	<ul style="list-style-type: none"> <li>Access to all the information that is available to the taxpayer</li> <li>Support in the form of effective content management system and process</li> </ul>
<ul style="list-style-type: none"> <li>Easy navigability</li> </ul>	<ul style="list-style-type: none"> <li>Easy navigability</li> </ul>
<ul style="list-style-type: none"> <li>Easy search ability</li> </ul>	<ul style="list-style-type: none"> <li>Easy search ability</li> </ul>

**ii. Interaction**

<b>Tax payer perspective (external customer perspective)</b>	<b>Departmental Perspective (internal customer perspective)</b>
<ul style="list-style-type: none"> <li>Ability to seek clarifications and replies to simple queries via e-mail</li> </ul>	<ul style="list-style-type: none"> <li>Enablement such as technology tools, processes and knowledge to respond to customer requests</li> </ul>
<ul style="list-style-type: none"> <li>Help lines</li> </ul>	<ul style="list-style-type: none"> <li>Enablement such as technology tools, processes and knowledge to respond to customer requests</li> </ul>
<ul style="list-style-type: none"> <li>Effective help centres</li> </ul>	<ul style="list-style-type: none"> <li>Enablement such as technology tools, processes and knowledge to respond to customer requests</li> </ul>
<ul style="list-style-type: none"> <li>Interactivity across multiple technology platforms and services and solutions that factor in increasing mobility of people</li> </ul>	<ul style="list-style-type: none"> <li>Enablement of mobile technologies for interaction</li> </ul>

**iii. Transaction**

<b>Tax payer perspective (external customer perspective)</b>	<b>Departmental Perspective (internal customer perspective)</b>
<ul style="list-style-type: none"> <li>• An easy registration system that will provide a single identification to a business entity that is shared by all tax authorities</li> </ul>	<ul style="list-style-type: none"> <li>• Simple and efficient back end process to service applications</li> <li>• Easy tracking of taxpayers</li> </ul>
<ul style="list-style-type: none"> <li>• Easy process for amendment of the details associated with the identity</li> </ul>	<ul style="list-style-type: none"> <li>• Simple and efficient back end process to service such requests</li> </ul>
<ul style="list-style-type: none"> <li>• User friendly portal to file all returns</li> </ul>	<ul style="list-style-type: none"> <li>• Efficient return processing at the back end</li> </ul>
<ul style="list-style-type: none"> <li>• Standard process for tax payment for all taxes, ability to use bank of his choice and choice of diverse modes of payment</li> </ul>	<ul style="list-style-type: none"> <li>• Efficient tax accounting system ensuring easy, timely accounting of tax revenue</li> <li>• Easy mapping of all payment to taxpayer tax liability</li> </ul>
<ul style="list-style-type: none"> <li>• Standard taxonomy by all tax departments</li> </ul>	<ul style="list-style-type: none"> <li>• Knowledge enablement and systems based on common taxonomy</li> </ul>
<ul style="list-style-type: none"> <li>• Elimination of repeat filing of the same information to and across tax departments</li> </ul>	<ul style="list-style-type: none"> <li>• Availability of required information irrespective of the source</li> </ul>
<ul style="list-style-type: none"> <li>• Returns that can be derived from the way financial accounts are normally maintained</li> </ul>	<ul style="list-style-type: none"> <li>• Availability of required information irrespective of the source</li> </ul>
<ul style="list-style-type: none"> <li>• Online scrutiny and processing.</li> </ul>	<ul style="list-style-type: none"> <li>• Error free systems that will undertake computer based processing of returns</li> </ul>
<ul style="list-style-type: none"> <li>• Elimination of physical visits for routine matters</li> </ul>	<ul style="list-style-type: none"> <li>• Easy access to all information relating to taxpayer for quick disposal of issues/grievances and process/legal enablement</li> </ul>
<ul style="list-style-type: none"> <li>• Speedy processing of refunds</li> </ul>	<ul style="list-style-type: none"> <li>• Easy access to all information relating to taxpayer for quick disposal of issues/grievances and process/legal enablement</li> </ul>
<ul style="list-style-type: none"> <li>• Quick feedback on non-compliance and errors</li> <li>• Easy options for corrections</li> </ul>	<ul style="list-style-type: none"> <li>• Easy access to all information relating to taxpayer for quick disposal of issues/grievances and process/legal enablement</li> </ul>

<b>Tax payer perspective (external customer perspective)</b>	<b>Departmental Perspective (internal customer perspective)</b>
<ul style="list-style-type: none"> <li>• Online communication of demands and notices and facility to respond online</li> </ul>	<ul style="list-style-type: none"> <li>• Easy access to all information relating to taxpayer for quick disposal of issues/grievances and process/legal enablement</li> </ul>
<ul style="list-style-type: none"> <li>• Transaction enablement for mobile technology platforms and services and solutions that factor in increasing mobility of people</li> </ul>	<ul style="list-style-type: none"> <li>• Complete automation of internal functions including HR and finance functions.</li> </ul>

#### iv. Transformation

<b>Tax payer perspective (external customer perspective)</b>	<b>Departmental Perspective (internal customer perspective)</b>
<ul style="list-style-type: none"> <li>• Single portal for all tax filings across tax administrations</li> </ul>	<ul style="list-style-type: none"> <li>• 360° profile of taxpayer based on all available internal and third party information</li> </ul>
<ul style="list-style-type: none"> <li>• Customized taxpayer services such as pre-filled returns</li> </ul>	<ul style="list-style-type: none"> <li>• Effective risk models to detect potential non-compliance</li> </ul>
<ul style="list-style-type: none"> <li>• Legal, procedural and technology frameworks aligned with the changing business environment</li> </ul>	<ul style="list-style-type: none"> <li>• Predictive analyses to support policy decisions as well as administration's actions</li> <li>• Ex-ante and ex-post analyses for impact assessment</li> </ul>
<ul style="list-style-type: none"> <li>• Systems designed to ensure compliance thereby reducing compliance burden.</li> <li>• Legislation enabled by ICT – laws should be capable of being converted into an algorithm.</li> <li>• Transparent and clear interpretation of law, which can be programmed into the compliance systems</li> </ul>	<ul style="list-style-type: none"> <li>• Effective taxpayer segmentation</li> <li>• Collaboration tools for sharing casework, expert knowledge</li> <li>• Knowledge management system that makes relevant knowledge available on the desktop of the user.</li> <li>• Strong MIS</li> </ul>

In using the framework, the analysis should take into consideration both the spread and depth of content of the services in the respective areas. It is also important to note that progress along the maturity path does not have to be sequential. It has to happen in parallel and in a spirit of continuous improvement. For example, taking the first stage of “information”, both the CBDT and CBEC have information portals that put out information about laws, regulations etc. However, the questions that need to be asked are: a) how user friendly are they in terms of look and feel, ease of



navigability and searchability? b) Is the user able to access the information he needs quickly and comfortably or does he need to navigate across multiple portals? c) Is there a robust and reliable content management process in place, ensuing adherence to “what is not on the website does not exist” principle? d) In other words, are the websites updated in such a manner that the users can rely on them completely? The answers to these questions will reveal the scope that exists to enrich the websites continuously to improve customer experience. And this cannot be achieved unless adequate resources, in the form a dedicated team with adequate strength and skills, is put behind the project. The efforts to do this should continue in parallel with the journey along the higher stages of maturity. And the example we have given applies equally to all projects across different levels of ICT maturity.

#### **VII.3.d Service oriented architecture and integrated applications**

As noted earlier, there is little integration across applications that are deployed by the two Boards. Even within each domain, they operate in silos leading to applications not talking to each other, requiring re-filing of the same data multiple times and presenting a fragmented picture. A service oriented approach has the potential to provide greater integration and better “value for money”- meaning better results at less cost, time and effort. It allows better integration between the new and legacy systems and greater customer focus and service orientation in the development of applications for making the most of available technology and adopting ICT-enabled ways of engaging with customers in ways that they prefer and expect from the administration such as mobile phones, social media etc. There should be a sharper focus on realizing intended benefits for the customers.

#### **VII.3.e Governance in the digital world**

The dominant paradigm of organizations in the digital world is going to be that of a network. As digital technologies permeate all aspect of our lives, even the physical world now increasingly resembles a network with nodes that are interconnected and interdependent. For example, one can think of cities as vast networks of people and physical infrastructure. This trend will only get accentuated as the digital world embraces more and more people. This means that newer ways are emerging for people to interact with each other and with organizations and communities that serve them, including the government. While the challenge a couple of decades ago was the “digital divide”, the opportunity now is the “digital unite”.

The structures of governance that have been designed for the physical world are bound to be found wanting in this new paradigm. Hence organizations, to fit the new emerging environment, need to think differently about how they structure themselves, how their people interact with customers and delight them (and how they can enable their people to do so) and how they can convert themselves into nimble and flexible organizations that can respond quickly to needs and challenges that seem to be rapidly evolving.

Tax administrations that wish to be “best in class” have to develop leadership that understands the fundamental shift that the digital world brings, grasp the pivotal role that ICT plays in enabling them to achieve organization - environment fit and have the capacity to ride the digital wave to deliver services that delight customers while at the same time, to plumb the depths to discover hidden insights and opportunities.

In Chapter III, we have recommended a functionally realigned organization for promoting specialization, clearer accountability and vastly improved delivery. This carries with it the risk of creating functional silos. It is ICT that converts the organization into a network that bridges the silos and creates a web in which knowledge and information flow seamlessly and reaches people at the place and time it is needed. It thus knits the organization together and promotes collaboration and team-working across organizational and functional boundaries.

In the matrix structure that we have recommended in Chapter III of the report, each of the functions – vertical and horizontal – would have an embedded ICT team with lines of reporting within the same function and also to the ICT function.

If this is to be achieved, the *sine qua non* is a deep integration of the ICT and business domains at the strategic as well as operational levels and in all key decision making. As discussed earlier, evidence suggests that ICT has not adequately penetrated into the governance structure of our tax administration and that a lack of holistic understanding of business needs with ICT capabilities has led to sub-optimal realization of the benefits of ICT projects and systems. Few decisions are taken with their compatibility with ICT in mind. It is suggested that each and every legislation instrument should be similarly vetted for ICT adaptability and it should be ensured that all types of legislation, such as levies, exemptions, procedures, forms etc., are finalized only after consultation with the Directorate of Systems.

### Box VII.1

A number of examples can be cited to show the disconnect between the policy making and IT wings. In indirect taxes, for example, the DG (Systems) is never consulted while bringing legislative changes in taxation year after year through the annual budget exercise or otherwise by the TRU. Similarly, the policy wings attached to central excise, customs and service tax do not consult ICT wings before bringing in changes in forms and procedures. Some illustrations from the recent past:

- i. In the middle of 2012, consequent on the implementation of the negative list in service tax, the ST-3 return form was amended by the Board without prior consultation with the DG (Systems) and without giving sufficient time to make the requisite changes in the application. This resulted in disruption in e-filing and hardship to taxpayers as they were not able to file their returns in time. The whole process got delayed and return filing spilled over to the next financial year. In the absence of returns, the department had to rely upon officers manually collecting and compiling data – an unnecessarily wasteful effort that could have been obviated had the change been properly planned.

- ii. Implementation of VCES scheme in 2013 is another example where the readiness of IT was not taken into account before the budget announcement. While the scheme has been a great success in raking in additional revenue, the department has lost the opportunity to get valuable information on the nature of non-compliance. Even though the scheme benefited the exchequer, the department was deprived of crucial real time information on sectors and regions that were non-compliant. Without the leverage of IT, a large amount of manual input is lying with the department, which is of little use from the perspective of analysis and future course of action.

In customs too, a number of notifications are framed in a manner that makes configuration of the business rules in the EDI system difficult and sometimes impossible. The result is that related clearances cannot be handled in EDI and have to be dealt with manually. A number of exemptions and anti-dumping notifications are in this category. The DG (Systems) CBEC has been flagging this issue on a number of occasions. The Tax Reforms Committee chaired by Dr. Vijay Kelkar had, in the year 2004, recommended the following:

- a. The systems wing of the CBEC should be strengthened in terms of both manpower and resources
- b. Since simplification, and standardization and stability of law and procedures are essential prerequisites for a successful automation programme, providing a lead time for software changes when laws are changed is essential for successful automation. All procedures must be devised in consultations with systems personnel who can advise on their adaptability to computerization and
- c. Levies and exemptions must be aligned to tariff headings. At present levies and exemptions are, at times, announced with reference to the description of the goods. Since the descriptions are not standardized, it creates difficulty in automation.

There appears to have been little note taken of the recommendations.

Efforts to achieve full digitization place an onerous burden on the shoulders of business as well as ICT leadership, i.e. the DG (Systems) of the two Boards. The DG (Systems) has to assume the responsibility of thought leadership in ICT and act as the “translator” between the technology and business domains. As the chief information officer, he must be a part of the highest councils that determine strategy and policy in order that ICT is integrated with key decisions. As the custodian of the information capital of the organization, he will also assist the Boards in the development of a sound information policy. He will also have to play a key role in developing training and change management initiatives to impart the required ICT skills and knowledge to the operational staff.

The Boards, on the other hand, will have to create structures and processes to enhance the working relationship between business owners and DG (Systems) to ensure that ICT initiatives are aligned with business needs, priorities and capabilities. And this means substantially strengthening the DG (Systems) organizations by providing officers with the right capabilities and in the required numbers and instituting sound processes for ICT governance that promote the achievement of business-ICT integration and ensure efficient, effective and secure governance.

### **VII.3.f Building and sustaining key IT related skills – technology skills, project management skills, vendor and contract management skills etc**

Often one witnesses a strange situation – officers posted in the systems directorate willing and able to continue contributing there face the prospect of transfer while unwilling and often unsuitable candidates get dragged there, all because of a wooden adherence to a clearly outdated transfer policy. This is an enduring and continuing risk to ICT projects.

As noted earlier, successful ICT implementation requires a basket of unique skills not normally expected in a tax administrator. Most tax administrations abroad have the flexibility to hire talent from the market and indeed very often do. In many cases, key positions in areas like ICT are filled by open recruitment of professionals. Besides, the internal staff are encouraged to specialize and acquire additional qualifications that make a difference in their career advancement. They are allowed growth in their chosen areas of specialization and permitted long tenures in order to do so.

In India, the situation is highly rigid. It is career IRS officers who staff the ICT function at managerial levels. While the two DG (Systems) have been fortunate to get committed and qualified IRS officers, that is largely situational and there is no guarantee that such supply will be available at all times. The reason is twofold. First, the transfer policies of the two Boards do not acknowledge the need for specialization in key domains, including in the area of ICT. In an age when the trend is clearly towards increasing specialization and competencies in specific areas, the HR policies are based on the false premise that everybody is good at everything. Secondly, both the DGs face acute difficulties in attracting willing and qualified IRS officers. The general perception appears to be that ICT is not the core area of tax operations. Considering the acute shortage of officers in the systems directorates, the prospect of lonely and stressful hard work is also clearly unpalatable to many officers.

It is, therefore, essential that HR policies must change. Broadly, the policy should encourage specialization of officers in certain key areas after a basic grounding in the department's work. On joining service, IRS officers for the first few years, say 9-10 years, are rotated on various jobs. Exception will be in cases where someone wants a particular type of job and the department does not have any objection and the person is suitable. Such postings could be in systems, training, and taxpayer services etc. Thereafter, the officers may be selected by the department for specialization, having regard to their capability, inclination and potential, in key areas such as ICT, audit, taxpayer services, the people function and training, intelligence and investigation, judicial etc. Ordinarily, there should be no transfers outside such specialization for the next ten years, unless an officer opts out or is required to be moved out on administrative grounds. The requirement, however, must be that the officers demonstrate quality work in their chosen domain.

Certain types of skills, however, may have to be acquired from outside as they are in any case generally in short supply. These are in areas such as big data analytics, behavioural sciences etc. which are critical in the knowledge and analysis centre.

### **VII.3.g Training and development for ICT use and effective change management**

For the ICT function, there are certain critical skills that are required in areas such as programme and project management, ICT procurement, vendor and contract management, service management and ICT governance, besides normal technology skills. As we noted earlier, currently these are acquired by officers on the job. This is hardly a desirable situation. Hence, it is necessary that arrangements are made to provide training in these areas, either in-house or through reputed institutions.

Besides, in specialized areas, participation in technical seminars and events add to the knowledge base of officers. So does continuous interaction with technology institutions such as the IITs and professional networks. The DG (Systems) should have the funding and authority to provide for this and depute officers for such seminars, events etc., whether in India or abroad.

For the staff in the field, certain basic ICT skills in terms of using business applications are required. DG (Systems) needs to help training institutions in the two Boards to develop basic ICT courses that spread awareness of technology and impart training in the use of systems deployed in the department. Besides, every new application roll out or a major change needs to be accompanied by a robust training effort. DG (ICT) will have to closely interact with DG (HR) and the respective training institutions to ensure that these needs are met.

### **VII.3.h Knowledge management**

There is currently no single portal that provides the knowledge and information needed by officers to perform their tasks with greater efficiency and effectiveness. The availability of such a system, which has become the norm in most well governed organizations, will result in much better performance of officers and improve the quality of taxpayer services. The system should also provide collaborative tools enabling officers to collaborate and find best possible solutions when needed.

### **VII.4 System of data utilization through data mining techniques, and carrying out analytics for various usages such as taxpayer service, risk management, revenue augmentation etc.**

In Chapter III, we have recommended the institution of a single Knowledge Analysis and Intelligence (KAI) centre for both direct and indirect taxes, to be located in the Strategic Planning and Risk Management Directorate. This will be a common service to be used by both the Boards.

Currently, data is by and large lying in a fragmented fashion and very little use is being made of it in either policy formulation or in more operational domains such as risk management, tax payer

segmentation etc. Further, there is no integration of data between the two Boards. Thus, the potential for use of the rich data in the two systems remains almost totally unexploited. Both the Boards have moved to set up data warehouses and acquire advanced analytical and reporting tools. However, these again are separate projects, and the current constraints and under realization of potential are likely to continue.

It is learnt that discussions on data sharing are on between the Boards. Hopefully, these will yield results. It is of utmost importance that these are speeded up and concluded.

Besides the internal data in the two tax systems, integration with third party data, from which the CBDT has derived substantial value already, is equally important. Even though the CBDT continues to wrestle with the challenge of non-PAN data, available data could be of immense use in the CBEC, particularly in the area of service tax.

Going beyond this, successful organizations are now travelling beyond the traditional data warehousing technologies to exploit the opportunities of “big data” by tapping into the data that is constantly being churned out in the world. The CBDT and CBEC will have to explore the potential in this area as well. Even assuming that hassle free data sharing is established, the two administrations doing their analyses independently would again mean a fragmented approach towards the taxpayer.

Considering this, it is clear that it will not be sufficient to merely create a mechanism for data sharing (which, by itself, has proved to be a matter of considerable difficulty between the two Boards). The Boards will have to create mechanisms for joint analyses and exploitation of the data that they acquire and hold. Nothing short of a common database and a joint mechanism for exploiting the data would provide the answer. Quite apart from anything else, this will also avoid considerable (and quite expensive) duplication of effort.

Analytics can add immense value in many ways. Some of these are:

- Enabling compliance measurement and accurate identification of non-compliance
- Providing support for effective risk management
- Enabling sectoral/industry wise analysis of trends and tax collections
- Robust revenue forecasting and identifying tax gap
- Improving recovery of arrears or tax debt collection
- Enabling impact analysis prior to and after legislative and policy changes
- Providing predictive support for intelligence and fraud detection
- Enabling tax payer profiling and segmentation for better taxpayer services
- Tracking taxpayer behaviour
- Tracking performance and identifying areas for improving business processes

Best performing organizations, including many tax administrations, are creating dedicated units for analytics. Typically, the mechanism adopted follows the “Centre of Excellence” model and the unit is a high-valued shared resource in the organization. Multiple skills need to be brought to bear on the task of advanced analytics. These include deep data analysts, domain experts with sharp analytical skills and ICT capabilities, statisticians and economists, behavioural scientists and even, on occasion, data scientists. These skills are not normally resident in a tax administration. They are also in short supply. Considering the high premiums such resources command in the market, there are challenges in attracting and retaining the right talent. A major motivation for people in such areas is the content, challenge and varied nature of the problems they are asked to work on. Hence, the “Centre of Excellence” approach is the best bet for setting up such a unit successfully. The ICT function, through the SPV we are recommending, will have to support it by providing the ICT platform, tools and technologies and perhaps, some expert resources as well.

Lest there be confusion, it should be clarified that it is not our recommendation that the KAI centre should be the sole repository of analysis. It would be highly valued and to entrust normal analysis to it would be a serious case of under-utilizing a scarce resource. Good quality analysis, relevant to each function, should continue to happen in each functional vertical and the ICT support for this should be provided by the ICT function. In fact, an analytical and data driven approach should drive operational decisions in each functional vertical.

Only complex problems with strategic implications should normally get referred to the KAI centre. It is, in fact, possible to create a financial model for chargeability for KAI centre services that will ensure that it is optimally utilized. In such a scenario, each functional vertical will budget for and pay for KAI centre services.

#### **VII.5 Structures to promote sound and quick decision making, flexibility and innovation, accessing the required resources from the market and functional and financial autonomy coupled with accountability for delivery**

The big question is whether the mammoth task that lies ahead can be accomplished by the two Boards through the two DG (Systems) in the current paradigm, structures and processes. To recapitulate, the challenge before them is to:

- Create and maintain systems that are comprehensive and fully meet the expectations of customers, staff, management and external stakeholders – both current and future
- Build and maintain a high degree of ICT related skills in areas such as programme and project management, ICT procurement, contract and vendor management and certain core technology skills
- Move the organizations to “digital by default” status
- Maintain high levels of ICT security



- Constantly enhance data sources, internal and external
- Provide the platform and capabilities for advanced data analytics that inform policy and operations
- Create a hub of innovation and experimentation that will explore new opportunities that rapid advances in technology offer
- Ensure ICT integration across CBEC/CBDT's and other organizations' boundaries

We have identified earlier in the report the salient risks both the Boards face in sustainable ICT implementation. These risks lie primarily in the area of

- ICT governance – where there are inadequacies and which requires strong ICT orientation in senior leadership
- Human resources – where there is lack of sustained availability (both in numbers and quality) of specialized skills essential for ICT implementation
- HR policies – where policies are not aligned with the need to promote specialization and do not recognize the special needs of ICT implementation
- Financial processes - where the inherent inflexibility of governmental processes that are not attuned to ICT implementation and the lack of financial delegation entails risk for project timelines

If there is to be any chance of success in this effort, the two DG (Systems) will need adequate resources, financial and operational flexibility and reasonable autonomy and independence. The challenges to build and maintain the required skills and capacities will continue to remain daunting.

Further, with the two directorates and Boards operating in separate silos, it will be very hard to move towards integration and a common ICT implementation, which is so eminently desirable.

For the detailed reasons given below, we believe the task is not possible within existing structures and processes. It is also too large to be carried out by the limited resources that the two DG (Systems) have or hope to have. In view of this, we believe a purpose-built organization, in the form of a special purpose vehicle (SPV), needs to be created to ensure sustainable ICT implementation. And to ensure synergies, efficiencies and economies of scale and prevent avoidable duplication of efforts, we believe it should be one organization that should service both the Boards.

The idea is not new. It has been inconclusively debated for long in both the Boards. There are a number of such SPVs already in operation such as Centre for Railway Information Systems (CRIS) and IRCTC in the Ministry of Railways – the former being a registered society and the latter a



PSU. FSLRC has recommended setting up of a Financial Data Management Centre that will be the common portal for data from financial regulators.

Realizing the special nature and significance of the ICT implementation, the Technical Advisory Group on Unique Projects, headed by Shri Nandan Nilekani had also recommended the setting up of SPVs, termed as National Information Utilities, for projects under the Ministry of Finance.<sup>102</sup> For GST, an SPV, GSTN, has already been set up.

We would, however, like to emphasize that the SPV should not be seen merely as a means to overcome the constraints of governmental processes. It is a strategic decision driven by what is best for effective and sustainable ICT implementation. It is worth noting in this context that many tax administrations have chosen to create such entities even when their governmental processes allow far greater freedom and autonomy than do the processes in India.<sup>103</sup> Its primary logic is to meet the need for a dedicated organization focused exclusively on creating flexible, effective and sustainable ICT systems that enable the tax administration to achieve its strategic goals. It can then focus its energies on policies and administration while the SPV focuses on creating and maintaining ICT infrastructure and systems that support the business strategies of the administration and delivers high quality service to its customers in the ICT domain. Both the entities would benefit from a mutually supporting and symbiotic relationship that enables them to focus on their core activities. Consequently, the key stakeholders – the tax administration, the taxpayer, the community at large and the government – would also benefit in the form of a high quality and high performing tax administration and high quality and reliable taxpayer services. We would also like to emphasize that our recommendations regarding improved ICT governance, HR policies to promote specialization etc. would continue to remain valid even after the SPV is set up. Certain core IT skills will continue to be needed in house to discharge key ICT roles in areas such as ICT strategy, security, information policies and governance.

The examples mentioned above show that an SPV can be set up either as a society under the Societies Registration Act or a company under the Companies Act. TAGUP examined the alternate structures and concluded that for executing complex projects in government, a company structure is preferable. We agree with their analysis that it would be preferable to create an SPV as a company with limited liability under the Companies Act. Our detailed recommendations on the SPV are given below.

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<sup>102</sup> TAGUP Report dated January 31, 2011. Available at [http://finmin.nic.in/reports/tagup\\_report.pdf](http://finmin.nic.in/reports/tagup_report.pdf) Last accessed on 24/4/2014

<sup>103</sup> SERPRO of Brazil is one example. Similarly, the Dutch Tax and Customs Administration has a full, market-based ICT company.

### VII.5.a Justification for SPV

Given the complexity and exploding volume of data to be handled, use of ICT tools has become an absolute necessity for better administration and taxpayer service. Both the CBDT and CBEC have been proactive and forward looking and have adopted ICT for their department functioning quite successfully. To manage this, they established the directorates of systems that focus on ICT enablement. The Directorate of Systems functions as the single entity within the department with responsibility to undertake major ICT based projects. They interact regularly with various other departments and field formations to know about problems, possible improvements, new requirements and future needs. DG Systems also works directly with the Boards to align ICT initiatives with the priorities and directions of the respective Boards. However, ICT is not the core area of strength, specialization or expertise of the department staff. Therefore, the systems directorates take up automation of various components of tax administration as discrete projects and engage ICT service providers for implementation support for each of the projects. Both departments require an integrated ICT enablement of tax administration and service delivery.

Equally important is the fact that other entities in the ecosystem of tax administration, like banks and taxpayers, are also computerizing at a fast pace and they expect their interface with the tax departments to be digital.

The digital transformation also offers new opportunities to strengthen tax administration. Both the departments collect a significant amount of data relating to taxpayers. It is clear that if these two data sources are integrated into a common data warehouse with the help of modern analytical tools, the departments could improve their ability to profile taxpayers. This can be further strengthened if data from other third party sources like state tax administrations, other ministries like corporate affairs, commerce and industry and so on are also linked with tax data. Data driven solutions can contribute to better customer service, better enforcement and analysis, and evidence based policy making.

The complexity and scale of ICT solutions and the criticality and sensitivity of the data being handled is an enormous challenge for both departments. First, they do not have necessary expertise within. Although they are able to access ICT expertise from ICT service providers engaged for each of the projects, such expertise is limited to the respective projects and is, in any case, a poor substitute for internal strength in these areas. Further, as there are multiple vendors, governed under separate contracts, their expertise cannot assist the development of a comprehensive ICT strategy and a comprehensive knowledge base.

Further, with both departments developing their databases and ICT solutions independent of each other, standards, taxonomy, data-structure etc., are very divergent. This makes data integration quite tedious. It also inconveniences taxpayers as they are required to submit the same data to both departments and often, arranged in different forms. With the two departments working in silos, there is lack of trust in each other with respect to data security and resistance to sharing data.

The directorates, considering the resources they have, the way they are structured and the framework in which they have to operate, do not have the flexibility and autonomy (a) to develop ICT strategy and enterprise architecture that is continuously updated to match evolving needs and technologies (b) to have specialists who can anchor critical areas like networking, data architecture and standards, integration etc. (c) to leverage assets of projects for other initiatives, (d) to develop integrated budgets as all budgets are project oriented, (e) to administer contracts and (f) to respond quickly to fast changing requirements.

The above constraints of focus, flexibility, nimbleness and availability of resources with specialized skills present a strong argument for establishing an independent entity such as an SPV that is focused on ICT based service delivery. Such a structure, independent of departmental constraints, can

- have financial autonomy to manage its functions
- attract and retain best domain and technology professionals to ensure realization of ICT based business strategies
- achieve possible economies of scale in computerization
- have policies to nurture a sustainable delivery organization
- provide a common interface to the taxpayer for tax payment, refunds, returns submission, status update and communication

The role of this SPV would be to provide ICT service and not to undertake tax administration. Further, both tax administrations have many functions like registration, payment of taxes, filing of returns, refund processing, audit and so on, which are systemically similar. Therefore, this SPV can be more beneficial as a common facility for the two Boards. Such a common facility could bring significant economies of scale, enable better taxpayer profiling and more powerful risk models to support enforcement. It will also contribute towards establishing common data standards and building security systems and practices acceptable to both parties.

This SPV can also be a place where departmental staff can be seconded for specific periods, which will help them to build deep awareness of technology tools and its usage for better tax administration. This will also help the SPV to appreciate and incorporate the priorities and compulsions of the departments.

Similarly, the SPV can be a source for accessing critical and highly specialized technological skills like data scientists, deep data analysts etc. for the departments. This will be very relevant in the knowledge and analysis centre for which, the SPV can be tasked with the responsibility of creating the platform and tools.

The SPV can eventually evolve to provide ICT services to other related government departments, bringing about further economies of scale and helping to build a comprehensive data warehouse.

Outsourcing of non-core functions is a strategy adopted widely in the public and private sector. Similarly, the establishment of captive ICT service providers with strategic control by the user is also a strategy adopted in sectors where ICT is a core enabler for the primary business as in the case of banking, financial services and so on. The criticality of ICT tools to the primary business of the tax administration is similar to that in the financial services sector. In the same fashion, Financial Sector Legislative Reforms Commission (FSLRC) has recommended a common SPV, the Financial Data Management Centre (FDMC) for managing data for the financial regulators like IRDA, SEBI, RBI and PFRDA.<sup>104</sup>

### VII.5.b Key functions of the SPV

We envisage the SPV to be established as a single entity that owns and delivers all major ICT initiatives of the departments. This SPV will be designed to be an agile organization, which will deliver business value at a significantly faster pace than is the case today. The scope and functions of the SPV will include the following:

- developing ICT strategies that match the vision of the tax administration
- implementing of ICT strategies in a timely fashion
- maintaining the ICT infrastructure in a safe and secure manner with committed service
- ensuring business continuity at all times
- continuously upgrading applications to cater to changing policies
- periodically refreshing technology to exploit new developments

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<sup>104</sup> Recommendation 9.5 of FSLRC report (Volume I: Analysis and Recommendations) states that the Financial Stability and Development Council (FSDC) will operate a common data centre to be called Financial Data Management Centre (FDMC) with the following mandate:

- The FDMC will work within the FSDC as the sole electronic system for the collection of data from financial entities for regulatory reporting and supervision;
- All decisions on the nature of information to be collected will be entirely within the domain of individual regulatory agencies;
- The FDMC staff will merely aggregate the data and provide access to the regulators. All vetting and review of such data, and requests for additional information will continue to be done by the individual regulators; and
- The FSDC would be empowered to enter into memoranda of understanding with other regulators such as the CCI or other statutory agencies associated with the financial system for increasing the ambit of a centralized data collection, transmission and warehousing function.

- providing training and support to both internal and external users of ICT
- providing inputs to policymakers on the impact of technology and the challenges in implementing policy changes
- defining and maintaining standards, inter-operability models etc
- defining business systems and ICT metrics for all ICT transformation initiatives
- owning all ICT infrastructure across all projects – including data centres, networking, servers, storages, application software etc. so that all ICT infrastructure elements are optimized across projects to increase utilization and minimize incremental procurement
- selecting service providers for execution of projects as needed and overseeing their performance

The IPR for all the solutions developed by the SPV could be owned jointly by the SPV and the respective Boards. This will allow the SPV to commercially exploit this IPR for other clients. At the same time, the SPV will not be able to put the two departments in difficulty because it holds exclusive IPR on the solutions it develops.

The SPV will not do any work in tax related areas other than that directed by departments and it should not be involved in the business operation of the department, *viz.*, the routine tax administration function.

#### **VII.5.c Institutional Framework and Strategic Control**

This aspect has been discussed in detail in the TAGUP. Relevant aspects have been adapted for the SPV under consideration.

##### **Independent management**

The structure of the SPV should be such that it should be able to work without the need for day-to-day guidance and advisories from the owner's representatives.

The management should be independent and empowered to take quick and efficient business decisions pertaining to attracting and retaining talent, procurement, rapid response to business exigencies, adopting new technologies etc. The independence of the management is linked to the financial independence of the SPV. Therefore, the SPV should be able to get funding independently and have a self-sustaining financial model (for e.g. levy user charges/charge for services or a combination). The entity should be empowered to commit and sign appropriate SLAs with customers and vendors.

### **Strategic control within government**

Given the sensitivity of the role that the SPV will play, it is necessary that strategic control be retained within government. Strategic control primarily should be focused on the vision and outcomes of the project rather than on controlling the functioning and management of the SPV's day-to-day affairs. Providing flexibility to the SPV is not necessarily against achieving the broad objectives and outcomes of the projects.

Strategic control can be achieved by having a strong dedicated team within the government to inter alia, drive policies, design a suitable solution architecture, supervise execution, frame appropriate contracts, adopt outcome-based pricing, evolve SLAs, and conduct independent audits.

### **A flexible institutional framework**

In order to evolve an operational model that would help achieve the twin objectives of independent management of the SPV while retaining strategic control with the government, two alternatives were evaluated, namely, a society (registered under The Societies Registration Act, 1860) and a company (registered under Companies Act, 1956).

A society is governed by its bye-laws, which are specifically defined for each society. The Societies Registration Act, 1860, provides full flexibility to the members of a society to define the bye-laws, based on which the society is to be governed and managed.

A company is governed by the Companies Act, 1956. Under the Act, there is a clear distinction between the management and the governing body (Board of Directors). The act also lays down the roles and responsibilities of directors, including the managing director.

A society can be created with bye-laws that allow for the independence of the management team with regard to operations, including HR policies and compensation norms, procurement process, and financial decisions. However, in order to retain strategic control, the society needs to be controlled by government and its processes may have to be aligned with government processes.

On the other hand, a company's management is provided with the requisite empowerment to operate independently with regard to day-to-day operations and yet be accountable to the Board. The Companies Act, 1956, provides for more elaborate and rigid norms (as compared to a society) with respect to accountability and transparency.

The governance structure of a company allows for government to retain strategic control (by virtue of being a shareholder and also a customer), without impeding the independence of its management.

In the context of executing complex projects in government, a company structure is preferable over a society because it implies a greater ability to raise funds and because it allows for financial

independence, operational flexibility, quicker decision making, greater accountability, and transparency. In the context of a society, the ability to attract different kinds of capital is limited and the structure is not viable for the public-private nature as envisioned in the long term.

Therefore, it is recommended that the SPV should be structured as a company with limited liability and be subject to sound corporate governance norms, such as those required for listed companies. While the company should not be listed on a stock exchange, the broad composition, accountability, and transparency norms for the SPV should be the same as prescribed for listed companies.

#### **VII.5.d Ownership**

The following characteristics would be appropriate for the SPV

- i) The total private ownership of the SPV should be at least 51 per cent. The government by virtue of its being the single largest shareholder will be able to moderate the functioning of the SPV through its position on the Board.
- ii) The ownership share of the government in the SPV should be at least 26%.
- iii) No single private entity should own more than 25 per cent of the shares in an SPV. Institutions that have a direct conflict of interest (*e.g.* ICT companies) should not be permitted to be shareholders.
- iv) An SPV should not go for an initial public offering or list itself on public exchanges.
- v) An SPV should be a dispersed-shareholding corporation with a professional management team who are not owners.
- vi) The shareholders of the SPV should be entities who stand to benefit from an efficient tax administration system. This would help align their incentives to the impact of the SPV upon society, as opposed to a focus on dividends and valuation. These could be financial institutions and industry associations.
- vii) The SPV should preferably have a net worth of around Rs.300 crore. This figure has been arrived at in order to ensure that the SPV has the ability to own and lease its asset base and to meet its working capital requirements in the initial stage. This will ensure that the SPV is well-capitalized, can hire the best people at competitive salaries, and invest adequately in infrastructure so that it can manage large-scale national projects.
- viii) The articles of association of the SPV may include a cap on dividend payouts, to ensure that the incentives of the owners do not drive it towards profit maximization.



### **VII.5.e Departments' functions post-SPV creation**

Departments should continue to focus on policy making and policy administration with absolute control over functions requiring statutory authority and interpretation of laws like assessment, recovery, scrutiny, appeals and so on.

The relationship between the departments and the SPV should be a complementary one. The overall strategy will be developed within the administration, with the ICT inputs provided by the DG (Systems), who will involve the SPV as well. The SPV will develop the ICT strategy within the framework of the overall strategy approved by the Boards. While the SPV will have full operational freedom to execute projects, certain key aspects of ICT policy such as contracting arrangements over project lifecycles, IPR etc., will require the concurrence of DG (Systems). This will ensure that the strategic and operational risks for the Boards are adequately addressed.

Systems directorates should continue to exist as a separate vertical, as detailed in Chapter III of this report, and become the arm of the Board to interface with and oversee the SPV. It should also oversee the transition of existing contracts to the SPV and become the first point of review and approval of financial proposals during the transition period. It would be the mechanism used by the Boards to maintain strategic control over the SPV and to liaise with and monitor the activities of the SPV on behalf of the Board. It should have sufficient technical strength for this purpose and for taking strategic technology decisions and vetting the SPV's proposals.

### **VII.5.f Financial Model for SPV**

Generally, SPVs are created as financially self-sustained entities and that is one of the main reasons these vehicles are successful. To provide for this independence, the SPV cannot be funded like a conventional department of the government, wherein all capital and operating costs are paid for by the government and department only manages its activities. This would make the structure inflexible and provide no incentives for cost and time control.

It is important that the business model in which the SPV generates its income is established in such a way that it provides independence and incentivizes efficiency gain. At present, there are different models in vogue in paying for large projects by the government. Some government projects follow a deferred payment model. In this model, no capital investment is required from the government at the time of inception. Capital investments are made by the System Integrator (SI) who gets paid over five to seven years period in quarterly instalments. This payment covers for the investment made by the SI and a reasonable return.

In some projects, payments are made against specific milestones attained. The milestones may include installation, commissioning, etc. besides annual maintenance charges covering both equipment and services.



In other cases, the service provider takes care of the capital and operating costs and gets paid by the user on the basis of their usage. The user charges are negotiated and fixed in the beginning.

In the first two models, there could be pressure on the service provider to ensure efficiency of operation; however, there is limited incentive for the entity to take measures to improve adoption of the services offered. This is especially relevant in the case of the ICT SPV, since the digitization that the SPV will effect will also require considerable effort to manage the transition from a manual to a digital environment.

Hence, we recommend that the SPV should have a mechanism for receiving usage based payment, which is agreed upon for each project that it undertakes. The SPV will then have to manage its finances from the payment so received, which will not only act as an incentive to keep costs low but also to work towards increasing adoption and usage of solutions developed.

#### **VII.5.g Overall management structure of the SPV**

The SPV is proposed to be established as a company under the Companies Act. Hence, it will have a structure with a Board with representatives of the direct and indirect tax administrations, which will oversee operations, and evaluate and decide on strategies. The Board will not be involved in day-to-day management.

The SPV could also provide for an advisory board, which can be given veto power over any decision taken by the SPV that violates a set of stated principles with respect to its role in providing a public good. This board may have eminent personalities with necessary experience and the ability to see the big picture. The advisory board should have no business responsibility. Their role should be to ensure that the privileged position of the SPV is not misused.

Management should be the responsibility of a suitably qualified team. The team should consist of professionals who are capable and committed with a long term view of the company. There could be a complement of career tax officers who are deputed to the SPV as domain experts. A broad structure delineating key functions of the SPV could be as follows:

- The SPV should be headed by a CEO. The management committee of the SPV should include a CFO (Chief Financial Officer), CTO (Chief Technology Officer), CSO (Chief Security Officer), besides the heads of HR and administration.
- The SPV should have independent departments for a) financial b) HR c) administration d) legal/contracting and e) risk management.
- The Chief Technology Officer's department should consist of a strategy and architecture group, process and assurance group and, various project groups for definition, implementation and operations. ICT security should be defined as part of each project. The separation of testing groups from execution groups is also essential and can ensure early

business-oriented testing. There have to be special groups for the data centre and networking, which could become common initiatives across various projects being undertaken.

- The security department should have the ability to draw up strategy, policy, procedures, and audit and compliance requirements. It should have the necessary expertise, capability and authority to ensure that the privacy and security of data, especially that of personal data, is not compromised.
- HR policies are going to be critical. Unless a professional work culture is introduced and the right challenges and opportunities are provided, the long-term sustainability of the SPV will always be in question. There is no immediate answer to the very critical issue of retaining people in the absence of a clear career path for the specialists who are part of the SPV.

The SPV, like any operating business enterprise, should have measurable goals for finance, business outcome, internal processes and productivity. While the SPV may have its own processes of monitoring and measuring these goals, there should be an annual review by the two Boards and the Governing Council. Besides these broad measurements against high level goals, the primary responsibility of the SPV should be to ensure that all ICT systems deliver the outcomes as per the service level agreements (SLAs) with the service providers. Therefore, the monthly scorecard of the SLAs is going to be one of the basic parameters of operational efficiency of the SPV. A structured system to collect annual/bi-annual feedback from end users can also be a reasonable indicator of how ICT systems are being managed.

#### **VII.5.h Operational alignment and relationship with departmental entities to enable effective ICT service delivery**

We envisage the SPV to be structured along major initiatives for each of which there is a principal stakeholder, user or owner within the department. The systems directorate organization has to work within the department framework to create the principal owner-stakeholder participation model to ensure that right inputs are provided, the right participation is there, right usage is there for initiatives and right feedback is provided for continuous evolution. In fact, departmental entities become key user entities.

To achieve this, it is important to clearly enunciate the role and responsibilities of the SPV. In particular, whenever the SPV is selected to deliver a service, there should be a clear agreement with it on the (i) scope, (ii) outcomes expected (ii) responsibility of the contracting entity (iii) financial arrangement and (iv) service level guarantee.

One of the key questions which may be asked is whether the SPV is the only entity within CBEC/CBDT to undertake ICT initiatives. Our view is that the charter of SPV has to be defined to ensure that all major IT initiatives are under the purview of the SPV. Only then will the SPV

have the necessary scale of operations, ICT infrastructure, the budget and resources to effectively manage service delivery as well as attract good quality manpower from industry. Smaller/ad hoc ICT initiatives may be permitted to be done by various departmental entities – departments can define the size of these; however, the SPVs view on these may be taken as some of these can be taken up for exploitation across departments.

With the institution of the SPV, the energies of the tax administration would be more sharply focused on policy and implementation, while the SPV will undertake the entire responsibility of providing effective ICT support to its efforts.

Diagrams 7.4, 7.5 and 7.6 illustrate the respective roles and structures.

Diagram 7.4: Integrated ICT environment for SPV

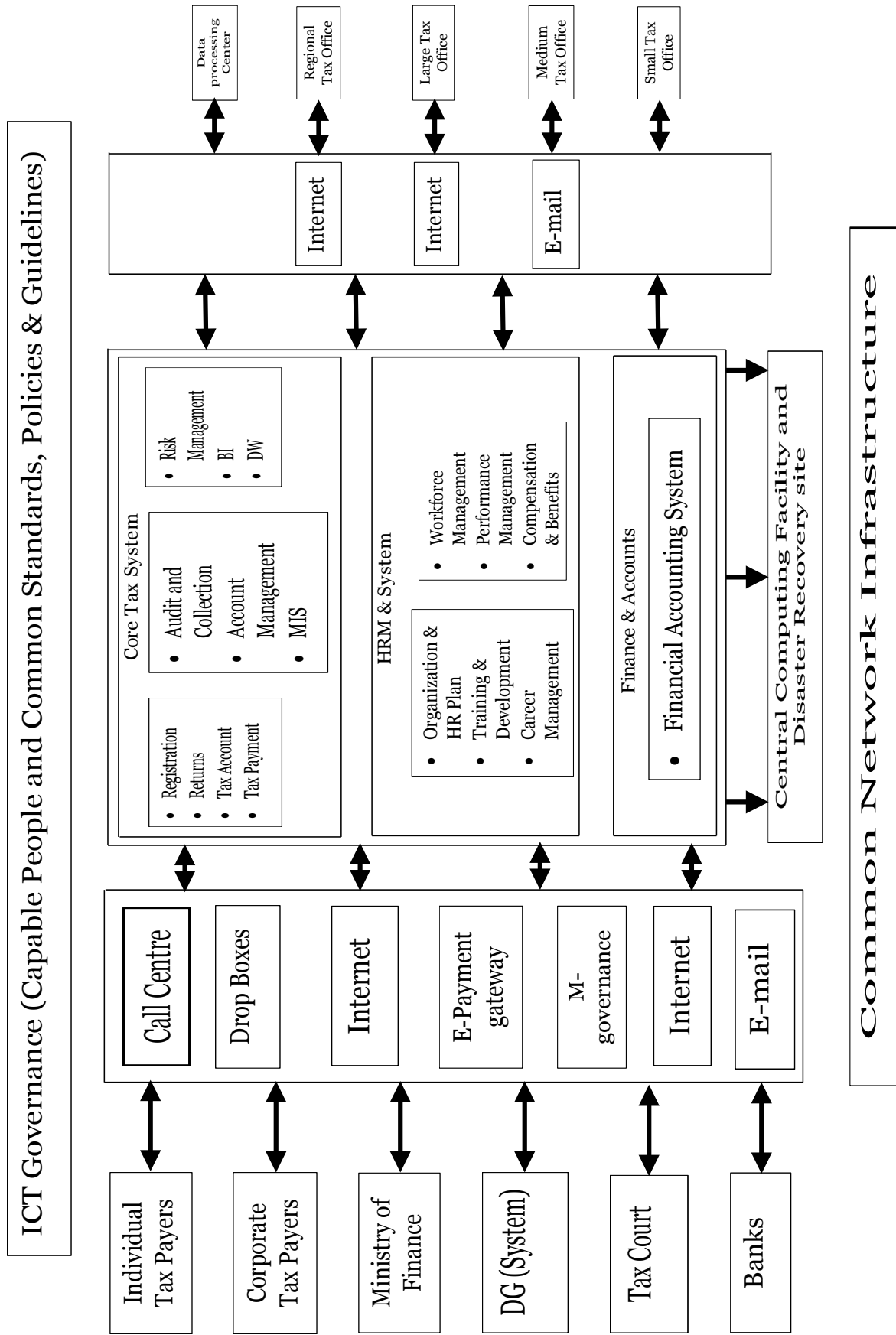


Diagram 7.5: High-level organisational structure for SPV

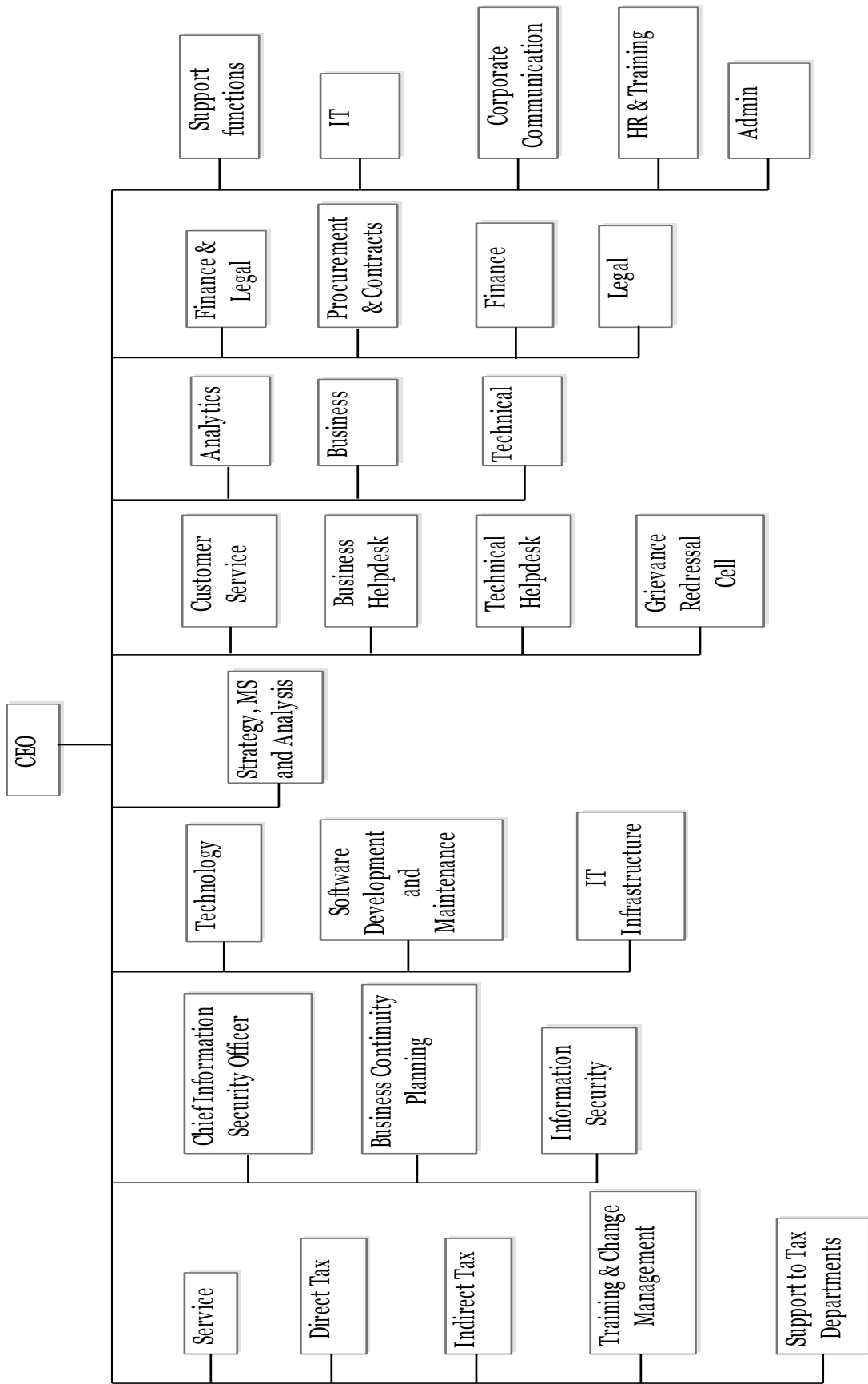
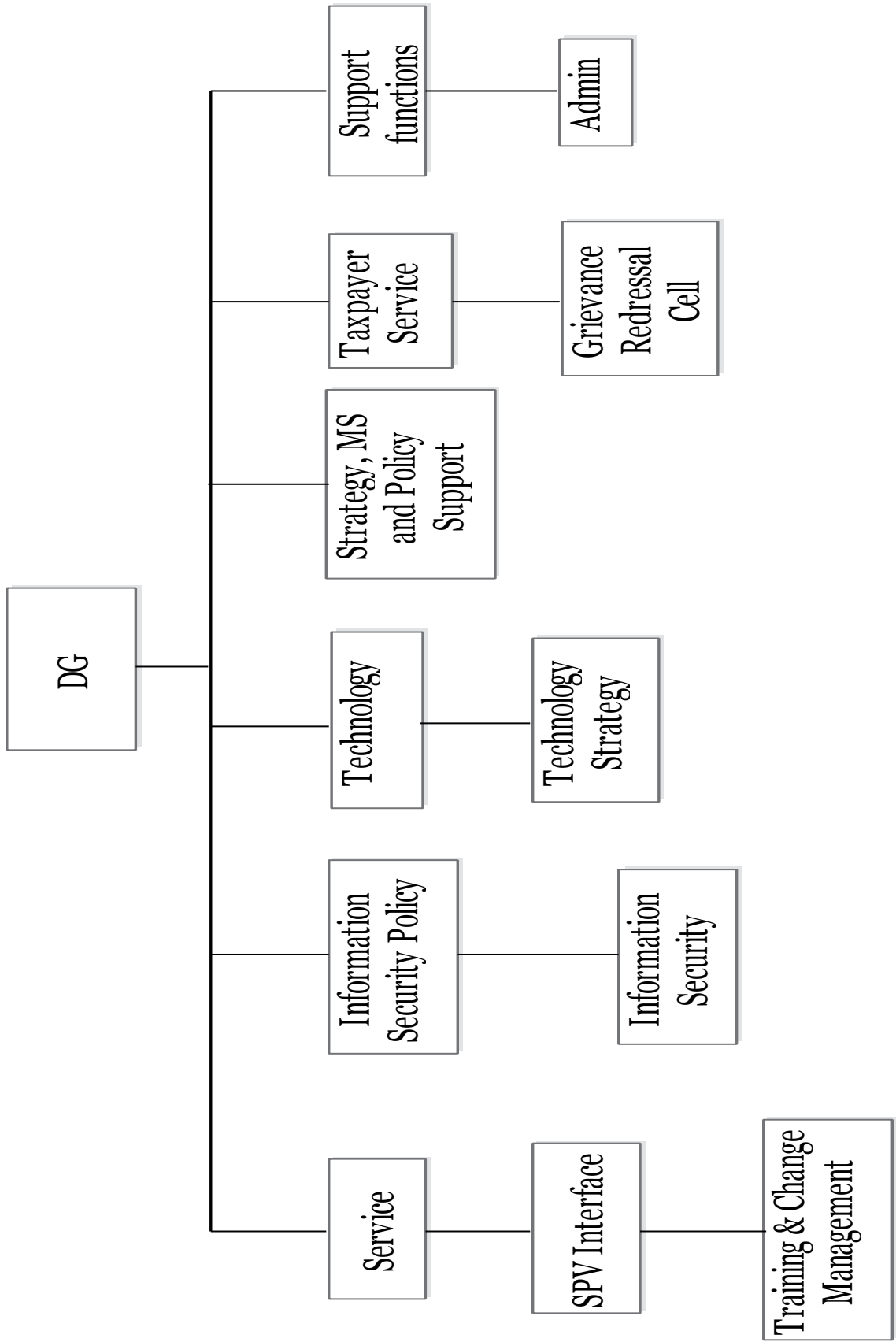


Diagram 7.6: High-level organisational structure for DG (Systems)



## VII.6 Journey to “digital by default”

The discussion so far has laid the approach for full digitisation of the tax administration, including the organisation structures necessary to carry it through. While the Boards are not starting on a “clean slate” in the use of ICT systems, the road ahead will be far more challenging as they will lead the tax administration to a totally digitised environment. This transformation will need to be started with a visioning exercise and take them away from project mode operation to a programme oriented execution. DG (Systems), SPV leadership team and the Boards themselves will have to be involved in this exercise, with the recognition that computerisation is not an “add on” to their business processes, but an integral part of it.

The planning exercise will have to be conducted by those who will have the responsibility for carrying the programme through. It will involve technology experts as well as knowledgeable users. The proposed structure makes it possible, as the SPV will have the technology expertise and will also be involved in carrying the programme through.

As noted, both the Boards have ambitious ongoing projects which extend the use of ICT in the departments. Early completion of these projects will embed ICT more fully in the working of the departments. These need to be positioned in the overarching ICT strategy to be developed as mentioned, which will evolve from the business vision and the path to the final destination laid out. It would be better for them to adopt a “building block” approach, with continuous stream of new applications rolled out, which can be progressively integrated. This will be facilitated by strategy of developing reusable components that can be effectively used for creating the building blocks.

In developing this path, they must ask themselves the following questions:

- i) Where are we going?
- ii) What are the design principles we need to adopt for this “digital by default” programme?
- iii) How do we plan for infrastructure acquisition to meet a heavy demand environment?
- iv) What steps do we need to take to plan and manage new projects and bring about a continuously improving digitised environment?
- v) What needs to be done to provide users a continuously enhancing experience of the power of ICT?
- vi) How do we stay current in terms of technology use so that we reap the full benefits of emerging technology paradigm?

The list below is intended to help the change management team in this planning exercise.

- i) Planning fully digitised environment
  - a. Conceive the final state of integrated applications of both the Boards
  - b. Develop the plan for applications to be logically added to reach the final state in a defined time period.
- ii) Develop architectural principles
  - a. Define the systems and data architecture principles , taking into account the state of legacy system and the current plans for systems development and implementation
  - b. Arrive at “Component” strategy and take inventory of current availability
  - c. Develop contracting guidelines and templates to support modular development
- iii) Create an infrastructure plan
  - a. Develop a “cloud” strategy, taking into account available capacity in Government Data Centres and putting in place security mechanism
  - b. Strengthen ICT acquisition skills by inducting specialists. Develop contract management strategies for acquiring data centre and network resources in a secure framework and in sharing them
- iv) Improve management of ICT system
  - a. Develop models for arriving at ICT budgets for large programs and a quantitative basis for assessing their impact
  - b. Assign program teams with both domain and technology expertise, dedicate resources throughout program lifecycle and collocate them, where possible. Hold them accountable for both individual functional goals as well overall program success.
  - c. Design principles for charging by usage
  - d. Enhance user capability to specify user requirements and accept systems
  - e. Launch a programme for sharing components and best practices
  - f. Develop approaches for review by the Boards and Governing Council
- v) Address Technology Refresh issues
  - a. Continuously scan for new technology introduction and competencies required
  - b. Engage with the innovation ecosystem including start-ups and research institutions to scan for early adoption of new technologies.
  - c. Hire personnel with requisite expertise



## VII.7 Recommendations

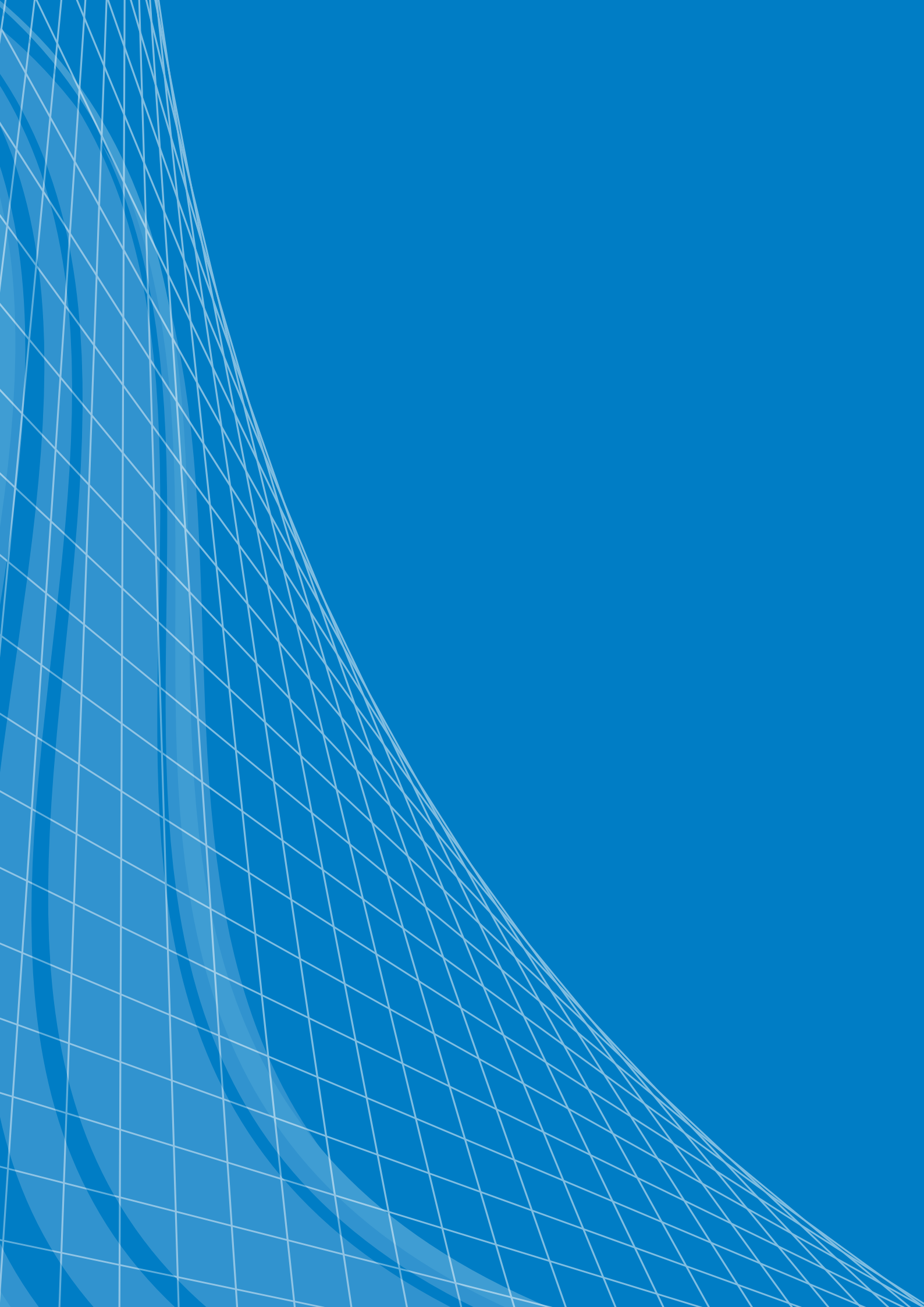
The TARC recommends that

- a) For full realization of the potential of ICT, it must get embedded in the DNA of the organization. Both the design of policies and implementation should make full use of ICT (Section VII.3.a)
- b) The leadership must ensure that where systems are available, employees should not have the option to work in a paper environment (Section VII.3.a)
- c) Both Boards must commit themselves to achieve a fully digitized environment and work towards comprehensive ICT system(s) in which everyone from the top leader to the last person on the frontline works in a digital environment (Section VII.3.a)
- d) The Boards must regularly use maturity frameworks to assess their ICT maturity and map out the path towards greater maturity (Section VII.3.a)
- e) Automation should follow business process re-engineering to avoid the danger of getting trapped in an outdated mode of governance (Section VII.3.a)
- f) All decisions should be taken with ICT compatibility in mind. Similarly, all legislation should be ICT-compatible (Section VII.3.b)
- g) The Boards must create structures and processes to enhance working relationships between business owners and DG (Systems) to ensure that ICT initiatives are aligned with business needs, priorities and capabilities (Section VII.3.b and d)
- h) Boards should adopt a robust ICT governance framework and practices, and rigorous programme and project management frameworks (Section VII.3.b)
- i) Project planning and approvals must include the required number and quality of human resources (Section VII.1.b)
- j) Movement of personnel should have a linkage with project implementation and there should be a process of knowledge transfer (Section VII.1.b)
- k) A service oriented architecture and approach should be adopted to promote integrated systems, greater “value for money” and customer focus (Section VII.3.b)
- l) HR policies must be aligned with the need for specialization and officers should be allowed to grow in the areas in which they specialize. Routine transfers should be avoided (Section VII.3.d)
- m) Special training for officers in key areas of ICT should be arranged for officers of DG (Systems) (Section VII.3.e)
- n) DG (Systems) should ensure proper training for operational staff at the roll out of any new application (Section VII.3.e)

- o) DG (Systems) should have authority and funding to depute officers for specialized courses, seminars and events and engage with professional networks and academic institutions (Section VII.3.e)
- p) The discussions for data sharing between CBDT and CBEC should be speeded up and sharing must begin quickly (Section VII.4)
- q) A shared knowledge, analysis and intelligence centre, headed by an expert professional, should be set up for advanced data analytics and research. The SPV can support it by providing the platform, tools and technologies, and expertise (Section VII.4)
- r) A common special purpose vehicle (SPV) should be set up for servicing the ICT needs of the Boards (Section VII.5.a)
- s) It should be incorporated as a company with limited liability under the Companies Act and should have a private ownership of 51 per cent and government ownership of at least 26 per cent. It should have operational independence and institutional flexibility even as government retains strategic control (Section VII.5.c)
- t) The SPV should preferably have a net worth of around Rs.300 crore. This will ensure that the SPV is well-capitalized, can hire the best people at competitive salaries, and invest adequately in infrastructure to manage large-scale national projects.
- u) The relationship between the departments and the SPV should be a complementary one. The tax administration would develop an overall strategy with the ICT inputs provided by the DG (Systems). The SPV will develop the ICT strategy within the framework of the overall strategy, which will be approved by the Boards. The DG (Systems) of the two Boards will continue to exist, and will perform more strategic roles and be the Boards' interface with the SPV (Section VII.5.e)
- v) It should aim to be financially self-sustaining through an appropriate business model (Section VII.5.f)
- w) It should be operationally aligned and maintain relationships with the concerned entities in DG (Systems) to ensure effective ICT service delivery (Section VII.5.h)
- x) The Boards, DG (Systems) and the SPV together should work out the plan for the transformation to "digital by default" status. The plan should begin with a visioning exercise to define the end state and should be programme, as opposed to project, oriented.



# APPENDICES



# Chapter II

## Customer Focus

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### Appendix II.1

#### Present taxpayer services by CBDT and CBEC

Taxpayer services by the two Boards, the CBDT and CBEC, are delivered by providing information (passive service) and through interactive services (active service). Channels for providing information are:

- i. Websites
- ii. Call Centres
- iii. Publications
- iv. Public circulars issued by the departments
- v. Advertisements
- vi. Interactive Voice Response System (IVRS)
- vii. Outreach programmes

#### Information through Websites

The national portal of India ([www.india.gov.in](http://www.india.gov.in)) has details of direct and indirect taxes acts and rules, downloadable forms, a link for new taxpayer registration, enquiry and e-filing of returns. The CBDT website provides the vision, mission and values of the I-T Department, details of the organization and its functions, jurisdiction of AOs and the citizen's charter. It also allows access to the direct tax Acts - Income Tax Act, Wealth Tax Act – along with the latest circulars and notifications issued by the I-T Department. Downloadable taxpayer information booklets are also available on the website on various subjects.

The CBEC website also provides information on indirect taxes acts, rules, regulations, forms, circulars, notifications, manuals, FAQs relating to customs, central excise, service tax, foreign travel tax and internal travel tax. It also contains details of customs tariffs, drawback rates, customs duty calculator, baggage rules and exchange rates.

#### Public Circulars of the Boards

Circulars are issued by the two Boards from time to time to inform taxpayers and citizens about changes in law and procedures and clarifications on legal provisions. These circulars are binding on the departments. However, there is a time lag in their issue. Notifications are often

in legal language, making it difficult for taxpayers to understand. They normally do not have explanatory notes.

### **Advertisements**

Both the Boards bring out informative and topical advertisements to coincide with deadlines for payment of taxes and filing of returns through newspapers, television, radio, outdoor advertisements and SMSs.

### **Active services through Websites**

CBDT website provides forms that can be downloaded together with bilingual instructions. The website also provides challan forms for payment of taxes and a software utility for printing challans with bar-coded PAN/TAN and other details. The website also provides PAN/TAN services, e-filing of income tax returns, e-filing of TDS returns, e-filing of third party information returns, status of refunds and view of the tax credit statement. Besides, the website has a tax calculator that helps taxpayers calculate their tax liability based on their taxable income.

The CBEC website, Automation of Central Excise and Service Tax (ACES), allows e-filing of central excise and service tax returns and e-payment of taxes. It also provides for registration, accounting, refunds, dispute resolution, provisional audit assessments, exports, claims, intimations and permissions. The site also provides a video on learning management systems for ACES.

ICEGATE is the e-commerce portal of the Indian customs. It offers services like-filing of bills of entry, electronic clearance of goods for custom house agents, exporters and importers, and real-time tracking of documents and status.

### **Call centres**

CBDT has opened five call centres to attend to queries from the public. There is also one call centre for the centralized processing centre for e-filing of returns. The NSDL also operates a TIN call centre. But there is no common interface between the two call centres. The use of IVRS by the call centres is minimal. The only functioning IVRS system is in Chennai. Call centre staff need training in responding to taxpayers/clients and need more domain knowledge relating to tax. The verification process of the taxpayer or caller by the staff is at present inadequate. Often, more serious or complex questions remain unanswered.

The CBEC has launched an e-helpline facility from October 1, 2012, in each chief commissioner zone for clarifying the doubts of trade and industry. The main objective of the e-helpline is to provide help to taxpayers on issues relating procedural delays and in addressing system related problems, including in the ACES and ICES.

## Outreach Programme

CBDT has been carrying out the following activities as part of its taxpayer outreach initiatives:

- a) Tax return preparer scheme
- b) Taxpayer lounges at international trade fairs
- c) Taxpayer conferences
- d) Conference with trade associations
- e) Children's education through visit to schools
- f) Aayakar Seva Kendras to be a single-point service delivery in each I-T Department building

## Aayakar Seva Kendra

Aayakar Seva Kendra (ASK) is meant to provide taxpayers access to information on various aspects of direct taxes. They also provide a facility to register grievances that can be resolved within specified time frames. ASK is, thus, a single point contact for taxpayers for information, lodging complaints and filing various documents. ASK has three different functional units, viz.

- May I Help you counter for replying to general enquiries by tax payers
- Collection counters for receipt of *dak (mail)* and paper returns,
- Facilitation centre to assist taxpayers on PAN queries/providing return forms and other taxpayer education literature and assistance of tax return preparers (TRPs)

A new software has been prepared under ASK that classifies each receipt under one of the 16 identified services that the taxpayer can get through ASK and allocates dates for disposal of the application, based on the timelines mentioned in the citizen's charter. The system generates an MIS for each receipt, thus making available details of achievement vis-à-vis standards for each transaction.

CBEC has also taken initiatives to provide quality services. Thirteen Commissionerates have been *Sevottam* certified and 7 more are at the BIS audit stage, ready for *Sevottam* certification based on BIS Standard IS 15700:2005.

## E-services by CBDT

CBDT has launched the following e-services for taxpayers:

- E-payment of taxes
- E-filing of TDS statements
- E-processing of TDS statements
- E-view of tax credits

- E-filing of income tax returns
- E-processing of income tax returns
- E-matching of tax credits
- E-tracking of income tax returns
- E-delivery of refunds
- E-tracking of refunds

Most taxpayers have benefitted from these services. During the FY 2011-12, 1.64 crore taxpayers e-filed their tax returns. The number went up to 2.15 crore in the FY 2012-13 and 2.97 crore in the FY 2013-14, showing a 38 per cent increase over the previous year.

### **E-services by CBEC**

Among the e-governance initiatives taken by the CBEC is the automation of processes, reducing discretion and physical interface between taxpayers and officers. Indian Customs EDI System (ICES) is running across 116 customs locations in the country in an upgraded version since 2009. This portal provides connectivity to all major stakeholders such as port authorities, shipping lines, airlines, custom brokers, DGFT, banks and other government agencies. It provides for e-filing of documents from anywhere/any time (24×7) to these partner organizations. At present, it serves 6.7 lakh importers/exporters and handles close to 98 per cent of the country's international trade. The list of services provided through this portal are:

- E-filing of bills of entry, shipping bills and IGM/EGM
- E-payment of duties
- Selective appraisal and examination through the risk management system (RMS)
- First-come- first-served basis processing of documents and online tracking of status.
- Direct crediting of drawback in exporters' bank accounts.
- Electronic refund of service tax paid on exports.
- Centralized bond management system, enabling traders to file a bond at one location and effect clearance of import/export goods through another.
- Electronic transmission of shipping bills to DGFT and online receipt of licences.
- Round the clock helpdesk with toll-free number
- Automated recording and targeting system (ARTS) for protection of intellectual property rights (IPR)
- Accredited clients programme (ACP) under which trusted importers are extended the facility of fast track custom clearance



Automation of Central Excise and Service Tax (ACES) has also been rolled out in all 104 excise and service tax commissionerates. This has helped ease business processes for about 20 lakh indirect taxpayers. The following services are provided through ACES:

- Online PAN-based registration of central excise and service tax assesses and online amendment. It provides for online validation of PAN with the income tax database
- Electronic filing of claims, permissions, intimations and processing thereof
- Instant e-acknowledgement of documents with document identification number
- Viewing, filing and tracking the status of documents online
- Facility of e-payment and checking status online
- Online revenue reconciliation
- Online messages/alerts to users on business related matters
- Online information to assessees about issuance of show cause notice, personal hearing and orders passed by adjudicating authorities
- Online filing of replies to show cause notices
- Online filing of application for provisional assessment

### **Self-Assessment**

Besides the above e-services, self-assessment of customs duty by importers/exporters has been also introduced since 2011. The objective of this facility is to expedite clearance of most risk free or less risky import/export goods without any assessment/examination by customs. Revenue interests in terms of ensuring correct declarations and duty payment are protected by an electronic risk management system (RMS) that identifies risky consignments for assessment or examination or both by the departmental officers. RMS is functional at all ports. Along with RMS, an on-site post clearance audit (OSPCA) scheme was also launched in 2011, to facilitate customs clearance of goods and reducing dwell time.

### **Authorized Economic Operator (AEO) Programme**

The AEO programme, launched as part of the World Customs Organization guidelines of SAFE Framework of Standards, aims to provide a secure international supply chain for import/export goods from the point of origin in the exporting country to the point of destination in the importing country. This programme provides stakeholder business entities with an internationally recognized certification of being secured and reliable trading partners. Every stakeholder who is accorded the status of authorised economic operator gets benefits as indicated below in Table 2A.1.

**Table 2A.1: Benefits to AEO Entities**

Exporter/ Importer	<ul style="list-style-type: none"> <li>• Reduced customs examination</li> <li>• Reduced bank guarantee</li> </ul>
Logistics Provider	<ul style="list-style-type: none"> <li>• Waived trans-shipment bank guarantee</li> <li>• Waived case-wise transit permission</li> </ul>
Warehouse Owner	<ul style="list-style-type: none"> <li>• Faster approval for new warehouse</li> <li>• Reduced bank guarantee</li> </ul>
Custom Broker	<ul style="list-style-type: none"> <li>• Extended licence validity</li> <li>• Waived licence renewal fee</li> </ul>
Custodian/Terminal Operator	<ul style="list-style-type: none"> <li>• Waived bank guarantee</li> <li>• Extended approval for 10 years</li> </ul>

**TRP Scheme**

The tax return preparer scheme (TRPS) was launched by CBDT in November 2006 to help individual and HUF tax-payers file their income tax returns. The main objective of the scheme was to make one more channel for filing of return available at a low cost to small taxpayers. The scope of the scheme was subsequently enlarged to include filing of TDS statements, service tax returns, etc. The department has further included TRPs as qualified e-return intermediaries so that they can file e-returns of individual and HUF taxpayers.

### ICT delivery mechanisms in other tax administrations

Tax administrations often use ICT-based taxpayer service delivery to not only reduce costs but also to boost taxpayer satisfaction. These efficient and effective operating practices often help in increasing voluntary compliance, besides improving taxpayer services. It is largely possible to interact with tax administrations and comply with all tax obligations without having to visit a ‘brick and mortar’ office. Tax administrations also provide access to taxpayer information through online taxpayer portals, call centres, using modern telephony facilities, etc.

Among the more advanced tax administration, the UK HMRC, for example, engages online with stakeholders on a continuous basis, and seeks feedback on its services. HMRC communications are multi-lingual, direct and clear and use social media technology (SMT) through channels such as YouTube, Twitter, etc. It has already moved to ‘tax apps’ in sync with the latest technology trend of SMAC (social media, mobiles, applications and cloud). UK HMRC also handles 70 million calls annually in its call centres.

ATO also often uses social media such as Twitter, Facebook, and YouTube to provide information about tax, respond to enquiries and direct people to relevant information on the website. Australia is also considering the implementation of universal routing, click to call, web chat, VOIP, screen capture, etc. Universal routing would enable the delivery of taxpayer initiated inbound activities, regardless of the channel. ATO has put in place a seamless ‘one-stop-shop’ of digital services in alignment with the whole-of-government approach to allow taxpayers access to government services and to receive secure electronic communications from multiple agencies in one place. ATO has also developed a small business interactive tool to provide simple online access to information and short videos especially for small business operators.

A survey of e-services delivery by some tax administrations is given in Table 2A.2.

**Table 2A.2: Priority areas for e-services delivery**

Priority areas for e-services delivery	Countries
<b>a) Internet-based services</b>	
Enhance existing range of on-line services to help taxpayers & employers for them to self-manage their tax affairs	Australia, Austria, Belgium, Canada, Chile, Denmark, France, Ireland, Italy, Japan, Korea, Netherlands, New Zealand, Norway, Portugal, Singapore, Slovenia, Spain, Sweden, Turkey, UK
New web-based services, including conversion of online products to web-based services	Australia, Denmark, France, Slovenia, Sweden, USA

Priority areas for e-services delivery	Countries
Integration of external service links such as e-banking and e-invoice	Austria, Turkey
Strengthen outreach & communications	Canada
Enhance telephone service capabilities	Canada, Chile, Ireland,
<b>b) Whole-of-government approaches</b>	
Standard business reporting	Australia, Belgium, New Zealand
Generic government solutions	Netherlands, Norway, Switzerland, UK
Sharing tax information with government bodies	Denmark, Norway, Slovenia, Sweden

Source: OECD, 2010

Table 2A.3 gives the targets set by different tax administrations for e-services delivery.

**Table 2A.3: Targets in different tax administrations for e-service delivery**

Name of the Country	E-service delivery and related targets/goals set for 2012
<b>Canada</b>	The CRA intends to achieve 5 per cent increase in total interactions/transactions by all taxpayers by March 2012, with accompanying 5 per cent increase in the satisfaction level.
<b>Denmark</b>	All communication to and from businesses are to be made electronic from 2012.
<b>Ireland</b>	Easier to use pay as you earn (PAYE) self-service channels, with a target that this service is used at least once in a year by 2010.
<b>Japan</b>	Goal to raise e-service usage to more than 65 per cent by 2013.
<b>Mexico</b>	Reduce cost of collections from 1.06 per cent in 2006 to 0.9 per cent in 2012; and also increase the level of taxpayer satisfaction to 85 per cent by 2012 from 80 per cent in 2006.
<b>Netherlands</b>	Reduce administrative burden to 25 per cent by 2012.
<b>New Zealand</b>	95 per cent of taxpayer filing electronically to also pay electronically by 2011-12; those not complying will be contacted.
<b>Spain</b>	Extending the use of the automated system to all taxpayers.
<b>Turkey</b>	All taxpayers to file tax returns via e-declaration and promote usage of banks for collections.
<b>USA</b>	80 per cent of all major tax returns to be filed electronically by individuals, businesses, and tax exempt entities by 2012.

Source: OECD 2010

### International practices of taxpayer rights and obligations

Descriptions of taxpayers' rights in taxpayer charters normally demonstrate that a distinction can be made in basic rights and service performance standards set by tax administrations. Basic rights are usually stated in formal documents such as taxpayer charters or even in a country's legislation. But in practice, many tax administrations set out taxpayer's rights in a formal charter/statement that are made public. Charters usually reflect the tax administration's vision for service delivery (*e.g.*, services are comprehensive, accessible, fair and timely) and its vision on performance standards in general. Many tax administrations also set service performance standards with time-bound objectives that are made public.

Taxpayer's rights can be categorized into six different segments:

- (a) Right to be informed, assisted and heard
- (b) Right of appeal
- (c) Right to pay no more than the correct amount of tax
- (d) Right to certainty
- (e) Right to privacy
- (f) Right to confidentiality and secrecy

The Inland Revenue Department of Hong Kong, China, operates with a relatively straightforward charter for everyone who deals with it on tax matters. The charter is complemented by a "performance pledge", which sets out the levels of services, including the timeliness; for example, counter enquiries are to be attended to within 10 minutes during peak periods, telephone enquiries to be answered within 3 minutes during peak periods, written enquiries on simple matters to be replied to within 7 days and enquiries related to technical matters to be replied to within 21 days. Performance targets are published *a priori* and there is an independent "users committee", comprising external representatives, to monitor the performance. These standards are reviewed from time to time. Lithuania's State Tax Inspectorate also has a taxpayer service standard, which defines the standards of conduct and service conditions for all personnel of the authority and focuses on service delivery.

The Australian Taxation Office (ATO) has also adopted a taxpayer charter, which outlines not only taxpayer's rights and obligations, but also what he can expect from the ATO and what he can do if he is not satisfied. The UK HMRC has a taxpayer charter that outlines what taxpayers can expect from it, including the expectation of taxpayers to be treated with respect and as honest. The charter states that the cost of dealing with HMRC should be kept as low as possible.

Canada Revenue Agency (CRA) has taken the legislative route to ensure that rights have legal force. It has adopted a 'Taxpayer Bill of Rights' that includes the right to have the law applied consistently, the right to expect CRA to be accountable, the right to be treated professionally, courteously and fairly and the right to expect CRA to warn the taxpayer about questionable tax schemes in a timely manner.

Table 2A.4: Sector-wise list of issues taken up during the Tax Forum meetings

Sector(s)	CBDT	CBEC
Information Technology; Reinsurance	<ul style="list-style-type: none"> <li>• Safe Harbour</li> <li>• Resumption of MAP process</li> <li>• Inter-corporate transactions</li> <li>• Deductions for exports of onsite services</li> <li>• Hiring of new employees and transfer as condition for eligibility for SEZ benefits</li> <li>• Withdrawal of pending cases and appeals on issues clarified by CBDT circular</li> <li>• Software product taxation (lower deduction certificate)</li> </ul>	<ul style="list-style-type: none"> <li>• Pending service tax refunds/rebates for export of services</li> <li>• Establishing nexus with exporters</li> <li>• Levy of TDS, VAT, excise and service tax on software products</li> <li>• Service tax in respect of services provided by reinsurance agents</li> </ul>
Manufacturing	<ul style="list-style-type: none"> <li>• Treating Indian manufacturing companies as PE of parent and group companies</li> <li>• Issuance of TDS certificate for persons who do not have PAN and where TDS has been deducted at higher rate</li> </ul>	<ul style="list-style-type: none"> <li>• Valuation of goods sold at a price below the cost of production</li> <li>• Liability of payment on removal of capital goods after use</li> <li>• Distribution of CENVAT credit by input service distributor</li> <li>• Non-payment of interest on pre-deposits in case of disputes (Section 35FF allows for</li> </ul>

		<p>interest from three months after the date of order of appellate authority)</p> <ul style="list-style-type: none"> <li>• CENVAT credit on endorsed bill of entry</li> <li>• Clarification in respect of Central Excise Notification No.33/2012</li> </ul>
<p>Financial services</p>	<ul style="list-style-type: none"> <li>• Provisions of Section 14A of the I-T Act, 1961 read with Rule 8D of the I-T Rules</li> <li>• Clarification of the definition of ‘securities’ in Section 112(1)(c) of the Act</li> <li>• Deduction of tax at source on interest income to non- banking financial companies (NBFC’s)</li> </ul>	<ul style="list-style-type: none"> <li>• Adjustment allowed of service tax paid on written off service revenue</li> <li>• Credit of service tax paid on “reinsurance premium”</li> <li>• Service tax on redemption/sale in securities by insurance companies</li> <li>• Assessment/scrutiny/audit of service tax records</li> <li>• Standardization of records to be maintained in terms of Rule 5 of Service Tax Rules</li> </ul>
<p>Infrastructure</p>	<ul style="list-style-type: none"> <li>• Taxation of consortium arrangements in turnkey/EPC infrastructure contracts as association of persons (AOPs)</li> <li>• Ambiguity on applicability of TDS on negative grant and on capital grant</li> <li>• Eligibility of deduction u/s 80-IA during unexpired period to the substituted company</li> </ul>	<ul style="list-style-type: none"> <li>• Applicability of service tax on financial dealings (cash calls and reimbursements/ allocation of overhead costs) between unincorporated joint venture (UJV)/association of persons (AOP) and their members</li> </ul>

	<ul style="list-style-type: none"> <li>• Clarity on availability of depreciation allowance/deduction in relation to cost incurred for development of roads/highways in case of BOT contracts.</li> <li>• Taxability under minimum alternative tax (MAT) u/s 115JB on share of income of a member from an AOP</li> </ul>	<ul style="list-style-type: none"> <li>• Service tax on capital grants to project support fund and revenue share paid to the sponsoring authority</li> <li>• CENVAT credit of capital goods, inputs and input services to assessee engaged in transportation of natural gas through pipelines</li> <li>• Accumulation of credit by joint ventures and unincorporated associations under the partial reverse charge mechanism</li> <li>• Allowance of bad debts in service tax</li> <li>• Amendment in Rule 6(4) of CENVAT credit</li> </ul>
Manufacturing		<ul style="list-style-type: none"> <li>• Restrictions on availment of CENVAT credit on services mandatory for business</li> <li>• Cascading of service tax for brand owners when manufacture is by job-workers</li> <li>• Denial of service tax refunds to exporters</li> <li>• Recovery proceedings pending disposal of stay petition rules, 2004</li> <li>• Timelines for finalization of matters (adjudication)</li> </ul>



		<ul style="list-style-type: none"> <li>• Distribution of credit by input service distributor (ISD) to specific sites only</li> <li>• Central excise valuation – impact of the judgment of the Supreme Court in Fiat case</li> <li>• Credit reversal in case of removal of used capital goods</li> <li>• Clearance of goods for captive consumption</li> <li>• Interpretation of the term ‘Food Stuff’ used in Notification No. 25/2012-ST dated 20.6.2012</li> <li>• Levy of service tax on facilities provided by employer to employees during the course of employment</li> <li>• Expanding the scope of the Authority for Advance Rulings (‘AAR’)</li> </ul>
<p>Furnace &amp; Foundry; Export of Services</p>	<ul style="list-style-type: none"> <li>• Withholding tax on payments made towards interconnect usage charges, international connectivity, roaming charges (domestic and international), port charges etc, under section 194J / 195 of the Act</li> </ul>	<ul style="list-style-type: none"> <li>• Deemed credit on non-excisable steel scrap</li> <li>• Valuation rules for interrelated/interconnected units</li> <li>• Credit reversal in case of removal of used capital goods</li> <li>• CENVAT credit on infrastructural support such as towers, shelters etc.</li> </ul>

		<ul style="list-style-type: none"> <li>• CENVAT credit for services used in civil structure</li> <li>• Multiple levy of service tax/VAT/excise on software, supply of content, etc.</li> <li>• Clarifications in relation to service tax exemption for SEZ units under Notification 12/2013-ST dated 1st July 2013</li> <li>• Payment of interest on the refund of accumulated CENVAT credit or rebate of excise beyond the specified period of 90 days</li> <li>• Service tax charged by landlords/mall owners to tenants/retailers on charges towards electricity, water etc.</li> <li>• Delay in processing SAD refund</li> </ul>
Insurance and International Taxation	<ul style="list-style-type: none"> <li>• Strengthening dispute resolution panels (DRPs)</li> <li>• Issuance of fresh shares to non-resident associate enterprises (AEs)</li> <li>• TDS on reinsurance premium paid to non-resident reinsurance companies</li> <li>• Responsibilities cast on qualified depository participants (QDPs)</li> <li>• TDS on service tax</li> </ul>	<ul style="list-style-type: none"> <li>• Disallowance of CENVAT credit on reinsurance services</li> <li>• Availment of the CENVAT credit in case of reimbursement of motor/health claims</li> </ul>
Financial services		<ul style="list-style-type: none"> <li>• Point of taxation for life insurance services</li> <li>• Service tax on commission paid to insurance agents</li> </ul>

	<ul style="list-style-type: none"> <li>• Tax issues through creation of SPV</li> <li>• Scope of income distribution tax under Section 115R of the Act</li> <li>• TDS on reinsurance premium paid to non-resident re-insurers</li> <li>• Applicability of minimum alternate tax to foreign companies</li> <li>• Set-off of losses in case of arbitrage business</li> <li>• Tax on distributed income on buy-back of shares</li> </ul>	
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# Chapter III

## Structure and Governance

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### Appendix III.1

#### Present Structure of CBDT and CBEC

In India, the power to levy, collect and administer taxes is divided among the three tiers of government. While the union (federal) government handles income tax, wealth tax, securities transaction tax, customs, central excise, central sales tax and service tax, state governments handle VAT, excise on liquor and molasses, land revenue, stamp duty, motor vehicle tax including driving licence, and local government bodies like municipal corporations, municipalities and cantonment boards administer property tax, taxes on non-motorized vehicles (cycles, three-wheeler rickshaws, animal driven vehicles), fees on pets etc.

There are four departments under the Ministry of Finance in India. One of them is the Department of Revenue. Under the Department of Revenue, there are two statutory Boards – the CBDT and the CBEC. Each is headed by a Chairperson with six members in their ex-officio rank of Special Secretary. These officers as well as other officers working in the CBDT & CBEC are ex-officio officers of the Department of Revenue, holding equivalent ranks.

There are a number of directorate generals in the two Boards handling specialized functions. These DGs work as attached offices of the Boards, and carry out functions such as publication, public relations, inspections, audit, systems, infrastructure development, vigilance, training, etc. While some of the directorates like inspection, audit, organization and management, vigilance and recovery carry out the function of supervision and compilation of reports etc., on the activities performed by field offices and report and assist the Board in evaluating and monitoring the performance of field formations, other Directorates, such as systems, printing, publication and public relations, examination, infrastructure, etc. carry out support functions for the entire field departments – (1) income tax department, or (2) customs, central excise and service tax departments, as be the case. There are also some variations in the works assigned to these attached directorates between the two Boards.

The administrative set up of the two Boards has been the subject matter of wide comments/criticism by various committees from time to time (see below). The powers and functions of the Boards emanate from the Central Board of Revenue Act, 1963, as well as the Government of India (Allocation of Business) Rules, 1961. According to these provisions, all matters concerning direct taxes are to be dealt with by the CBDT, and indirect taxes such as customs, central excise, central sales tax and service tax by the CBEC. Unlike other statutory

boards like the Postal Board and Railway Board, the CBDT and the CBEC have not been declared a separate department. In the present arrangement, the CBDT and the CBEC are a part of the Department of Revenue, even though it is neither its department or its attached or subordinate office, nor an autonomous organization or a public sector undertaking. The role of the Department of Revenue according to the Government of India (Allocation of Business) Rules, 1961, is restricted to only dealing with matters concerning the CBDT or CBEC. However, it has no powers to exercise any supervision and control over the CBDT or CBEC or any of their attached offices. Similarly, the Department of Revenue has no powers to administer any direct or indirect tax acts and its functions in respect of these acts are restricted to replying to questions raised in Parliament. Again, the Government of India (Allocation of Business Rules), 1961, has also not conferred on the Department of Revenue any role in the administration of the Indian Revenue Service, I-T or C&CE. The power to issue instructions to income tax authorities statutorily vests with the CBDT, as per the Income Tax Act, 1961. Similarly, in matters relating to indirect taxes, such power to issue instructions to field formations is vested in the CBEC.

### **Central Board of Direct Taxes (CBDT)**

CBDT constitutes the apex body to administer for the administration of laws relating to direct taxes. The CBDT was created under the Central Board of Revenue Act, 1963 (54 of 1963), with effect from January 1, 1964. Prior to this, the Central Board of Revenue was looking after the administration of both direct and indirect taxes. The Central Board of Direct Taxes consists of a chairman and six members. The chairman and members are assisted by Joint Secretaries/Commissioners, Directors, Deputy Secretaries, Undersecretaries and ministerial staff to carry out their day-to-day functions; the organizational set-up of CBDT is given in Diagram 3A.1 below.

There are eight directorates that work as the attached offices of CBDT for liaison between the field formations and the Board. Field functions are not monitored by the directorates. The Chief Commissioners report directly to the concerned members of the Board as far as assessment and investigation work is concerned. These directorates are headed by the director generals of income tax (DGIT) and are directly under the administrative control of the CBDT. Directors of Income Tax (DIT) head these directorates. They work under the DGIT and report through them to the Board. The general structure of these directorates is given in Diagram 2A.2.

Diagram 3A.1: CBDT Organizational Structure

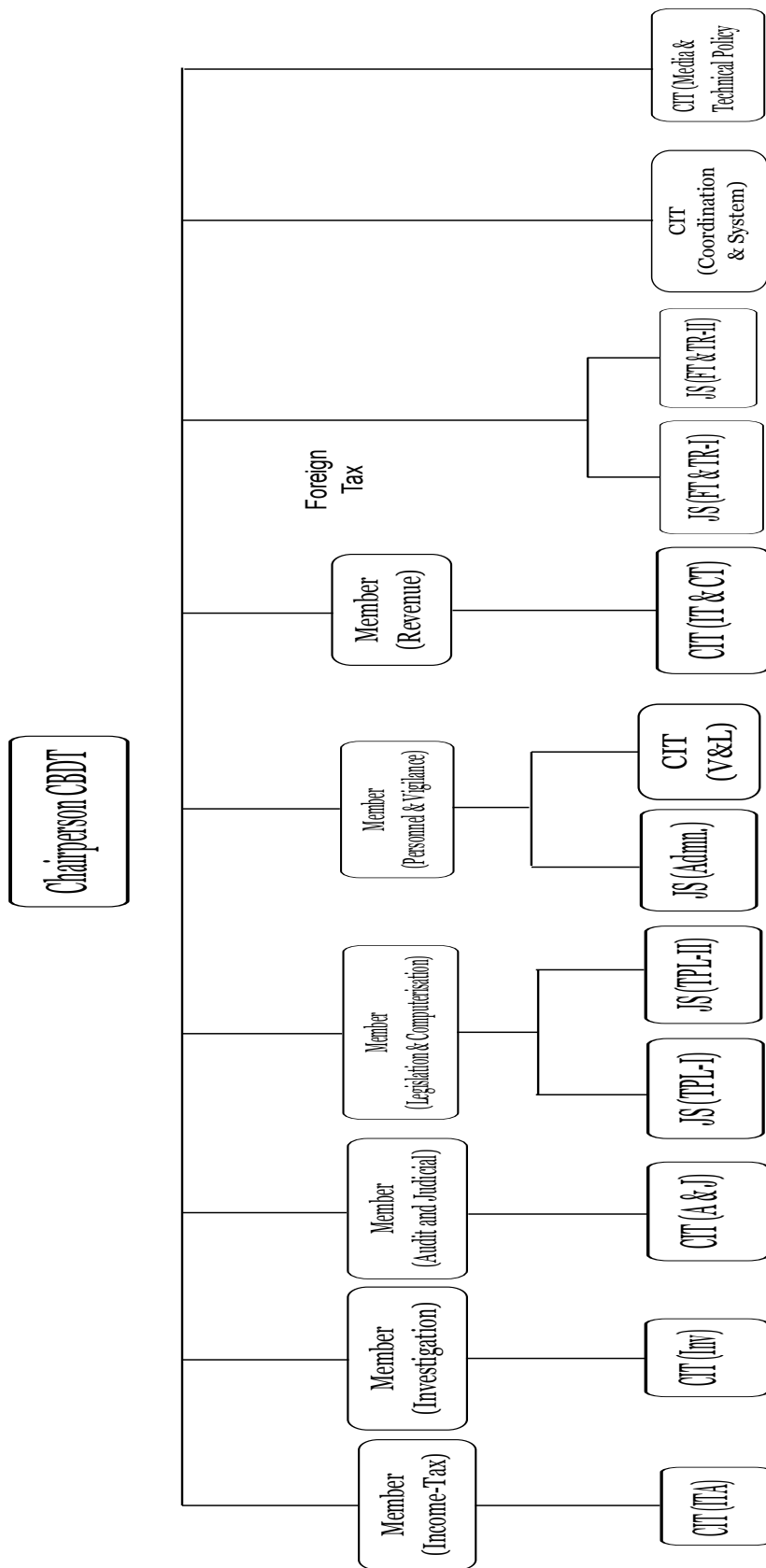
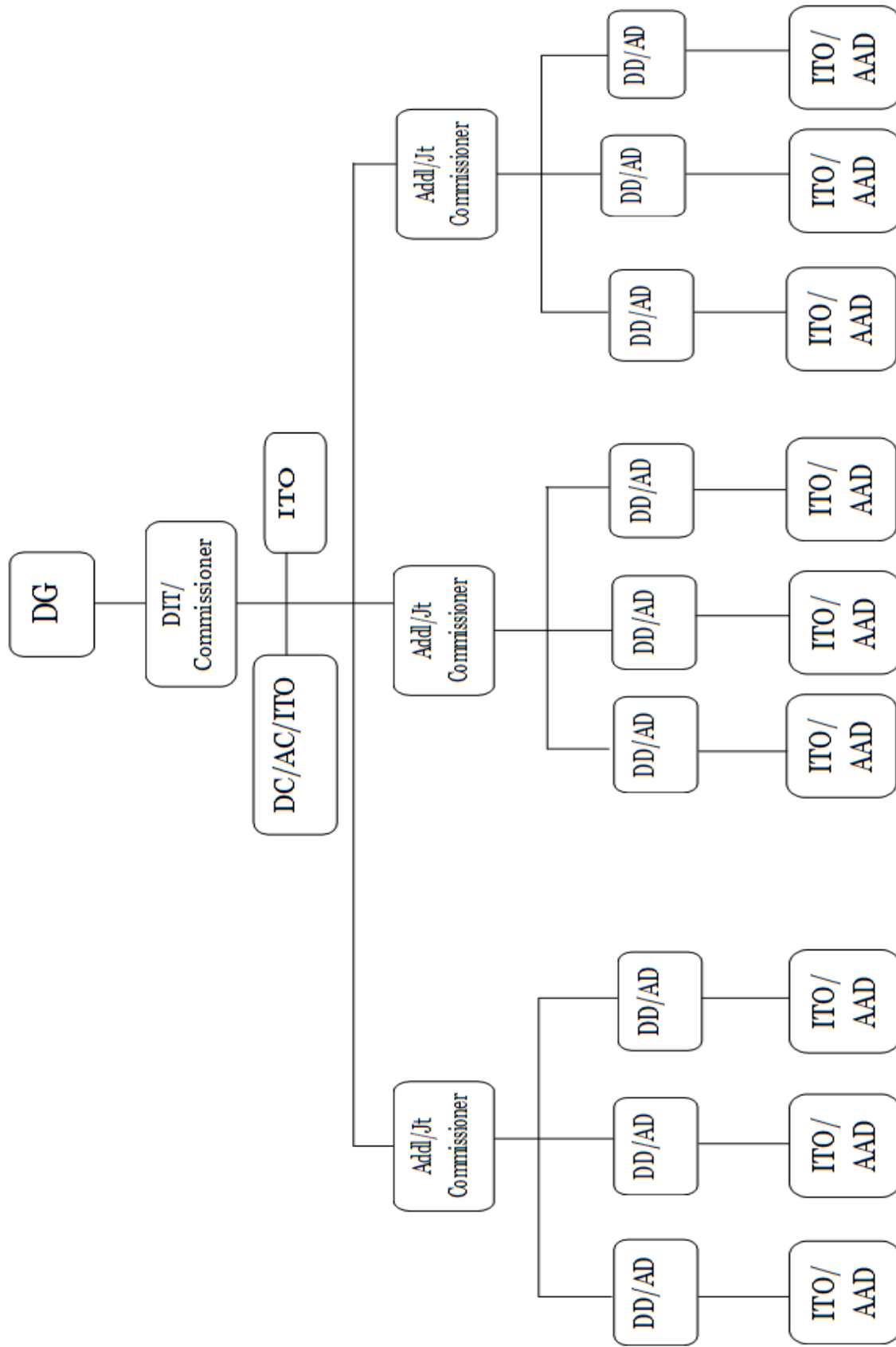


Diagram 3A.2: Structure of a Directorate in CBDT





**The Director General of Income Tax (Administration)** supervises the functioning of the following Directorates:

- **Directorate of Income Tax (Public Relations, Printing, Publications and Official Language):** This directorate prints and publishes bulletins of a technical and administrative nature and monographs for use by departmental functionaries. It is also responsible for printing and supplying forms and registers (statutory and non-statutory) to field formations, including refund order books – both MICR & non-MICR. The publicity and public relations wing of the directorate brings out taxpayer information booklets from time to time and handles all advertisement/publicity work in the electronic and print media. The official language policy wing acts as the nodal agency for implementation of the official language policy of the government in the I-T Department and monitors its implementation in field formations.
- **Directorate of Income Tax (Inspection and Examination):** This Directorate lays down general guidelines for inspections of field formations, issues instruction to launch inspection programmes, monitors the progress of inspection, critically reviews the reports received and provides feedback to field formations on the quality of assessments and inspections. It also periodically reports to the Board the findings emerging from inspections and brings out an annual review of inspection. The examination wing of the directorate conducts departmental examinations for service confirmation and promotion of all employees of the department including newly recruited ACIT (Probationers). It is also responsible for the review, amendment and interpretation of rules and the syllabi for various examinations.
- **Directorate of Income Tax (Audit):** It is the nodal agency for CAG audit and controls the internal audit function in the department. It collects material and prepares briefs for the Board in respect of draft paras for discussion in the PAC meeting. It is responsible for inspection of the work of the audit wing of the various CCIT regions and issues general instructions to field officers. It also brings out relevant manual, bulletins and circulars for the purpose of internal audit.
- **Directorate of Income Tax (Recovery):** It is responsible for collection, compilation and collation of data relating to recovery of tax arrears of income tax and wealth tax involving demand of Rs. 1 crore and above from all CCIT/DGIT (Inv.), studying these dossiers, monitoring the collection of arrears and preparing of quarterly reports of dossiers of Rs. 25 crore and above for monitoring by the CBDT. The directorate also conducts inspection of field offices for speedy recovery of tax arrears and processes proposals for write off, partial write off and scaling down of arrears received from the field.
- **Directorate of Income Tax (TDS):** The directorate issues guidelines from time to time on the working of the relevant provisions of tax deducted at source (TDS) and tax collected at source (TCS) and also provides knowledge and analysis to field functionaries on TDS/TCS.

**The Director General of Income Tax (Systems):** This directorate co-ordinates all activities relating to computerization in the I-T department at the apex level. It is responsible for selection of sites for the installation of computer hardware, preparation of sites, procurement and installation of computer systems, conducting acceptance tests and making the system operational. It is also responsible for maintenance of computer hardware, testing and documentation of application software packages, training and co-ordination etc. DGIT (System) is also responsible for the management of the central processing centres (CPCs) for processing e-filed tax returns at Bangalore and TDS-CPC at Ghaziabad.

**The Director General of Income Tax (Logistics)** is in-charge of the following directorates:

- **Directorate of Income Tax (Organization and Management Services):** This directorate works as an internal management consultant to the Board performing the functions of conducting organization and management studies, continuous review of work procedures/identification of deficient areas for improving methods and management practices, laying down work/staffing norms, formulation of the action plan for the income-tax department and performance appraisal by regularly monitoring performance of field offices vis-à-vis the targets set for them.
- **Directorate of Income Tax (Infrastructure):** It is responsible for drawing up the strategic plan for up-gradation of facilities and prioritizing decisions relating to the creation of infrastructure in the department.
- **Directorate of Income Tax (Business Process Re-engineering):** The functions of the Directorate of BPR is to supervise projects for re-engineering the business processes of the department, concentrating on the four principal areas of work, namely, pre-assessment, assessment, post-assessment and appellate, together with support functions cutting across all the four areas.
- **Directorate of Income Tax (Expenditure and Budget):** This directorate is responsible for expenditure budget management and allocation between different Principal CCIT (CCA) regions. It also liaises with the Internal Finance Unit (IFU) of the Ministry of Finance for budget preparation. Any revision in the expenditure requirement or additional expenditure of the I-T department is to be routed through this directorate before it is placed before IFU. It also issues various guidelines, instructions, rules, circulars etc for the department.

**The Director General of Income Tax (Vigilance):** The Director General of Income-tax (Vigilance) is the Chief Vigilance Officer of the I-T Department. He is appointed with the concurrence of the Central Vigilance Commission (CVC). He is responsible for the discharge of all administrative and technical functions relating to vigilance matters, which include the issue of vigilance clearance to Group 'A' Officers, finalization of the agreed/officers of doubtful integrity (ODI) lists of officers in consultation with the CBI, investigation of complaints, actions in matters

investigated by the CBI, references to CVC, UPSC, DOP&T etc. These functions are discharged with the help of the four zonal units of the vigilance directorate located at Delhi, Mumbai, Chennai and Kolkata.

**The Director General (Training):** The DG (Training) at NADT, Nagpur, is the training co-ordinator for the income tax department. He has the overall responsibility of planning, organizing and conducting the induction training courses for probationers as well as organizing in-service training programmes for senior officers of the department. The DG (Training) supervises the functioning of seven regional training institutes (RTIs) at Bangalore, Kolkata, Lucknow, Mumbai, Chennai, Chandigarh and Ahmedabad and 26 ministerial staff training units (MSTUs) spread over the country. These institutes impart training to various cadres within their jurisdiction.

**The Director General of Income Tax (HRD):** It is responsible for the design and development of strategic human resource plans, policies and processes aligned with the goal and vision of the income tax department to ensure optimal resource mobilization and delivery of taxpayer services.

**Director General of Income Tax (Legal and Research):** It is the nodal agency of the Board for litigation and related research work. It is responsible for receiving special leave petition (SLP)/appeal proposals from field formations, referring proposals to the Board and the Ministry of Law with specific recommendations, eliciting information from field formations as asked by the Ministry of Law/Central Agency Section, vetting of SLP/appeals and affidavits, liaising with the counsel for follow-up of cases and maintenance of the necessary data base of court cases etc.

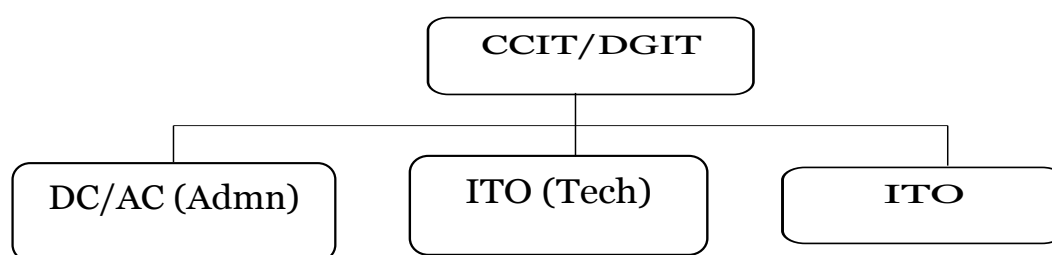
**The Director General of Income Tax (Intelligence):** This directorate is located in Delhi with a compact investigative set up. It has an all-India jurisdiction and is assigned concurrent powers with the other DGIT (Investigation). The directorate is required to take up intensive investigation of selected cases and develop them for further action/specialized operation, study and analyse emerging trends in tax evasion, create an economic offence data base and develop a profiling system etc. both in traditional and non-traditional fields. This directorate liaises with other intelligence/investigating agencies such as Financial Intelligence Unit, Narcotics Control Bureau, Enforcement Directorate, Directorate of Revenue Intelligence, Directorate General of Central Excise Intelligence, Serious Fraud Investigation Office, Central Economic Intelligence Bureau, etc.

In addition to the above, there are three more directorates indicated below. These directorates work at the field level.

- DGIT (Investigation)
- DGIT (Exemption)
- DGIT (International Taxation)

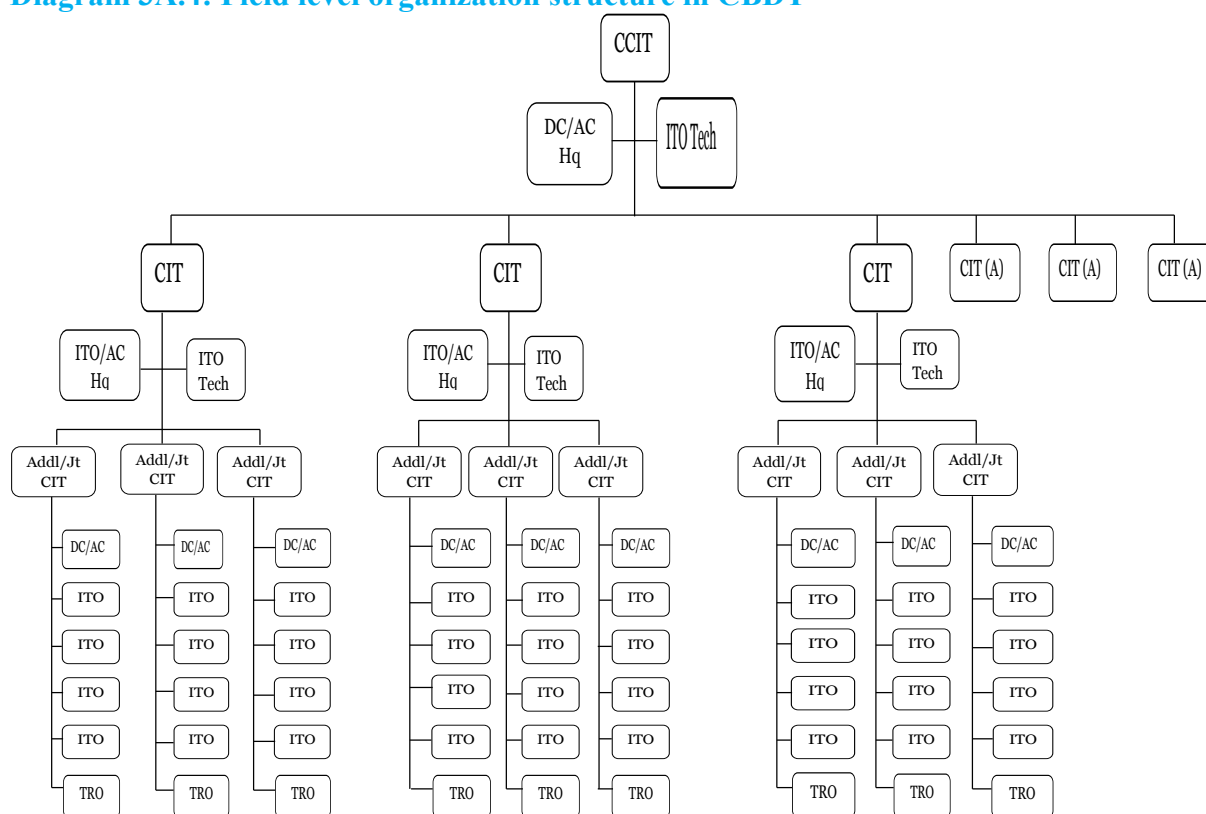
Chief Commissioners of income tax are the top functionaries stationed at the field level at different locations all over the country. They are in charge of supervision, control and administration of their respective regions. The Director Generals of Income-tax (Investigation) stationed in different parts of the country are overall in-charge of the investigation machinery in respect of their regions to curb tax evasion and unearthing unaccounted money. The typical organizational set-up for the office of CCIT/DGIT is given in Diagram 3A.3.

**Diagram 3A.3: Organizational set-up of CCIT, DGIT office in CBDT**



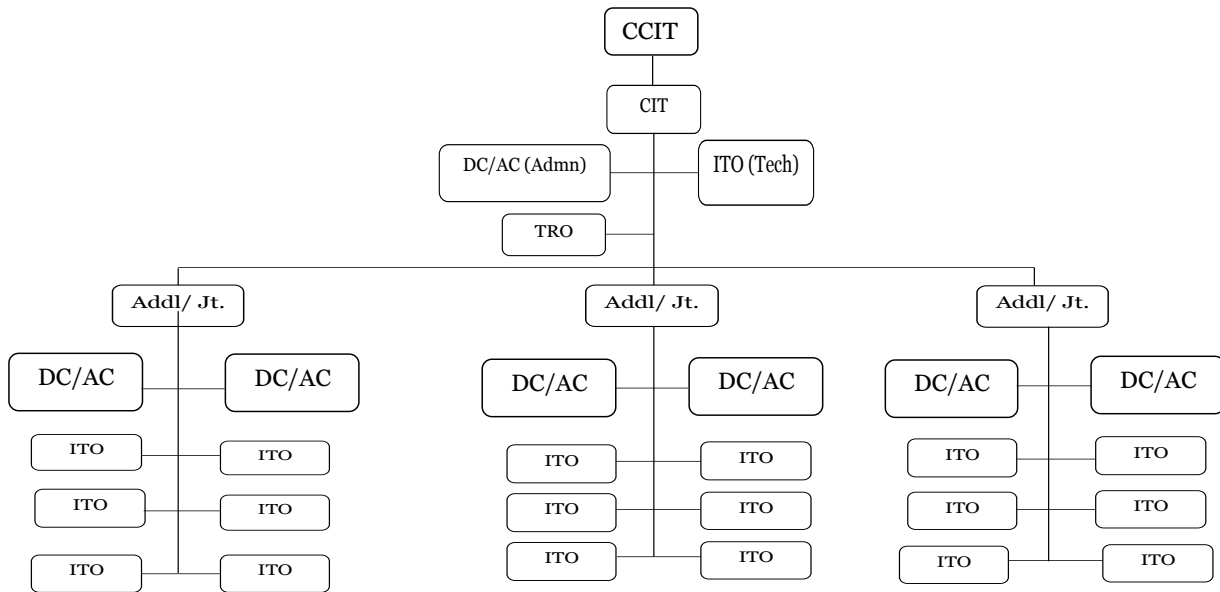
The Chief Commissioners/Director Generals of income tax are assisted by Commissioners of income tax/directors of income tax in their respective jurisdictions. The first appellate level is of Commissioners of Income-tax (Appeals), who perform the work of disposal of appeals against the orders of assessing officers. The organizational structure at the field level is given in Diagram 3A.4 below.

**Diagram 3A.4: Field level organization structure in CBDT**



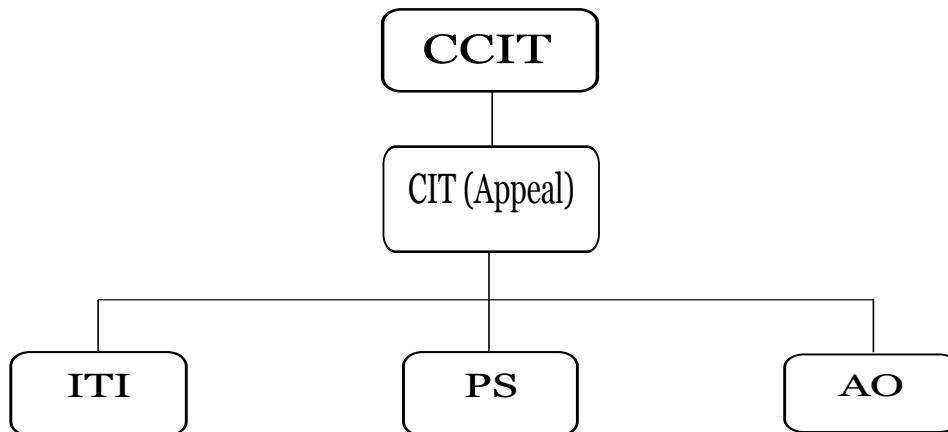
Normally, the field structure has taxpayer segmentation to the extent that corporate cases in some cities are separated. Similarly, salary cases are also dealt with separately in metropolises. For the corporate income tax charges, typically one additional officer at the level of DC/ACIT is provided as the cases require more focus and skill. The structure for the corporate CITs, starting from CCIT, is given in Diagram 3A.5 below.

**Diagram 3A.5: Structure of Corporate CIT**



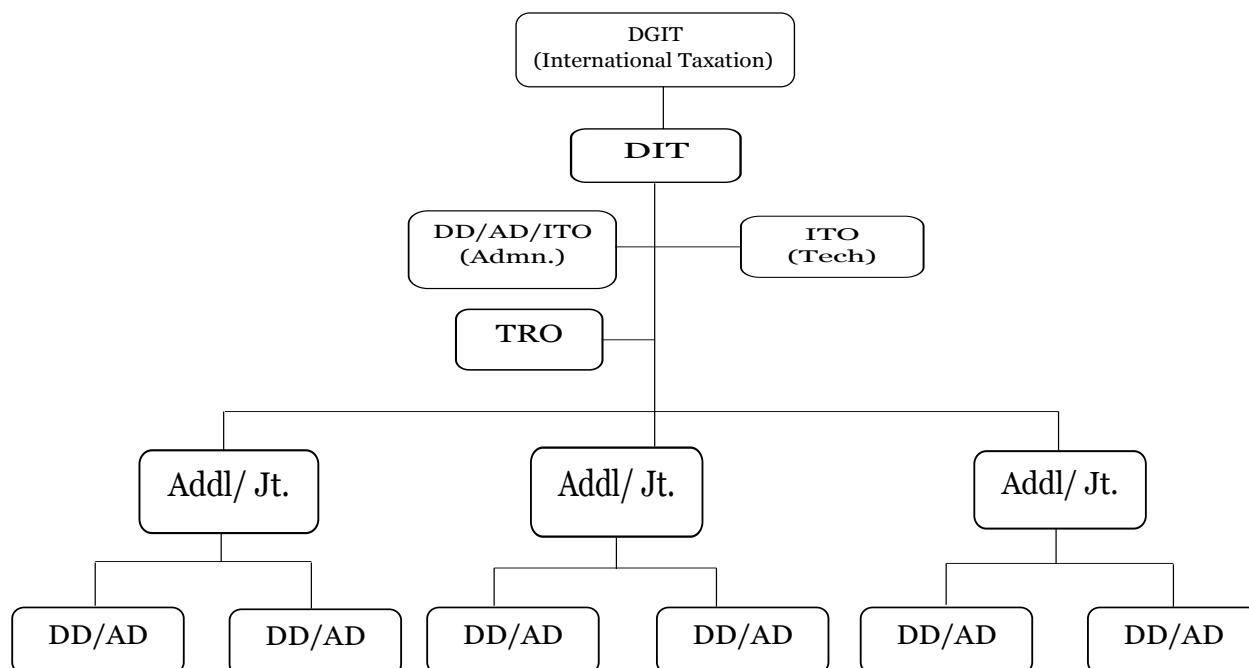
The Commissioner of Income Tax (Appeals) is the first appellate authority, and its office structure is given below. As can be seen, s/he is not assisted by any officer with the skills to investigate cases as the CIT (Appeals) have the powers to investigate cases to find out the facts as the Assessing Officers. Structure of CIT (Appeals) is given in the Diagram 3A.6.

**Diagram 3A.6: Structure of CIT (Appeal)**



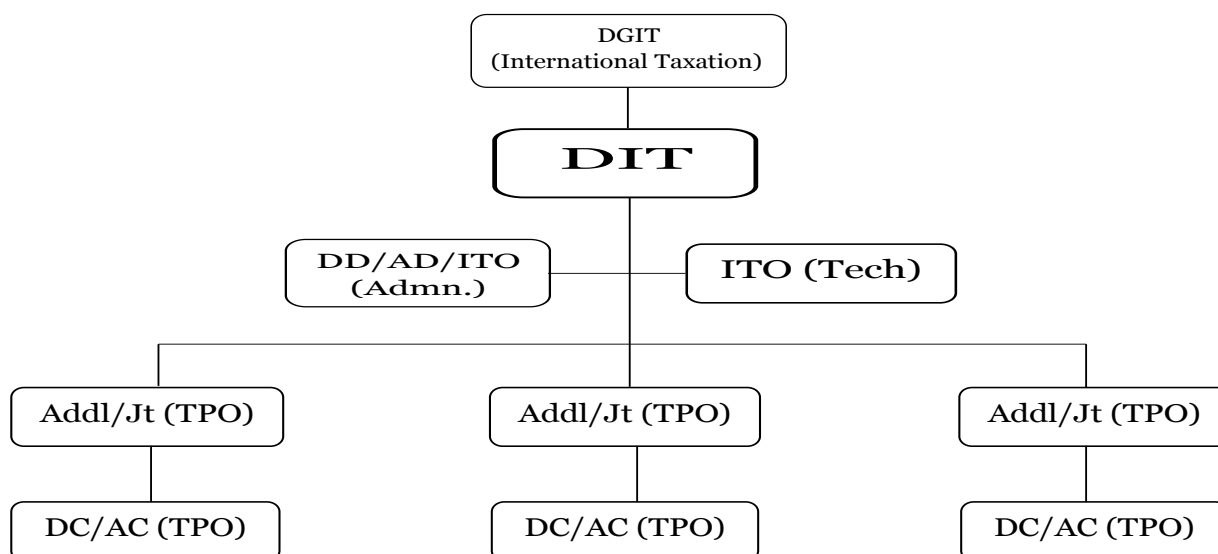
The Directorates of Income Tax for international taxation and transfer pricing is considered a field functionary, and deals with tax matters and assessment of non-residents and withholding of tax on remittances abroad. The typical structure of the DIT (International Taxation) is given in Diagram 3A.7 below.

**Diagram 3A.7: Structure of DGIT (international Taxation)**



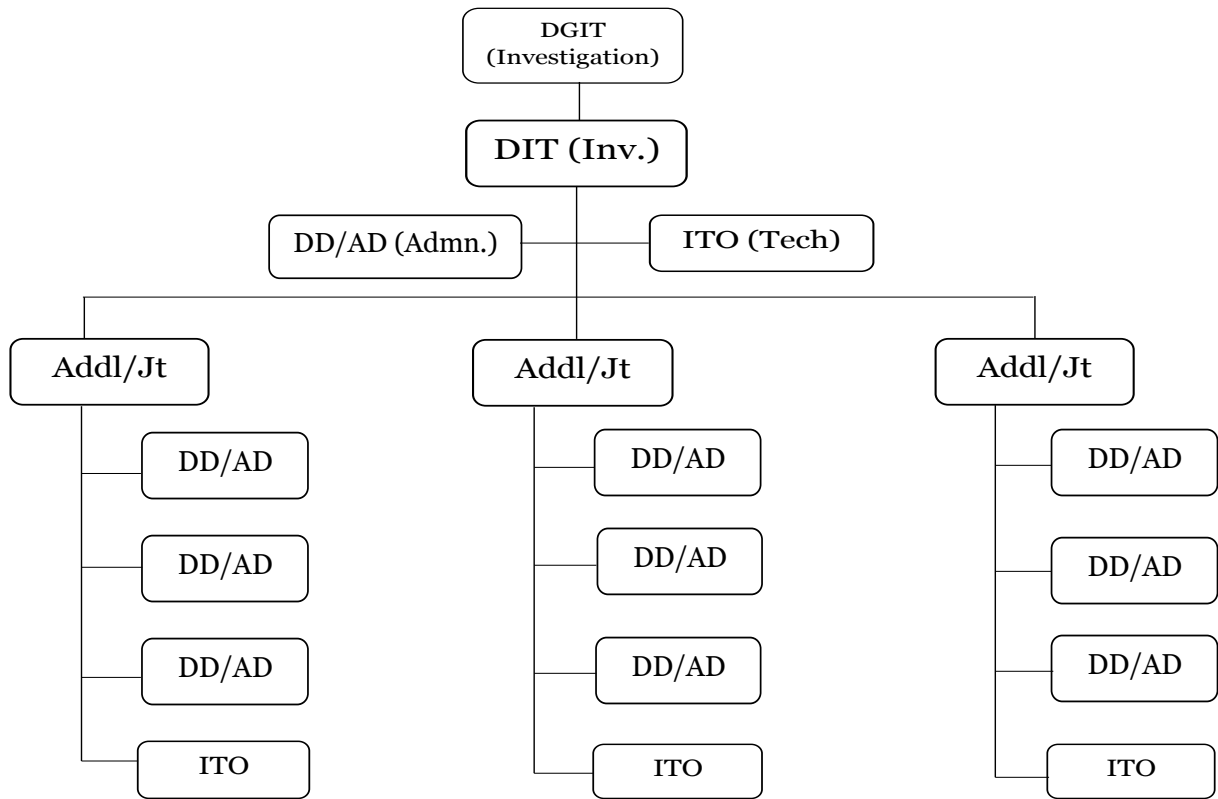
The Transfer Pricing Directorate has the following structure as indicated in Diagram 3A.8. In many places where there is not sufficient work, the directorate is merged with the DIT (International Taxation).

**Diagram 3A.8: Structure of Transfer Pricing Directorate**



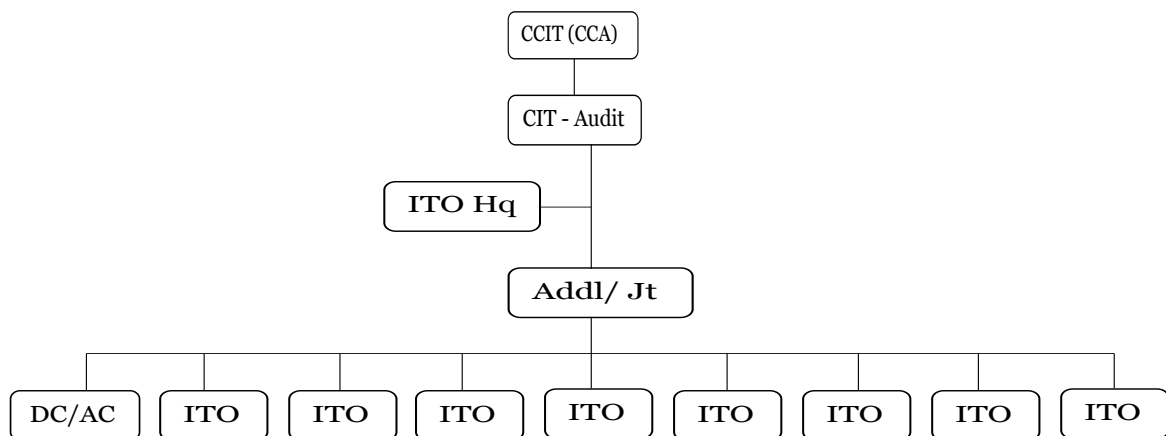
The Director of Income Tax (Investigation) plans and executes search and seizure, and survey operations in tax evasion cases. It also deals with tax evasion complaints. Its structure is given in Diagram 3A.9 below:

**Diagram 3A.9: Structure of DGIT (Inv.)**



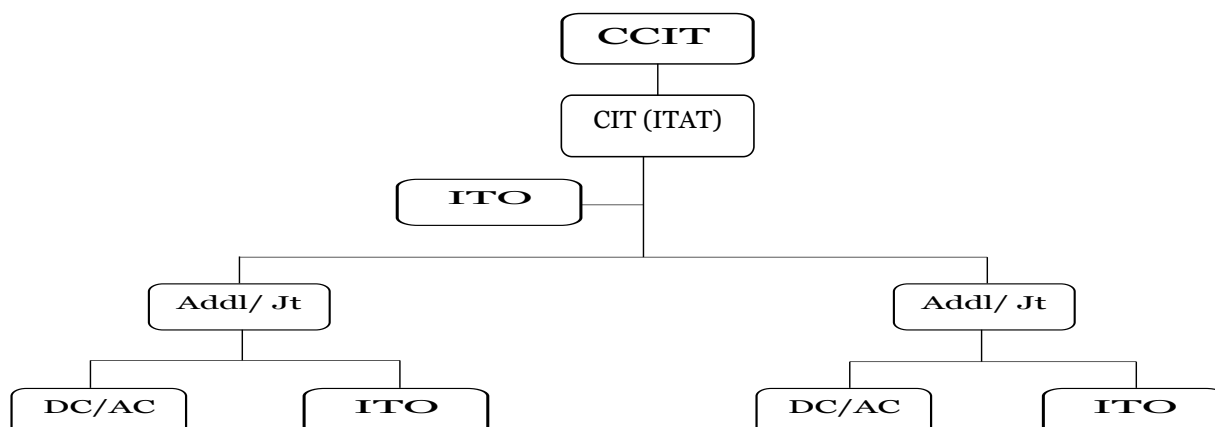
The Commissioner of Income tax (Audit) is tasked to test check the work done by field functionaries. The underlying idea is to ensure that the assessment is error free, and the test check is done before the CAG audits the cases for any deficiency. The structure of CIT (Audit) is given in Diagram 3A.10 below.

**Diagram 3A.10: Structure of CIT (Audit)**



The Income Tax Appellate Tribunal (ITAT) is the second level appellate authority after the CIT (Appeals). All appeals after CIT (Appeals) lie before the ITAT. Both the department and the taxpayers file cases before the ITAT. To represent the departmental side, CITs are posted with each bench of ITAT. The typical structure of the office of CIT (DR) is given in Diagram 3A.11 below.

**Diagram 3A.11: Structure of CCIT (DR)**



The deployment of manpower in various CCIT (CCA) regions/directorates in the income tax department is given in Table 3A.1.

### **Central Board of Excise and Customs (CBEC)**

The CBEC deals with the tasks of formulation of policy concerning levy and collection of customs duties, central excise duties and service tax, prevention of smuggling and administration of matters relating to customs, central excise and narcotics to the extent under the CBEC's purview. The Board is the administrative authority for its subordinate organizations, including customs houses, central excise and service tax commissionerates, the Central Revenues Control Laboratory and various specialized directorates. The organizational structure of the CBEC is given in Diagram 3A.12 below.

The directorates act as an extended arm of the Board and assist it in discharging its day-to-day functions. The general organizational structure of a directorate general is given in the Diagram 3A.13 below. Directorates working under the CBEC at present, their administrative structure and functional responsibilities are as under.



Diagram 3A.12: Organizational set-up of CBEC

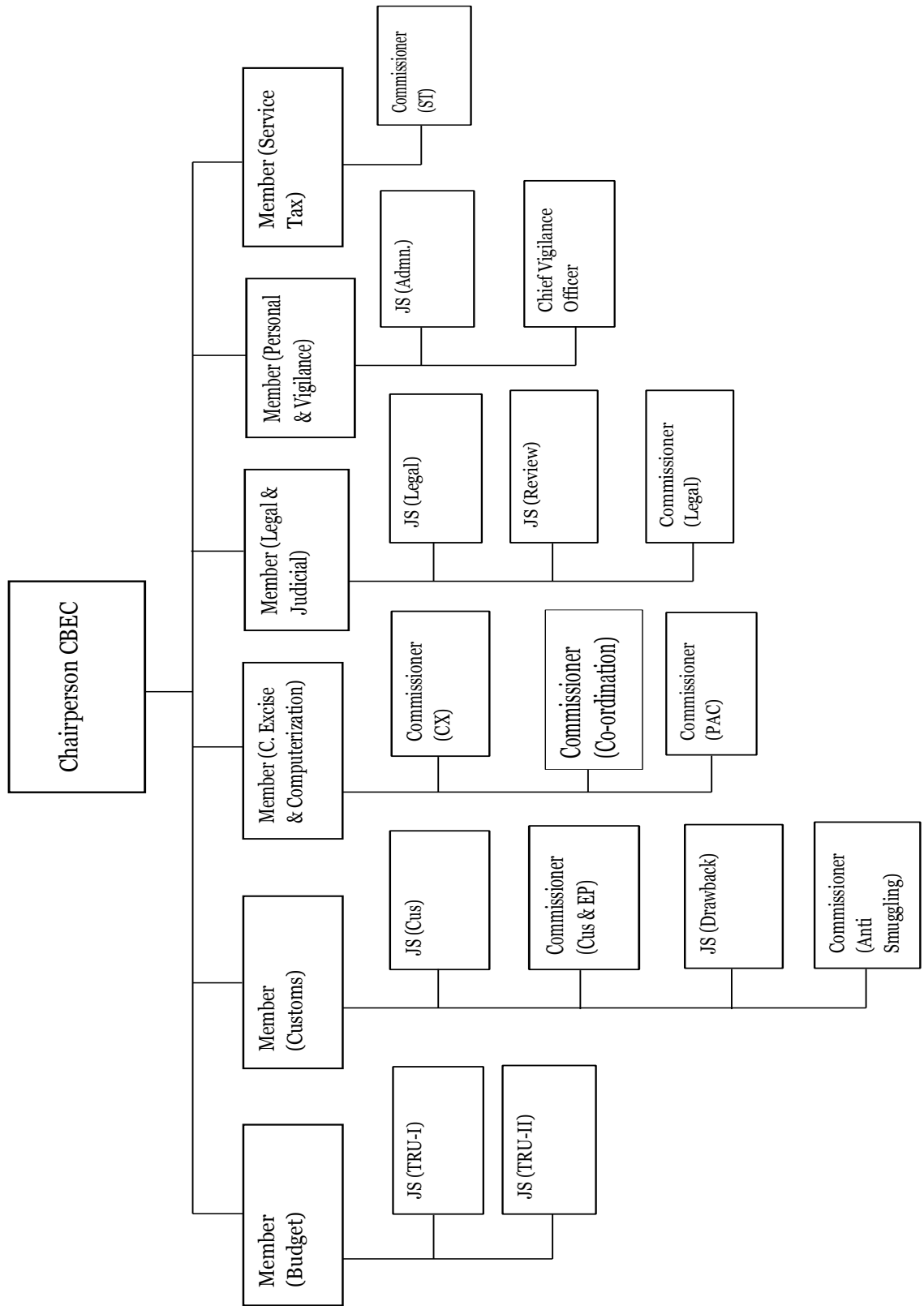
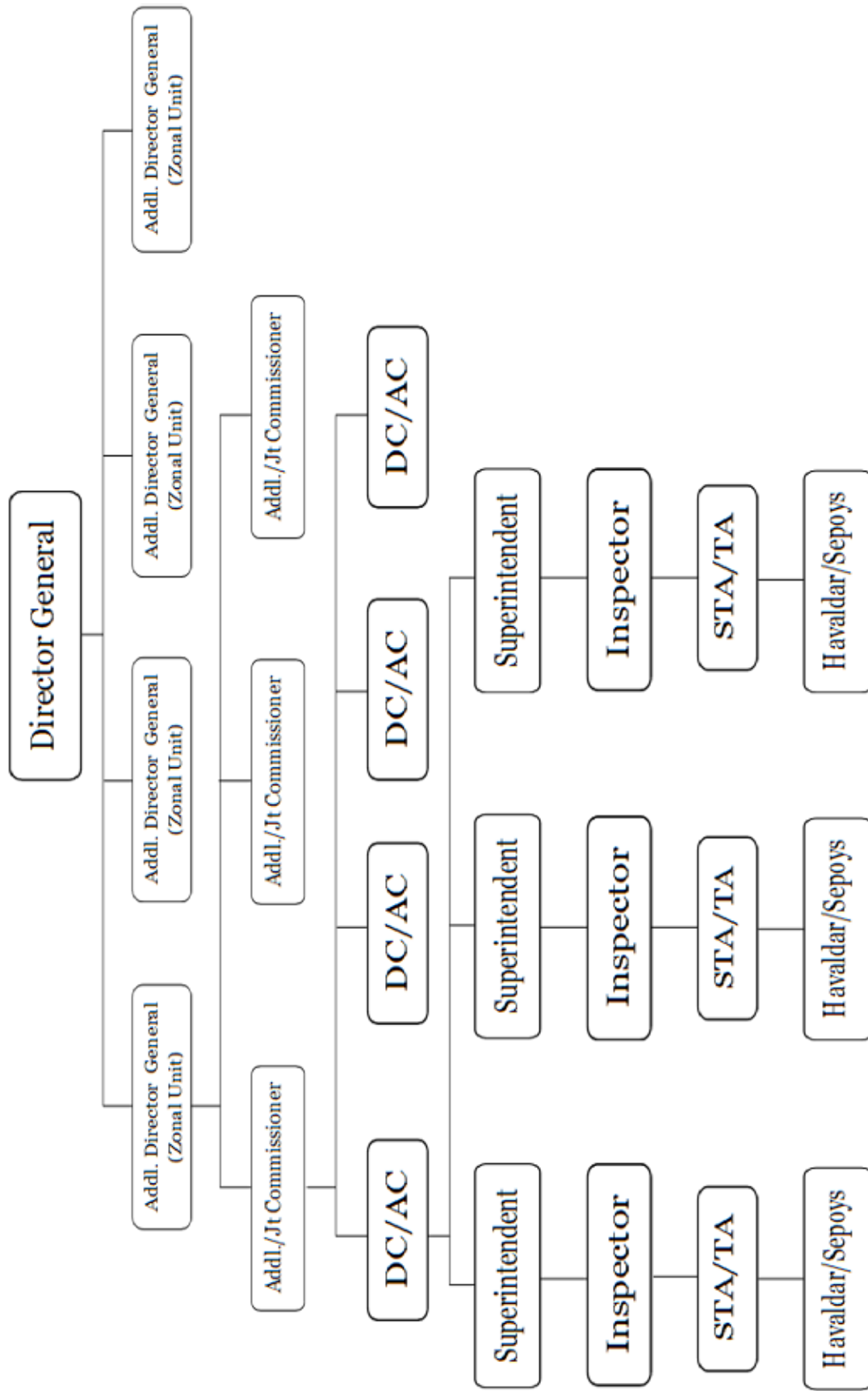


Diagram 3A.13: Structure of a Directorate General in CBEC



### **Directorate General of Inspection**

This directorate was constituted in 1939 as part of the Board office to conduct periodic inspections and to advise the Board on technical questions and on standardization of organization and procedures in custom houses and central excise collectorates. It was separated from the Board on April 1, 1946, and given the status of an attached office.

This directorate has its headquarters at Delhi and comprises five regional units (north regional unit/central regional unit/west regional unit/south regional unit/east regional unit located at Delhi, Hyderabad, Mumbai, Chennai and Kolkata respectively), customs wing (headquarters), central excise wing (headquarters), administrative wing and the Nepal/Bhutan refund wing, under the immediate supervisory control of the Director General. It performs the following functions:

- Study the working of the customs, central excise and narcotics departmental machinery throughout the country.
- Suggest measures to improve efficiency and rectify important defects in it through inspection and by laying down procedures for smooth functioning.
- Carry out inspection to determine whether the working of field formations is in conformity with customs and central excise procedures, and to make recommendations in respect of procedural flaws, if any.
- Suggest measures to improve the functioning of field formations.
- Function as the nodal agency of the CBEC to implement various works relating to Hindi (Rajbhasha) in field formations and to co-ordinate with the Grah Mantralaya (Rajbhasha Vibhag)
- Hold examinations for custom brokers under the Custom Brokers Licensing Regulations, 2004
- Attend to work pertaining to Nepal and Bhutan Rebate Claims
- Prepare manuals under the Customs and Central Excise Law and Procedures
- Conduct special studies as entrusted by the CBEC.

### **Directorate General of Audit**

The Directorate General of Audit has its headquarters located in Delhi and is headed by the Director General (Audit). It has seven zonal units located at Delhi, Mumbai, Chennai, Kolkata, Hyderabad, Bengaluru and Ahmedabad, each headed by an additional director general level officer. The primary function of this directorate is to monitor audit of units paying central excise and service tax in the jurisdiction of various central excise and service tax commissionerates all

over India. It also conducts quality assurance review function and ranks these commissionerates on the basis of their annual audit performance.

### **Directorate of Revenue Intelligence (DRI)**

It is the apex intelligence organization of Indian customs with its headquarters located in Delhi. It has seven zonal units located at Delhi, Mumbai, Chennai, Kolkata, Ahmedabad, Bengaluru and Lucknow. There are more regional offices, and sub-units under the jurisdiction of zonal units.

It is responsible for the study and dissemination of intelligence against smuggling, identifying organized gangs of smugglers and areas vulnerable to smuggling, targeting intelligence against them and their immobilization, liaising with intelligence and enforcement agencies in India and abroad to collect intelligence, and investigating in-depth important cases having inter-commissionerate and international ramifications, alerting field formations to intercept suspects and contraband goods, assessing current and likely trends in smuggling and advising the ministry in all matters pertaining to imports/exports to plug loopholes and attending to such other matters as may be entrusted by the ministry/Board for investigation.

### **Directorate General of Central Excise Intelligence**

It is the central intelligence organization for central excise and service tax matters with its headquarters located in Delhi. It has seven zonal units located at Delhi, Mumbai, Chennai, Kolkata, Ahmedabad, and Bengaluru and more regional offices, and sub-units under the jurisdiction of zonal units.

It is responsible for collection, collation and dissemination of intelligence relating to evasion of central excise duties and service tax, study of the price structure, marketing patterns and classification of commodities vulnerable to evasion of central excise duties, co-ordination of action with agencies like income tax, etc., in cases involving evasion of central excise duties/service tax, investigation of cases of evasion of central excise duties/service tax having inter-commissionerate ramifications and advising the Board and the commissionerates on the modus operandi of evasion of central excise duties/service tax and the appropriate remedial measures thereof.

### **Directorate General of Vigilance**

The Directorate General of Vigilance has its headquarters at New Delhi and has four zonal units – North Zonal Unit at New Delhi, West Zonal Unit at Mumbai, East Zonal Unit at Kolkata and South Zonal Unit at Chennai. The directorate is headed by the Director General and the zonal units are headed by Additional Director Generals.

## Functions

### (a) Headquarters:

- To get complaints received from the public or through the CVC and other formations investigated through the zonal units or field formations
- Processing of investigation reports received from the zonal units of the directorate general; field formations of the CBEC or CBI for obtaining CVC/CVO's first stage advice for further action where gazetted officers under the CBEC are involved
- Liaison with CBI, CVC in disciplinary matters
- Compliance with the directions of CVC in disciplinary matters
- To assist the disciplinary authority in disciplinary and prosecution matters relating to Group 'A' officers under the CBEC in consultation with CVC
- To issue charge sheets to officers, conduct inquiries and to process the inquiry officer's report for obtaining CVC/CVO's second stage advice
- Advise the ministry on matters of vigilance clearance in respect of Group 'A' officers

### (b) Zonal Units:

- To co-ordinate the work of various vigilance formations in customs, excise and service tax commissionerates
- Liaison with the CBI
- To investigate vigilance complaints received from the public and complaints forwarded by headquarters, the CVC and other vigilance organizations
- To carry out various preventive vigilance studies for improving the functions of the field formations of customs, excise and service tax commissionerates
- To carry out preventive checks at sensitive locations to control corruption in excise, customs and service tax commissionerates
- To carry out inspection of vigilance section of the commissionerates of excise, customs and service tax

## Directorate of Publicity and Public Relations (DPPR)

Directorate of Publicity and Public Relations was established in 1979 as an attached office to the CBEC. This directorate is headed by a Commissioner level officer and situated in Delhi without any zonal or branch office.

The directorate is primarily responsible for publicity campaigns concerning public awareness of service tax, central excise and customs. All available media including the print and electronic media and the Internet are used for these campaigns. The second important assignment of this directorate is to maintain public relations. The Commissioner (DPPR) also acts as the nodal officer for implementation of the citizen's charter in the CBEC.

### **Central Revenues Control Laboratory**

Central Revenues Control Laboratory (CRCL), New Delhi, is under the administrative control of Director (Revenue Laboratory). In addition, there are 16 more chemical laboratories of CRCL, which are attached to the customs house/central excise commissionerates. These are headed by a joint director/chemical examiner Grade I/chemical examiner Grade II/assistant chemical examiner and are under the administrative control of the concerned commissionerate.

Functions:

- To analyse samples sent to them by the revenue authorities of customs and central excise for classification under customs tariff, central excise tariff, export-import trade counsel policies and drawback purposes
- To furnish technical opinion to the CBEC and its field formation with regard to classification, duty aspects on various goods, etc.
- To provide technical support to opium and alkaloid factories for production of export opium
- To analyse and certify export grade opium
- To analyse narcotic drug and psychotropic substances and precursor chemicals

### **Directorate General of Export Promotion (DGEP)**

The directorate is headed by a Chief Commissioner level officer and is situated in Delhi without any zonal or branch office.

Functions of DGEP:

- Work relating to the following export promotion schemes (both customs and central excise)
  - 100 % export oriented units
  - Special economic zones (including work relating to erstwhile free trade zones and export processing zones)
  - Special jewellery complexes and gem and jewellery export promotion schemes
  - Software Technology Park and Electronic Hardware Technology Park schemes

- Monitoring export promotion schemes, analysis of periodical reports/returns/statistics, and legislative work relating to the above schemes (both customs and central excise)
- Meeting of the Foreign Investment Promotion Board (FIPB), Boards of Approval (BOA) for EOU/SEZ, Inter-Ministerial Standing Committee (IMSC) in the Department of Information Technology etc., meetings with DGFT/Ministry of Commerce on matters relating to export promotion schemes and interaction with trade, including export promotion councils
- Act as a central consultative body with trade and other stakeholders (trade associations and chambers of commerce such as FIEO, Federation of Freight Forwarders Associations of India, Air Cargo Agents Association of India, National Association of Container Freight Stations, Export Promotion Councils, Indian Ports Association, etc.) and suggest changes in customs clearance procedures with a view to facilitate international trade, wherever necessary
- Review customs trade facilitation measures from time to time with a view to evaluate their efficacy and suggest further improvements
- Study the best international practices concerning customs clearance procedures for their adoption
- Oversee and analyse the dwell time for clearance of import/export cargo at various major ports, airports, ICDs, etc., and, as appropriate, make recommendations relating to clearance procedures followed by customs and other agencies to reduce dwell time
- Review the trade facilitation initiatives of custom houses and other field formations.

### **Directorate General of Service Tax**

Service tax was introduced for the first time in 1994 only on three services. Thereafter, the scope of the levy has been considerably enlarged and now all services except a select few included in the negative list are liable to service tax. Considering the increasing workload due to expanding coverage and the share of services in GDP, a Directorate General of Service Tax was established with its headquarters at Mumbai. The main functions of this directorate are

- to monitor the collection and assessment of service tax,
- to study the implementation of service tax in the field and to suggest measures to increase revenue collection
- to undertake study of law and procedures
- to form a data base and
- to inspect service tax work in the commissionerates

### **Directorate General of Valuation**

The headquarters of the Directorate General of Valuation is at Mumbai. It is headed by a Director General. There are three zonal units, one each at Delhi (Northern Zone), Chennai (Southern Zone), and Kolkata (Eastern Zone). The supporting staff at Group B, C and D levels is taken on deputation/loan basis from the central excise/customs formations.

The main functions assigned to this directorate are

- To assist and advise the Board in the implementation and monitoring of the working of the WTO Agreement on customs valuation
- To build a comprehensive valuation data base for internationally traded goods using past precedents, published price information or price obtained from other authentic sources and to disseminate such information on a continuing basis to all customs formations for on-line viewing and to assist in day-to-day assessment with a view to detect and prevent undervaluation as to enable assessments to be finalized speedily
- To monitor valuation practices at various customs formations and bring to the notice of the Board significant and emerging pricing patterns and to suggest corrective policy or other measures, where needed
- To liaison with the valuation directorate of other customs administrations and customs officers posted abroad
- To study international price trends of sensitive commodities and pricing patterns of transnational corporations (e.g. transfer pricing) and Indian ventures with foreign collaboration and help evolve a system to combat planned undervaluation and valuation frauds

### **National Academy of Customs, Excise and Narcotics (NACEN)**

The National Academy of Customs, Excise and Narcotics at Faridabad is the apex training institute under the CBEC. There are nine regional training institutes (RTIs) of NACEN located at Delhi, Mumbai, Kolkata, Chennai, Bangalore, Hyderabad, Vadodara, Hazaribagh and Kanpur, which cater to the training needs of the Group B and Group C officers. NACEN at Faridabad is primarily responsible for the training of Group A officers.

Functions:

- To impart training to direct recruits and to arrange refresher courses for departmental officers
- To assist in formulating and implementing training policies approved by the CBEC, including framing the syllabi for training direct recruits and other officers of the department



- To arrange study tours of customs and excise officers from neighbouring countries under UNDP

### **Directorate General of Systems**

The headquarters of the Directorate General of Systems is in Delhi. It also has field offices in Delhi, Mumbai, Chennai and Kolkata. The directorate looks after the implementation of computerization projects in the department, including acquisition of hardware, development and maintenance of software, training of personnel and monitoring of expenditure budget on computerization at the central and field level. It has another directorate within its purview, i.e., the Directorate of Data Management, which has the following functions:

- To collect and consolidate data and statistics on the realization of revenue from indirect taxes and to advise the ministry and the CBEC in making budget estimates
- To collect statistics to compile statistical bulletins and statistical year books on revenue, arrears, seizures, court cases, etc., pertaining to indirect taxes

### **Directorate General of Human Resource Development**

The Directorate was created in 2008 by merging the erstwhile Directorate of Organization and Personnel Management and Directorate of Housing and Welfare. The welfare function which used to be with the Directorate of Logistics has also been transferred to it. It is located at New Delhi and headed by a Director General, who is an officer of the level of Chief Commissioner. It has the following five divisions:

- Cadre Management Division
- Performance Management Division
- Capacity Building and Strategic Vision Division
- Welfare Division
- Infrastructure Division

### **Directorate General of Safeguards**

The Directorate General of Safeguards investigates and recommends whether a safeguard duty should be imposed under Section 8B & 8C of the Customs Tariff Act, 1975, and the rules framed under the act. The directorate is located in Delhi and is headed by a Chief Commissioner level officer.

### **Directorate of Legal Affairs**

The Directorate of Legal Affairs (DLA) was set up in 2002 with its headquarters at New Delhi under the supervisory control of a Commissioner rank officer. The functions of the directorate are the following:

- Function as the nodal agency to monitor the legal and judicial work of the CBEC and its field formations
- Work in close co-ordination with CBEC, office of the Chief Commissioner (Authorised Representative), law ministry, Directorate of Systems, chief commissioners, Central Agency Section of the Supreme Court of India, senior law officers, government counsels, etc.
- Maintain and monitor the database on cases decided by or pending with the CEGAT, CAT, high courts and the Supreme Court
- Inform field formations about important Supreme Court and high court decisions that are not appealed against by the department after consultation with the relevant nodal ministries
- Recommend and maintain panels of standing counsels/panel of counsels for various high courts and keep an approved panel of eminent lawyers well versed with customs and central excise laws and other administrative matters who may be engaged by the department for handling important cases.

### **Directorate of Logistics**

The Directorate of Logistics was set up in 1979 by re-organizing the Directorate of Anti-smuggling, Directorate of Communication and Directorate of Marine Operations to co-ordinate activities related to anti-smuggling (Logistics) under the Central Board of Excise and Customs. It has its headquarters at New Delhi and is headed by a Commissioner rank officer. The directorate has the following three divisions and functions:

- Anti-smuggling Division
  - Assessing the anti-smuggling equipment (including arms and ammunition) required by field formations, formulating proposals for their purchase, obtaining sanctions from the Ministry and acquiring, installing/distributing them
  - Monitoring stocks of seized, confiscated and ripe-for-disposal goods with the commissionerates
  - Maintaining a statistical data bank relating to investigations, adjudications, rewards and prosecutions, stocks and disposal of goods, and preparing a monthly performance indicators bulletin

- Loaning of seized/confiscated arms to departmental officers
- Acquisition and deployment of sniffer dogs
- Communication Division
  - Plan and formulate wireless communication proposals for customs preventive commissionerates and obtain sanctions from the ministry to acquire wireless equipment
  - Distribution of wireless equipment among the commissionerates; monitoring traffic passed over the wireless networks
  - Provide support for the maintenance and repair of wireless equipment in the commissionerates and inspection thereof, and training telecommunication staff
  - Co-ordinate with regional command security committees under Ministry of Defence in matters relating to breaches of communication security
- Marine Division
  - Examining proposals for appropriation/condemnation of vessels received from maritime commissionerates and extending technical support
  - Procurement and supply of technical and general sea stores through Central Stores Yard, Mumbai.
  - Overall supervision and control over the four workshops for the repair of vessels.
  - Maintaining statistical data pertaining to craft and crew.
  - Recruitment of trained and disciplined technical personnel for operating vessels, workshops and the Central Stores Yard.

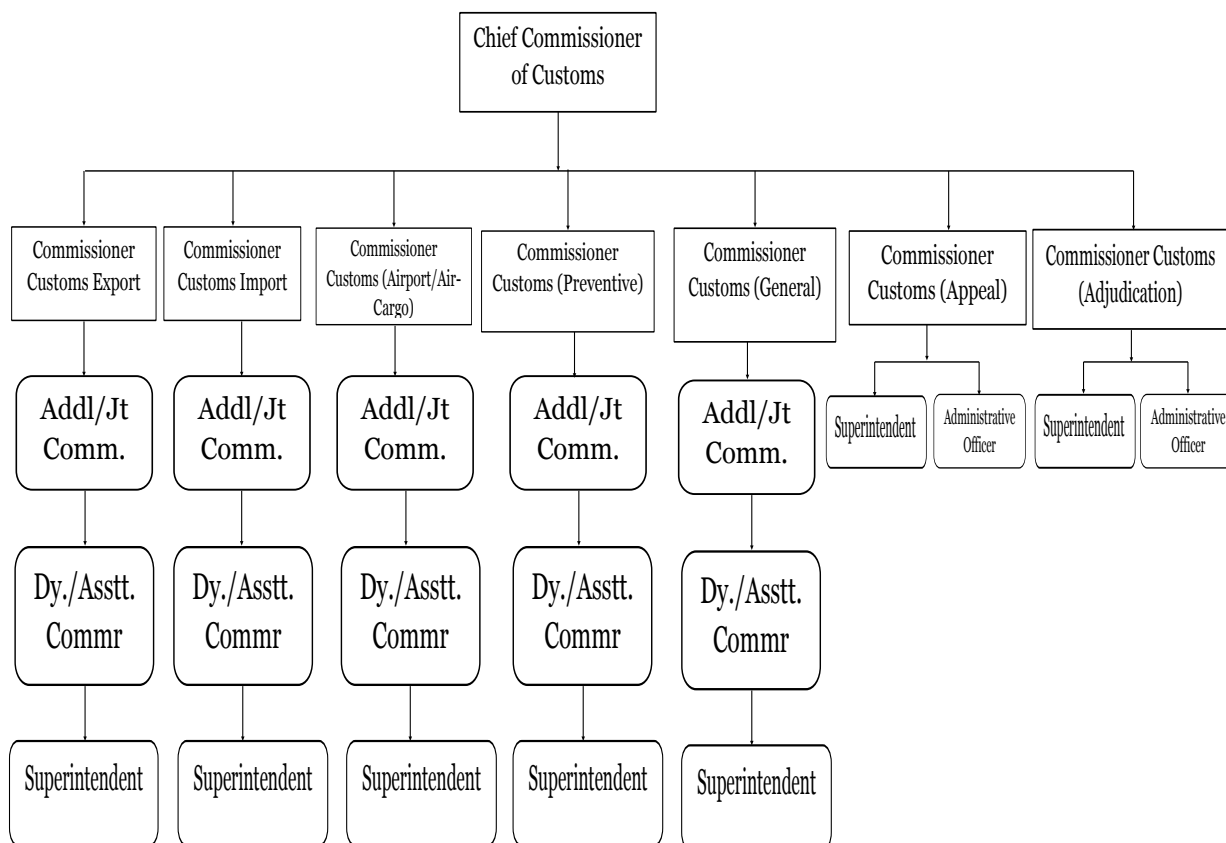
The CBEC has several field formations to help it discharge its responsibility of levying and collecting indirect taxes administered by central government. These include the Customs, Customs (Preventive) and Central Excise zones and the Commissionerates of Customs, Customs (Preventive), Central Excise And Service Tax.

### **Customs, Central Excise and Customs (Preventive) zones**

There are 23 central excise and customs zones and 11 exclusive customs and customs (preventive) zones spread across the country. Each of these zones is headed by a chief commissioner level officer and comprises two or more Commissionerates. Its territorial/geographical jurisdiction is analogous to the sum total of jurisdictions of these Commissionerates. The Chief Commissioners have a very limited statutory role under the customs, central excise and service tax law and their main functional responsibility is to supervise the working of Commissionerates and Commissioner (Appeals) under their charge. Generally one additional commissioner, 20 Group 'B' gazetted, 20 Group 'B' non-gazetted and other ministerial staff assist the Chief Commissioner in discharge of

day-to-day functions. The organizational structure of a typical Chief Commissioner of a customs zone is given in Diagram 3A.14 below.

**Diagram 3A.14: Organizational set-up of a Chief Commissioner of Customs zones**



### Commissionerates of Customs and Customs (Preventive)

There are 35 commissionerates exclusively of customs and customs (preventive) spread all over the country. These commissionerates implement the provisions of the Customs Act, 1962, and allied acts, which include the levy and collection of customs duties, and enforcement functions in their earmarked jurisdiction.

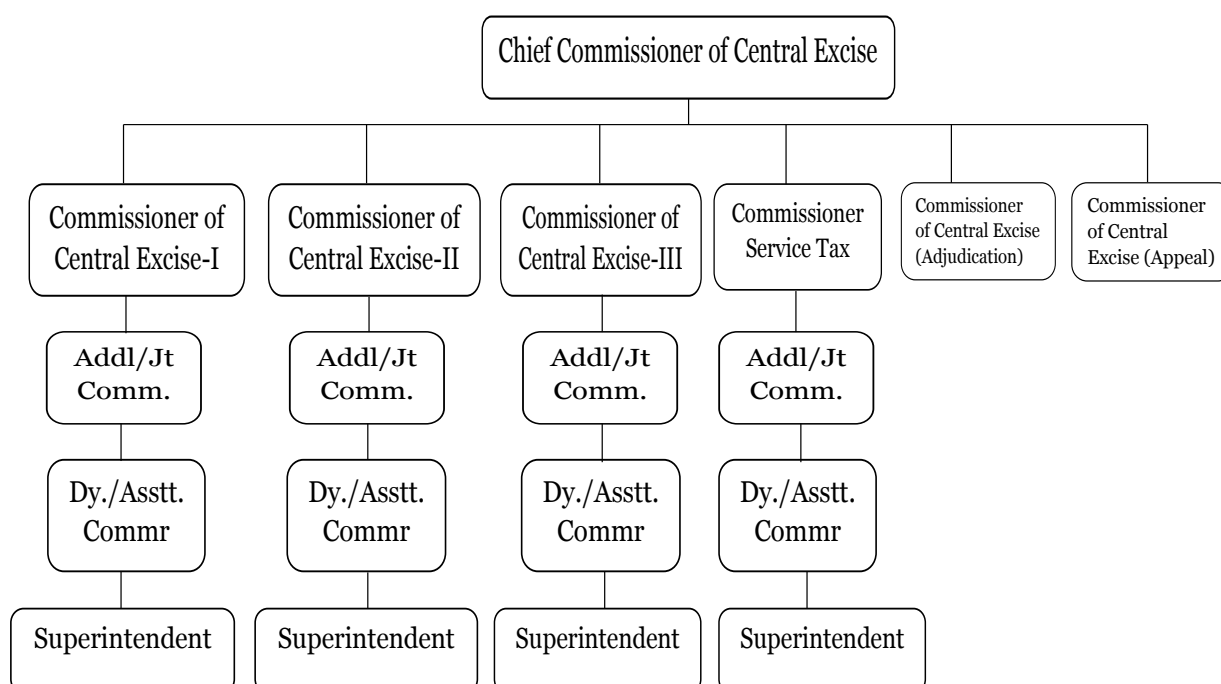
Besides, they also undertake surveillance of coastal and land borders to prevent smuggling activities. The marine and telecommunications wings under the Directorate of Logistics also assist these commissionerates in their anti-smuggling and coastline surveillance work.

### Central Excise Commissionerates

There are 93 central excise commissionerates in the country headed by a Commissioner of central excise. These commissionerates collect duties in the notified territorial jurisdiction of the commissionerate and related administrative functions. Most of the commissionerates also deal

with work relating to service tax and customs in their jurisdiction. Each commissionerate consists of 4 to 5 divisions with each division consisting of 4 to 5 range offices. The division offices are headed by a Deputy/Assistant Commissioner and the range office by a Superintendent of central excise. The typical structure of a central excise commissionerate (including service tax) is given in Diagram 3A.15 below:

**Diagram 3A.15: Organizational structure of a Central Excise Commissionerate**



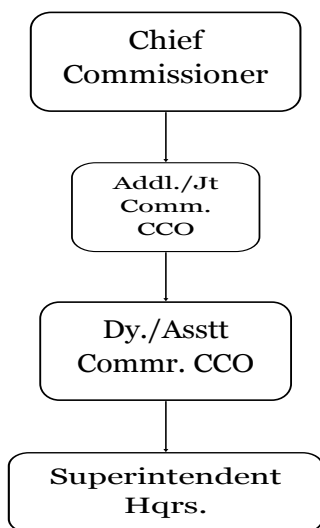
### Service Tax Commissionerates

Service tax is being administered mainly by various central excise commissionerate spread across the country. However, there are seven commissionerates located at metropolitan cities of Delhi, Mumbai, Kolkata, Chennai, Ahmedabad and Bangalore that deal exclusively with work related to service tax. These commissionerates are supervised by the jurisdictional chief commissionerate of central excise. Each commissionerate consists of 4 to 5 divisions with each division consisting of a number of range offices.

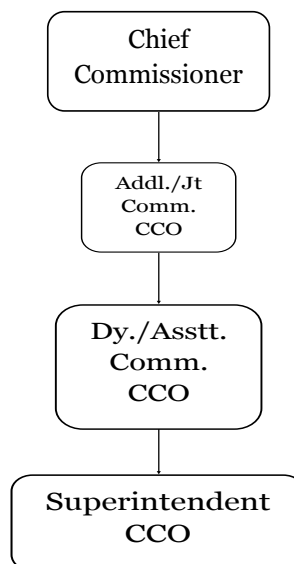
The offices of the Chief Commissioners of central excise and custom respectively have the structure given in Diagram 3A.16 below.

**Diagram 3A.16: Structure of Chief Commissioner of customs, Central Excise and Service Tax**

### Central Excise & Service Tax



### Customs



### Appellate Mechanism

There are 67 posts of Commissioner (A) under different Chief Commissioner zones of central excise and customs. The appellate machinery, comprising the Commissioners (A), deals with appeals filed against the orders passed by officers lower in rank than the Commissioner of customs and central excise under the Customs Act, 1962, Central Excise Act, 1944 and service tax laws.

### Commissioner (Adjudication)

There are four posts of Commissioner (Adjudication), one each at Mumbai, Chennai, Delhi and Bangalore to decide cases with all-India ramifications and high revenue stakes. These Commissioners attend to central excise as well as customs cases.

Staff deployment in field formations may vary from one commissionerate to another depending on the volume of work and specific geographical needs. The total manpower deployed in various central excise, customs and customs (P) zones is given in Table 3A.2. Sample deployment of manpower in central excise, service tax, customs and customs (P) commissionerates is given in Table 3A.3.

Table 3A.1: Region-wise Working Strength in the I-T Department (CBDT)

CCIT (CCA) Regions	Delhi	Mumbai	Kolkata	Chennai	Ahmadabad	Pune	Nagpur	Bangalore	Hyderabad	Kochi	Bhubaneswar	Guwahati	Patna	Bhopal	Lucknow	Kanpur	Jaipur	Chandigarh	DG (Systems)	DOMS	NADT	DG (Admn.)	PP, PR & OL	DG (Vig.)
CCIT	18	15	8	8	6	3	1	6	5	1	1	2	3	4	3	2	4	6	1	1	1	1	0	1
CIT	103	103	64	44	62	33	9	37	35	15	9	10	17	24	22	27	28	61	7	8	2	1	1	2
Addl./Jt. CIT	92	133	72	51	64	43	14	41	39	16	10	15	18	30	23	32	33	43	18	2	7	1	2	3
Dy./Asstt./ CIT	160	211	177	147	136	92	38	71	91	43	30	34	55	54	61	60	68	110	18	3	7	1	5	2
Joint Director (Sys)		0	0	1	0	0	0	0			0		0				0	0	2		0		0	
Dy./Director (Systems)		0	0	4	0	0	0	1		1	0		0	8	2	2	0	0	3		0		0	
Asst. Dir (System)		0	0	3	1	2	1	1	3	3	1	1	1	1	1	1	1	4	18		2		0	
ITO	365	516	465	370	339	237	69	246	235	119	66	93	123	158	143	237	161	327	1		0		2	
Sr. A.O.	0	0	0	0	0	0	0	0	0		0		0		0	0	0	0			0		0	
AO Gr. II	3	2	1	2	3	1	2	2	2	2	1	1	2	1	2	1	2	2			1		0	
AO Gr. III	92	108	87	60	73	33	8	39	34	22	13	14	21	10	22	16	26	29			1		0	

CCIT (CCA) Regions	Delhi	Mumbai	Kolkata	Chennai	Ahmadabad	Pune	Nagpur	Bangalore	Hyderabad	Kochi	Bhubaneswar	Guwahati	Patna	Bhopal	Lucknow	Kanpur	Jaipur	Chandigarh	DG (Systems)	DOMS	NADT	DG (Admn.)	PP, PR & OL	DG (Vig.)
Sr. PS/P.S.	94	105	102	58	72	23	9	32	30	19	11	14	13	15	21	16	11	9	1	1	1	1	1	2
Dy. Director (OL)	0	0	0	0	0	0	0	1	0		0	0	0		1	0	0	0			0		1	
Asstt. Director (OL)	0	0	0	5	2	3	1	3	2	2	1	0	2	1	3	2	2	6	1		2		0	1
Sr. Hindi Trans.	4	5	3	3	3	2	2	2	2	1	1	2	2	2	2	3	2	3	1		1		2	1
Jr. Hindi Trans.	3	2	3	0	6	2	0	1	2	1	2	1	0	1	1	1	1	6	0		2		3	
DPA. Gr. 'B'	7	0	0	5	2	1	1	0	2	1	0	0	0	1	0	1	1	1	1		0		0	
DPA, Gr. 'A'/PA.CO	3	0	3	2	0	0	0	0	0	0	0	0	0	0	3	1	0	4	1		0		0	
ITI	785	1188	240	558	728	443	132	170	431	161	125	151	275	256	321	350	346	526	10		6		0	
Office Supt.	193	301	376	186	174	97	59	94	121	64	38	58	61	89	89	103	87	129	0		5		0	
Sr. Tax Asstt.	583	824	1249	561	368	292	144	151	365	153	51	45	210	250	216	239	202	365	0		13		4	
Tax Asstt./LDC	668	711	576	261	470	244	83	178	287	157	68	99	221	154	198	310	282	297	11		5		11	
LDC	27	50	31	4	21	9	5	13	5	6	0	4	8	9	9	12	5	12	1		4		16	4
Steno. Gr. I	22	89	118	51	26	18	28	4	39	8	7	10	26	18	7	29	1	12	1		6		3	0



CCIT (CCA) Regions	Delhi	Mumbai	Kolkata	Chennai	Ahmadabad	Pune	Nagpur	Bangalore	Hyderabad	Kochi	Bhubaneswar	Guwahati	Patna	Bhopal	Lucknow	Kanpur	Jaipur	Chandigarh	DG (Systems)	DOMS	NADT	DG (Admn.)	PP, PR & OL	DG (Vig.)
Steno Gr. II	8	84	32	8	1	47	22	4	50	25	13	0	63	25	15	42	102	56	2	0	0		2	0
SCD (Spt. Gr.)	3	5	4	4	3	2	0	1	2	1	1	1	1	2	1	2	2	4	0		0		0	
SCD Gr. I	10	35	25	27	20	11	2	14	12	4	3	4	7	18	9	11	9	12	0	0	0		1	
SCD Gr. II	17	30	21	21	18	7	2	12	10	5	0	2	6	8	7	9	9	16	1		0		0	
SCD (OG) III	7	12	11	7	8	6	3	2	3	4	6	1	7	5	14	0	2	21	1	1	4	1	3	2
Notice Server	194	367	496	189	196	85	43	109	134	52	23	27	68	64	72	95	65	159		0	0			
Sr. Jr. Gest Operator	0	0	0	0	0	0	0	0	0			0			1		0				0		2	1
MTS	306	463	517	287	267	150	118	221	210	75	109	138	174	155	349	309	171	322	9	11	62		35	14

Table 3A.2: Deployment of staff (working strength) in Central Excise and Customs Zones (incl. SEZs)

Cadre / Zone	Lucknow	Meerut	Ranchi	Mumbai -I	Mumbai -II	Pune (C&CE)	Kolkata	Shillong (C&CE)
Chief Commr	1	1	1	1	1	1	1	1
Commr	3	4	2	5	3	5	9	4
Commr(Appeal)	3	2	2	2	0	3	2	1
Commr(Adjn.)	0	0	0	1	0	0	0	0
ADC/JC	4	9	7	14	6	7	9	3
DC/AC	19	25	11	26	18	34	54	17
Supdt of CE	313	406	266	557	342	377	1086	203
Supdt Customs(P)	0	0	0	0	0	27	0	0
Appraiser	0	2	0	0	0	16	0	0
Programmer	0	0	0	0	0	0	0	0
Inspector	564	564	361	724	488	560	1333	541
Examiner	0	0	0	0	0	3	0	0
Preventive Officer	0	0	0	0	0	64	0	0
CAO	0	0	1	0	0	2	5	0
AO	21	18	12	41	25	28	77	20
DD(OL)	1	0	0	0	0	0	1	0
AD(OL)	1	1	1	0	1	1	2	0

Cadre	Zone									
	Lucknow	Meerut	Ranchi	Mumbai -I	Mumbai -II	Pune (C&CE)	Kolkata	Shillong (C&CE)		
Sr. P S	1	0	0	1	1	1	1	0		
P S	1	0	0	9	4	4	6	1		
Asstt. Programmer	0	0	0	0	0	0	0	0		
Steno I	4	1	0	2	5	0	17	0		
Steno II	15	8	16	19	10	12	6	9		
Executive Asstt.	79	62	73	129	86	128	316	50		
Tax Asstt.	56	57	57	62	70	92	203	67		
LDC	18	18	11	5	4	24	38	26		
Driver Spl. Grade	5	0	1	2	3	5	6	3		
Driver I	3	2	7	12	11	11	22	17		
Driver II	9	21	1	13	13	21	24	13		
Driver III	21	12	5	2	2	6	0	12		
A S I (Weapons)	0	0	0	0	0	0	0	3		
Lady Searcher	0	0	0	0	0	0	0	0		
A S I (Dog Handler)	0	0	0	0	0	0	0	0		
Sr. Hindi Translator	3	1	2	1	1	1	3	0		
Jr. Hindi Translator	2	4	0	4	3	3	6	4		
Draftsman	0	0	0	0	0	0	0	0		

<b>Cadre</b> <b>Zone</b>	<b>Lucknow</b>	<b>Meerut</b>	<b>Ranchi</b>	<b>Mumbai -I</b>	<b>Mumbai -II</b>	<b>Pune</b> <b>(C&amp;CE)</b>	<b>Kolkata</b>	<b>Shillong</b> <b>(C&amp;CE)</b>
Sr. Gest. Operator	0	0	0	0	0	0	0	0
Cashier	0	0	0	0	0	0	0	0
Dy. Cashier	0	0	0	0	0	0	0	0
Head Havaldar	11	37	21	50	59	73	102	71
Havaldar	290	191	122	195	132	279	372	270
MTS	32	9	11	6	4	22	7	13
<b>Total</b>	<b>1480</b>	<b>1446</b>	<b>991</b>	<b>1883</b>	<b>1291</b>	<b>1799</b>	<b>3708</b>	<b>1462</b>

<b>Cadre</b> <b>Zone</b>	<b>Nagpur</b>	<b>Bengaluru</b>	<b>Mysore</b>	<b>Cochin</b> <b>(C&amp;CE)</b>	<b>Delhi</b>	<b>Chandigarh</b>	<b>Bhubaneswar</b>	<b>Ahmedabad</b>
Chief Commissioner	1	1	1	1	2	1	1	1
Commissioner	3	5	3	2	8	4	2	5
Commissioner(Appeal)	2	2	1	1	5	2	0	2
Commissioner (Adjn.)	0	1	0	0	1	0	0	1
ADC/JC	6	12	3	4	21	6	4	14
DC/AC	23	19	15	28	53	21	9	32

<b>Cadre</b> / <b>Zone</b>	<b>Nagpur</b>	<b>Bengaluru</b>	<b>Mysore</b>	<b>Cochin (C&amp;CE)</b>	<b>Delhi</b>	<b>Chandigarh</b>	<b>Bhubaneswar</b>	<b>Ahmedabad</b>
Supdt of CE	303	337	225	361	649	321	194	488
Supdt of Customs(Prev.)	0	0	0	114	0	0	0	0
Appraiser	3	0	0	22	0	0	0	0
Programmer	0	0	0	0	0	0	0	0
Inspector	445	304	259	525	957	418	216	572
Examiner	1	0	0	10	0	0	0	0
Preventive Officer	0	0	0	97	0	0	0	0
CAO	2	0	0	0	0	3	0	0
AO	21	26	14	25	41	21	12	22
DD(OL)	0	0	0	0	0	0	0	0
AD(OL)	0	0	0	0	0	1	0	0
Sr. P S	1	2	1	1	1	0	1	1
P S	3	6	1	5	11	0	0	3
Asstt. Programmer	0	0	0	0	0	0	0	0
Steno I	2	1	2	3	2	5	0	6
Steno II	11	11	4	8	23	10	14	14
Executive Asstt.	73	57	35	62	114	57	30	33
Tax Asstt.	95	50	22	67	107	51	18	62

<b>Cadre</b> / <b>Zone</b>	<b>Nagpur</b>	<b>Bengaluru</b>	<b>Mysore</b>	<b>Cochin (C&amp;CE)</b>	<b>Delhi</b>	<b>Chandigarh</b>	<b>Bhubaneswar</b>	<b>Ahmedabad</b>
LDC	14	10	12	25	18	14	7	10
Driver Spl. Grade	0	2	2	4	4	2	1	3
Driver I	5	11	9	11	9	18	8	9
Driver II	6	5	0	11	13	12	1	10
Driver III	1	3	1	10	4	2	1	0
A S I (Weapons)	0	0	0	1	0	0	0	0
Lady Searcher	0	0	0	0	0	0	0	0
A S I (Dog Handler)	0	0	0	0	0	0	0	0
Sr. Hindi Translator	1	0	0	1	0	1	0	1
Jr. Hindi Translator	6	3	1	3	5	2	2	1
Draftsman	0	0	0	0	0	0	0	0
Sr. Gest. Operator	0	0	0	0	2	0	0	0
Cashier	0	0	0	0	0	0	0	0
Dy. Cashier	0	0	0	0	0	0	0	0
Head Havaladar	29	54	58	83	55	36	19	72
Havaladar	122	95	280	168	181	166	100	178
MTS	12	3	9	0	11	4	7	9
<b>Total</b>	<b>1185</b>	<b>1002</b>	<b>1616</b>	<b>1269</b>	<b>2297</b>	<b>1178</b>	<b>645</b>	<b>1523</b>

<b>Cadre</b> <b>Zone</b>	<b>Chennai</b>	<b>Coimbatore</b>	<b>Jaipur</b>	<b>Bhopal</b>	<b>Hyderabad</b>	<b>Vizag (C&amp;CE)</b>	<b>Vadodara</b>
Chief Commr	1	1	1	1	1	1	1
Commr	7	4	2	3	4	4	6
Commr(Appeal)	2	2	2	3	2	1	3
Commr(Adjn.)	0	0	0	0	0	0	0
ADC/JC	10	4	3	4	5	5	9
DC/AC	36	27	17	21	38	26	38
Supdt of CE	551	478	208	325	442	336	537
Supdt of Customs(Prev.)	0	0	0	0	0	46	0
Appraiser	0	2	0	0	5	8	4
Programmer	0	0	0	0	0	0	0
Inspector	730	627	290	461	590	462	590
Examiner	0	0	0	0	0	14	0
Preventive Officer	0	0	0	0	0	72	0
CAO	2	0	2	1	1	0	0
AO	35	35	13	19	27	24	15
DD(OL)	0	0	0	0	1	0	0
AD(OL)	1	0	1	0	0	0	1
Sr. P S	1	1	1	1	1	1	1

<b>Cadre</b> <b>Zone</b>	<b>Chennai</b>	<b>Coimbatore</b>	<b>Jaipur</b>	<b>Bhopal</b>	<b>Hyderabad</b>	<b>Vizag (C&amp;CE)</b>	<b>Vadodara</b>
P S	11	7	1	1	7	2	0
Asstt. Programmer	0	0	0	0	0	0	0
Steno I	3	3	0	11	3	2	2
Steno II	4	7	14	13	14	10	13
Executive Asstt.	129	115	91	73	75	100	26
Tax Asstt.	77	56	44	119	38	20	48
LDC	11	26	7	21	25	25	18
Driver Spl. Grade	27	3	1	3	2	1	2
Driver I	2	9	4	9	10	11	7
Driver II	2	11	8	11	5	3	16
Driver III	1	11	6	7	0	4	0
A S I (Weapons)	0	0	3	0	0	0	0
Lady Searcher	0	0	0	0	0	0	0
A S I (Dog Handler)	0	0	0	0	0	0	0
Sr. Hindi Translator	0	0	1	0	0	0	1
Jr. Hindi Translator	4	3	0	3	3	2	2
Draftsman	0	0	0	0	0	0	0
Sr. Gest. Operator	0	0	0	0	0	0	0
Cashier	0	0	0	0	0	0	0



<b>Cadre</b> <b>Zone</b>	<b>Chennai</b>	<b>Coimbatore</b>	<b>Jaipur</b>	<b>Bhopal</b>	<b>Hyderabad</b>	<b>Vizag (C&amp;CE)</b>	<b>Vadodara</b>
Dy. Cashier	0	0	0	0	0	0	0
Head Havalddar	65	70	23	37	43	48	33
Havalddar	147	187	108	138	119	180	242
MTS	12	21	14	17	15	13	5
<b>Total</b>	<b>1775</b>	<b>1710</b>	<b>865</b>	<b>1302</b>	<b>1386</b>	<b>1421</b>	<b>1599</b>

**Customs & Customs (Prev.) Zones (incl. SEZs)**

<b>Cadre</b> <b>Zone</b>	<b>Delhi Cus. Prev.</b>	<b>Patna Cus. Prev.</b>	<b>Mumbai -III</b>	<b>Trichy Cus. Prev.</b>	<b>Kolkata Cus.</b>	<b>Bangalore Cus.</b>	<b>Ahmedabad Cus.</b>	<b>Delhi Cus.</b>	<b>Mumbai -I</b>	<b>Mumbai- II</b>	<b>Chennai Cus.</b>
Chief Commr	1	0	1	1	1	1	1	1	1	1	1
Commr	3	2	4	2	3	2	2	3	2	2	3
Commr(Appeal)	0	0	1	0	0	1	2	1	1	1	1
Commr(Adjin.)	0	0	0	0	0	0	0	1	1	0	0
ADC/JC	8	3	7	4	6	6	7	14	6	6	5
DC/AC	21	14	36	10	18	17	33	37	30	32	35

Cadre Zone	Delhi Cus. Prev.	Patna Cus. Prev.	Mumbai -III	Trichy Cus. Prev.	Kolkata Cus.	Bangalore Cus.	Ahmedabad Cus.	Delhi Cus.	Mumbai -I	Mumbai- II	Chennai Cus.
Supdt of CE	205	166	98	181	341	156	243	303	0	0	0
Supdt of Customs(Prev.)	0	0	314	0	0	0	0	0	195	186	209
Appraiser	3	0	48	4	0	7	6	22	68	84	102
Programmer	0	0	0	0	0	0	0	0	0	0	0
Inspector	303	276	174	260	488	152	328	268	0	0	0
Examiner	0	0	55	0	0	0	0	0	43	69	54
Preventive Officer	0	0	357	0	0	0	0	0	189	254	270
CAO	1	1	1	0	0	0	0	0	0	1	4
AO	12	8	15	10	25	8	6	12	26	14	36
DD(OL)	0	0	0	0	0	0	0	0	0	0	0
AD(OL)	0	0	0	0	1	0	0	0	0	0	0
Sr. P. S	0	1	0	1	1	0	1	2	2	1	1
P S	3	0	2	1	4	3	2	1	0	2	5
Asstt. Programmer	0	0	0	0	0	0	0	0	0	0	3
Steno I	0	1	2	0	5	1	0	1	0	0	6
Steno II	10	11	5	3	10	4	5	7	13	3	4
Executive Asstt.	24	38	65	20	86	14	15	37	118	62	144

Cadre Zone	Delhi Cus. Prev.	Patna Cus. Prev.	Mumbai -III	Trichy Cus. Prev.	Kolkata Cus.	Bangalore Cus.	Ahmedabad Cus.	Delhi Cus.	Mumbai -I	Mumbai- II	Chennai Cus.
	Tax Asstt.	29	25	47	26	70	16	40	21	105	33
LDC	10	13	9	7	4	4	6	9	8	3	11
Driver Spl. Grade	3	1	3	3	3	1	7	0	1	0	0
Driver I	12	9	20	4	11	6	15	12	10	5	7
Driver II	17	7	12	18	13	8	22	14	8	4	9
Driver III	8	22	13	3	2	1	2	0	1	5	5
A S I (Weapons)	6	3	3	3	0	0	0	0	0	0	0
Lady Searcher	1	0	1	0	0	0	0	0	0	0	0
A S I (Dog Handler)	0	0	4	0	0	0	0	4	0	0	0
Sr. Hindi Translator	0	1	0	0	1	0	0	0	1	1	0
Jr. Hindi Translator	2	2	0	2	3	1	0	3	3	0	1
Draftsman	0	0	0	0	0	0	0	0	0	0	0
Sr. Gest. Operator	0	0	0	0	0	0	0	0	0	0	1
Cashier	0	0	0	0	0	0	0	0	0	0	0
Dy. Cashier	0	0	0	0	0	0	0	0	0	0	0
Head Havaldar	58	73	71	52	59	14	85	57	24	17	32

Cadre Zone	Delhi Cus. Prev.	Patna Cus. Prev.	Mumbai -III	Trichy Cus. Prev.	Kolkata Cus.	Bangalore Cus.	Ahmedabad Cus.	Delhi Cus.	Mumbai -I	Mumbai- II	Chennai Cus.
	Havaldar	235	569	367	101	132	83	340	59	161	120
MTS	9	11	16	17	4	1	0	6	46	10	8
Total	984	1257	1751	733	1291	507	1168	895	1063	916	1195

**Table 3A.3: Sample staff allocation in Central Excise, Service Tax, Custom (P) and Customs Commissionerates**

S. No	Post	Allahabad Central Excise	Mumbai Service Tax	Delhi Custom (P)	Delhi ACC (I & G) including Airport
1.	Chief Commissioner	0	0	1	1
2	Commissioner	1	1	1	1
3	Commissioner (Appeals)	1	0	0	1
4	Commissioner (Adjn)	0	0	0	1
5	Addl./Jt. / Commissioner	3	5	5	6
6	Dy./Asstt. Commissioner	9	17	5	23
7	Supdt. Of C. Ex.	113	107	80	180
8	Supdt. Cus. (P)	0	0	0	0
9	Appraiser	0	0	0	30
10	Programmer	0	0	0	0
11	Inspector of C. Ex.	178	168	98	354
12	Examiner	0	0	0	0
13	Prev. officer	0	0	0	0
14	CAO	1	1	1	1
15	AO	8	10	4	5
16	Dy. Director. (OL)	0	0	0	0
17	Asst. Director. (OL)	1	0	0	0
18	Sr. P. S.	0	0	1	1
19	P.S.	2	2	1	3
20	Asstt. Programmer	0	0	0	1
21	Steno-I	5	2	3	8
22	Steno-II	4	11	2	5
23	D.O.S.	20	14	2	11
24	Sr. Tax Assistant	27	2	5	22
25	Tax Assistant	41	31	20	70
26	LDC	7	6	0	3
27	Driver Spl. Grade	1	0	1	1
28	Driver-I	4	4	6	7
29	Driver-II	3	4	4	6
30	Driver-III	3	4	4	5
31	A.S.I. (Weapons)	0	0	3	0
32	Lady Searcher	0	0	0	0
33	A.S.I. (Dog Handler)	0	0	0	5
34	Sr. Hindi Translator	1	0	0	0
35	Jr. Hindi Translator	1	0	1	3
36	Hindi Typist	0	0	0	0
37	Draftsman	0	0	0	0
38	Sr. Gest. Operator	0	0	0	0
39	Record Keeper	0	0	0	0
40	Cashier	0	0	0	0
41	Dy. Cashier	0	0	0	0
42	Pin Point Operator	0	0	0	0
43	Book Binder	0	0	0	0

S. No	Post	Allahabad Central Excise	Mumbai Service Tax	Delhi Custom (P)	Delhi ACC (I & G) including Airport
44	Head Havaldar	14	0	8	12
45	Havaldar	28	0	20	23
46	Sepoy	46	76	10	4
47	Peon	0	0	0	0
48	Gest. Operator	1	0	0	1
49	Safaiwala/Bhisti/Farash	5	0	0	3
50	Safaiwala	0	0	0	2
51	Chowkidar	3	0	0	2
52	Mail	1	0	0	0
53	Bhisti	0	0	0	0
54	Daftri	0	0	0	1
55	Sorter	0	0	0	0
56	Scaleman	0	0	0	0
57	Liftman	0	0	0	0
58	Koyal	0	0	0	0
59	Darwan	0	0	0	0
60	Caner/Carpenter	0	0	0	0
61	Total	532	465	286	802

### Comparison between CBDT and CBEC

CBDT and CBEC were established on April 1, 1964. Before they were set up, the Central Board of Revenue (CBR) administered all central taxes. A review of the functioning of the two Boards shows that there is a commonality of approach in a number of functions. Key functions such as external publicity, computerization or systems, human resource management, logistics, etc are delivered through directorates attached to the Boards. In the CBEC, however, there are more directorates than in the CBDT. But that apart, there are also some differences; for example, the CBEC and its field functionaries have the power to fully write off tax arrears, but in the CBDT, the power to write-off tax arrears is restricted to only Rs.10 lakh. Any write-off above that has to be approved by the finance minister. Some of these key differences are summarized in Table 3A.4 below.

**Table 3A.4: Differences between CBDT and CBEC**

Item of work	CBDT	CBEC
<p><b>Organization of field formations and cadre control</b></p>	<p>There are 18 Principal CCIT regions in the country, which are further sub-divided into 91 regions, each headed by a CCIT/DGIT. Each of these is further divided into a number of charges, each headed by a Principal CIT/ CIT.</p> <p>The regions and charges are identified primarily on the basis of clearly earmarked geographical boundaries. But some charges are also on the basis of income segmentation, like salary, corporate, and trusts etc.</p> <p>Each Principal CCIT acts as a cadre controlling authority (CCA) of Group 'B', 'C' &amp; 'D' officers.</p> <p>Pr. CCIT (CCA), through regional placement committees, decides on transfer/posting up to the level of Additional/Joint Commissioners</p>	<p>Customs and central excise commissionerates/zones are identified with geographical boundaries. There are 23 customs &amp; central excise zones and 11 exclusive customs/customs (P) zones. The geographical boundaries of central excise, customs and customs (P) zones/commissionerates overlap.</p> <p>The Chief Commissioner in-charge of a zone is the CCA for Group 'B', 'C' &amp; 'D' employees, but these employees may work in other zones too. Group B, C &amp; D employees posted in central excise can also get posted to customs and customs (P).</p> <p>Officers of rank above AC are initially posted to a particular zone by the Board but on completion of the specified term, can be posted in</p>

Item of work	CBDT	CBEC
	from one region/charge to another within his geographical jurisdiction. For CIT and above level officers, the deciding authority is the Board.	other zones if the Chief Commissioners concerned agree.  Some commissionerates draw manpower from more than one CCA Chief Commissioners.
<b>Investigation wing</b>	Work relating to searches, seizures and surveys etc is handled separately in DGIT (Inv.). DGIT normally has jurisdiction over two or three CCIT (CCA) regions, thus having a wider geographical jurisdiction than a region.	There are multiple agencies for investigations under the Customs and Central Excise Acts. It is done by DRI, DGCEI and preventive commissionerates and by the Preventive or SIIB/CIU wings in the assessing commissionerate.
<b>Assessment of searched cases</b>	There is a separate commissionerate called CIT (Central) for assessment in cases which are investigated by DGIT (Inv.). The CIT (Central) reports to DGIT (Inv.).	No separate set of assessing or adjudicating officers for cases booked by any investigating agency.
<b>Financial powers to Commissioner (Appeal)</b>	CIT (Appeals) is allocated a separate budget and exercises the powers of a head of department.	Commissioner (Appeal) does not have any financial powers and depends on executive commissioner for day-to-day expenditure needs.
<b>Internal Audit</b>	There is a separate CIT (Audit) in each Pr CCIT region for a random selective second check on the work done by field AOs to make assessment error free before the CAG audit.	No separate audit commissionerate. The audit function is generally discharged by officers of the same commissionerate in which assessment is done, with the sole exception of customs clearance of ACP clients whose audit is done by central excise officers in the factory of importer under the OSPCA scheme.



Item of work	CBDT	CBEC
<b>Computerization at field level</b>	CIT (CO) in each Principal CCIT Region supervises computer operations at the field level and liaises with the Directorate of Systems. He is also responsible for liaising with other agencies (banks etc.) and for the maintenance of hardware, networking and AMC.	One Additional Commissioner is designated as system manager in each commissionerate for supervising computer operations and also for liaising with Directorate of Systems. Liaising with other agencies and maintenance of hardware is in the domain of DG (Sys.)
<b>Training</b>	All matters relating to foreign training are dealt by Chairman CBDT directly. All other training is under the purview of Member (P&V).	Chairman CBEC through the concerned member.
<b>O &amp; M services and Infrastructure division</b>	The Directorate of Income Tax (O&M Services) and Directorate of Income Tax (Infrastructure) are headed by a commissioner level officer and report to DG (Logistics).	These Divisions work under DG (HRD)
<b>Structure of Vigilance Directorate</b>	Vigilance work after the charge sheet stage is handled under the supervision of two commissioner-level officers of the IRS cadre - one posted in the office of DG (Vigilance) to provide comments on the defence submitted by the charged officer, IO report and to refer to the CVC for 2 <sup>nd</sup> stage advice, and another posted in the ministry in V & L section to handle litigation work. Thirteen officers, including 12 IRS officers, handle the post-charge sheet stage work.	Post-charge sheet work is handled in Ad. V section in the ministry manned by CSS officers. They lack the expertise to understand the intricacies of tax laws. It results in delays due to multiple stage correspondence between DG (Vigilance) and CVO offices during the course of an enquiry. Staff strength is also abysmally low in Ad. V section, which includes only 1 director, 1 undersecretary and 2 SOs.

Item of work	CBDT	CBEC
<b>Vigilance clearance</b>	<p>By the CVO/DGIT (Vigilance) office in respect of Group 'A' officers.</p> <p>By the zonal units of Directorate General of Vigilance in respect of Group 'B' officers.</p>	<p>By the CVO/ DG (Vigilance) office in respect of Group 'A' officers.</p> <p>By the cadre controlling Chief Commissioner in respect of Group 'B' officers. No role for the zonal unit of Directorate General of Vigilance in issue of vigilance clearance to Group 'B' officers.</p>
<b>List of suspect officers</b>	<p>In addition to Agreed and ODI Lists, one more list of suspect Group 'A' and 'B' officers is prepared whose work is subjected to vigilance inspection.</p>	<p>No such list</p>
<b>Business Process Re-engineering (BPR)</b>	<p>There is an exclusive directorate for BPR in all four principal areas, namely, pre-assessment, assessment, post-assessment and appellate, together with support functions cutting across all the four areas.</p>	<p>No such Directorate.</p>
<b>Research</b>	<p>There is a Directorate of Research.</p>	<p>Research work in Centre of Excellence under DG (NACEN).</p>

### Post-cadre restructuring scenario

#### CBDT

With the approval of cadre restructuring in May 2013, 20,751 additional posts were created in the department for carrying out various measures to increase its effectiveness. The number of assessment units (AUs) is to be increased by 1,080 from 3,420 to 4,500 to strengthen the tax administration. It is estimated that this would bring net additional revenue of Rs.25,756.04 crore per annum against an additional expenditure of Rs.449.71 crore per annum. Each range is to have one more assessing officer. The number of Administrative CITs deployed on assessment related functions is to also increase from 228 to 250, and 114 special ranges were to be created, with adequate supporting manpower so as to bring more focus on assessment. It was also decided to have a separate Directorate for Risk Management; other important areas such as international tax, investigation, and TDS were to be expanded. It is also proposed to strengthen the appellate/advocacy structure by increasing the number of CIT Appeals and providing them supporting manpower. At present, the cadre restructuring is yet to roll out.

The sanctioned strength at various levels in the I-T Department before and after the cadre restructuring in 2013 is given in Table 3A.5 below.

**Table 3A.5: Sanctioned posts in CBDT**

Sl. No.	Cadre	Pay Scale	Manpower Strength		
			Pre-Cadre Restructuring	Post-Cadre Restructuring	Additional manpower
1	Principal Chief Commissioner of Income Tax	Rs.80,000 (fixed)	0	26	26
2	Chief Commissioner of Income Tax	Rs. 75500-80000	0	91	91
3	Principal Commissioner of Income Tax*	Rs.67000-79000	116	300	184
4	Commissioner of Income Tax	Rs.3 7400-67000 + grade pay of Rs. 10000	731	635	-(96)
5	Additional /Joint Commissioner of Income Tax	Rs.37400-67000 + grade pay of Rs. 8700/ Rs.	1253	1575	322

Sl. No.	Cadre	Pay Scale	Manpower Strength		
			Pre-Cadre Restructuring	Post-Cadre Restructuring	Additional manpower
		15600-39100 + grade pay of Rs. 7600			
6	Deputy Commissioner of Income Tax	Rs. 15600-39100 + grade pay of Rs. 6600	1358	1394	36
7	Assistant Commissioner of Income Tax	Rs. 15600-39100 + grade pay of Rs. 5400	734	900	166
8	Reserves (Group 'A')	Rs. 15600-39100 + grade pay of Rs. 5400	0	760	620
9	Income Tax Officer	Rs.9300-34800 + grade pay of Rs. 4800/Rs.5400	4448	5942	1494
10	Posts in AO cadre	Rs. 15600-39100 + grade pay of Rs. 6600/RS.9300-34800 + grade pay of Rs. 4800/4200	814	1384	570
11	Posts in PS cadre	Rs.9300-34800 + grade pay of Rs. 4800/4200	823	1051	228
12	Inspector of Income Tax	Rs.9300-34800 + grade pay of Rs. 4600	9490	13293	3803
13	Executive Assistants	Rs.9300-34800 + grade pay of Rs. 4200/	13905	19837	5932
14	TA/Steno III/Driver	Rs. 5200-20200+ grade pay Rs. 2400	11886	14781	2895
15	Notice server/ LDC/ Driver	Rs. 5200-20200+ grade pay of Rs. 1900	3707	3974	267
16	Group C	Rs. 5200-20200+ grade pay of Rs. 1800	7365	11138	3773
17	Posts in EDP cadre	Rs. 15600-39100/ Rs. 5200-20200	321	610	289
18	Posts in OL cadre	Rs. 15600-39100/ Rs. 9300-34800	203	354	151
19	Other Posts		639	639	0
<b>Total Posts before cadre restructuring</b>			<b>57,793</b>		

Sl. No.	Cadre	Pay Scale	Manpower Strength		
			Pre-Cadre Restructuring	Post-Cadre Restructuring	Additional manpower
<b>Additional manpower approved</b>			<b>20,751</b>		
<b>Total Posts after cadre restructuring</b>			<b>78,544</b>		

## CBEC

Cadre restructuring and the reorganization of field formations under the CBEC has been approved by the government vide notification dated December 12, 2013. It is proposed to create 45 exclusive audit commissionerates and substantially increase the service tax commissionerates from 7 to 22, central excise commissionerates from 93 to 119 and customs/customs (P) commissionerates from 35 to 60. The change in the number of formations as a result of cadre restructuring is likely to be as follows:

Sl. No.	Formation	Pre-Cadre Restructuring	Post-Cadre Restructuring
1	Central Excise & Service Tax Zones	23	27
2	Central Excise Commissionerates	93	119
3	Service Tax Commissionerates	7	22
4	Audit Commissionerates	0	45
5	Customs Zones	11	11
6	Customs Commissionerates	35	60

The sanctioned strength at various levels in the CBEC before and after the cadre-restructuring in 2013 is given in Table 3A.6 below.

**Table 3A.6: Sanctioned posts in CBEC**

S. No	Cadre	Pay Scale	Pre-Cadre Restructuring	Post-Cadre Restructuring	Additional Posts
1	Principal Chief Comm./Pr. DG	Rs. 80,000 (Fixed) (Apex)	0	14	14
2.	Chief Comm./DG	Rs. 75,000-80,000 (HAG+)	0	38	38
3.	Pr. Commissioner	Rs. 67,000-79,000 (HAG)	47	100	53

S. No	Cadre	Pay Scale	Pre-Cadre Restructuring	Post-Cadre Restructuring	Additional Posts
4.	Commissioner	PB-4 Rs. 37,400-67000+ Grade Pay Rs. 10,000 (SAG)	295	340	45
5.	Additional Commissioner/	PB-4 Rs. 37,400-67,000 + Grade Pay Rs. 8700 {JAG (NFSG)}	593	932	339
6.	Joint Commissioner*	PB-3 Rs. 15,600-39,100+ Grade Pay Rs. 6600 (JAG)			
7.	Dy. Commissioner	PB-3 Rs. 15,600-39,100 + Grade Pay Rs. 6600(STS)	601	801	200
8.	Asst. Commissioner	PB-3 Rs. 15,600-39,100 + Grade Pay Rs. 5400 (JTS)	949	1249	300
9.	Asst. Commissioner**	PB-3 Rs. 15,600-39,100 + Grade Pay Rs. 5400 (JTS)	0	2118	2118
10.	Senior Private Secretary	PB-2 S. 9300-34,800 + Grade Pay Rs. 4800	47	152	105
11.	Private Secretary	PB-2 Rs. 9300-34,800 + Grade Pay Rs. 4600	295	340	45
12.	Steno Grade-I	PB-2 Rs. 9300-34800 + Grade Pay Rs. 4200	735	932	197
13.	Steno Grade-II	PB-2 Rs. 5200-20,200 + Grade Pay Rs. 2400	550	801	251
14.	Superintendent of Customs Excise	PB-2 Rs. 9300-34800 + Grade Pay Rs. 4800 & 5400 (After 4 years of regular service)	13948	19108	5160
15.	Superintendent of Customs (P)				
16.	Appraiser				
17.	Inspector Central Excise	PB-2 Rs. 9300-34,800 + Grade Pay Rs. 4600	20163	25203	5040
18.	Preventive Officer				
19.	Examiner				

S. No	Cadre	Pay Scale	Pre-Cadre Restructuring	Post-Cadre Restructuring	Additional Posts
20.	CAO	PB-3 Rs. 15,600-39,100+ Grade Pay Rs. 5400	155	349	194
21.	A.O.	PB-2 Rs. 9300-34,800 + Grade Pay Rs. 4600	984	1600	616
22.	Executive Assistant	PB-2 Rs. 9300-34,800 + Grade Pay Rs. 4200	5197	4850	-347
23.	Tax Assistant	PB-1 Rs. 5200-20,200 + Grade Pay Rs. 2400	5432	6432	1000
24.	LDC	PB-1 Rs. 5200-20,200 + Grade Pay Rs. 1900	908	1917	1009
25.	Driver Spl. Grade	PB—2 Rs. 9300-34,800 + Grade Pay Rs. 4200	103	86	-17
26.	Driver Grade-I	PB-1 Rs. 5200-20,200 + Grade Pay Rs. 2800	725	392	-333
27.	Driver Grade-II	PB-1 Rs. 5200-20,200 + Grade Pay Rs. 2400	621	427	-194
28.	Driver Grade-III	PB-1 Rs. 5200-20,200 + Grade Pay Rs. 1900	641	480	-161
29.	Head Havaldar	PB-1 Rs. 5200-20,200 + Grade Pay Rs. 1900	2139	6500	4361
30.	Havaldar	Pb-1 RS. 5200-20,200 + Grade Pay Rs. 1800	10475	8690	-1785
31.	Deputy Director (OL)	PB-3 Rs. 15,600-39,100 + Grade Pay Rs. 6600	6	11	5
32.	Asstt. Director (OL)	PB-3 Rs. 15,600-39,100 + Grade Pay Rs. 5400	34	68	31
33.	Senior Hindi Translator	PB-2 Rs. 9300-34,800 + Grade Pay Rs. 4600	24	79	55
34.	Junior Hindi Translator	PB-2 Rs. 9300-34,800 + Grade Pay Rs. 4200	168	158	-10
35.	Programmer	PB-2 Rs. 9300-,34800 + Grade Pay Rs. 4600	20	0	-20
36.	Asst. Programmer	PB-2 Rs. 9300-34,800 + Grade Pay Rs. 4200	60	5	-55

S. No	Cadre	Pay Scale	Pre-Cadre Restructuring	Post-Cadre Restructuring	Additional Posts
37.	Group 'C'	PB-1 Rs. 5200-20,200 + Grade Pay Rs. 1900, Rs. 2000 & Rs. 2400	69	69	0
38.	Multi-Tasking Staff	PB-1 Rs. 5200-20,200 + Grade Pay Rs. 1800	821	634	-187
Total			66,808	84,875	18,067

\*\* Posts of Additional Commissioner and Joint Commissioner have been counted together.

\*2118 Temporary posts of Assistant Commissioner created in Junior Time Scale for a period of five years.

The two Tables show that overall more additional posts have been created in the CBDT than in CBEC – 20,751 posts in CBDT and 18,067 posts in CBEC. There are more posts at the higher level in the CBDT – 5,541 posts as compared to 3,474 posts in CBEC. But for a period of five years, 2,118 posts have been created in the CBEC at the level of assistant commissioners. If we add these temporary posts, the total number of posts in CBEC at higher levels would be 5,592. This is marginally more than that in the CBDT. At the middle level of ITOs, Superintendents and inspectors, there are more posts in the CBEC than in the CBDT – 44,311 in the CBEC and 19,325 in CBDT. At the lower end, the CBDT has more support staff – 53,129 vis-à-vis 34,338 in the CBEC. The CBDT has more than 600 staff (EDP cadre) exclusively for computerization; CBEC has only 5 staff members. Table 3A.7 gives the above comparison for each level between the two Boards.

**Table 3A.7: Comparative statement of manpower resources in the two Boards after cadre restructuring, 2013**

**Group 'A':**

Sl. No.	Cadre	Pay Scale	CBDT	CBEC
1	Principal Chief Commissioner	Rs.80,000 (fixed)	26	14
2	Chief Commissioner	Rs. 75500-80000	91	38
3	Principal Commissioner	Rs.67000-79000	300	100
4	Commissioner	Rs.3 7400-67000 + grade pay of Rs. 10000	635	340



5	Additional/ Joint Commissioner	Rs.37400-67000 + grade pay of Rs. 8700/ Rs. 15600-39100 + grade pay of Rs. 7600	1575	932
6	Deputy Commissioner	Rs. 15600-39100 + grade pay of Rs. 6600	1394	801
7	Assistant Commissioner	Rs. 15600-39100 + grade pay of Rs. 5400	900 + 620 (Reserve)	1249 + 2118 (Temp. posts for 5 years)
<b>Total Group 'A'</b>			5,541	3,474 + 2,118 (Temp)

**Group 'B' & 'C' Executives**

Sl. No.	Cadre	Pay Scale	CBDT	CBEC
1	Income Tax Officer/ Supdt./ Appraiser	Rs.9300-34800 + grade pay of Rs. 4800/Rs.5400	5,942	19,108
2	Inspector of Income Tax/ Central Excise/ PO / examiner	Rs.9300-34800 + grade pay of Rs. 4600	13,293	25,203
<b>Total Group 'B' &amp; 'C' executive</b>			<b>19235</b>	<b>44311</b>

**Ministerial including Drivers:**

Sl. No.	Cadre	CBDT	CBEC
1	Posts in CAO/ AO cadre	1,384	1,949
2	Posts in Sr. PS/ PS cadre	1,051	492
3	Executive Assistants	19,837	4,850
4	TA/Steno /Driver	14,781	9,070

5	Notice server/ LDC/ Driver III	3,974	2,397
6	Group C/Head havaladar/havaladar	11,138	15,259
7	Posts in EDP cadre	610	5
8	Posts in OL cadre	354	316
<b>Total</b>		<b>53,129</b>	<b>34,338</b>

**Others:**

Sl. No.	Cadre	CBDT	CBEC
1	Other Posts/ MTS	639	634
<b>Total</b>		<b>639</b>	<b>634</b>

Table 3A.8: Delegated authority that can be exercised by the national revenue body

Delegated authority								
Country	Make tax rulings	Design internal structure	Allocate budget	Fix levels/mix of staff	Set service standards	Influence staff recruitment criteria	Hire and dismiss staff	Negotiate staff pay levels
<b>OECD Countries</b>								
Australia	√	√	√	√	√	√	√	√
Austria	√	√	√	√	√	√	√	×
Belgium	√	×	×	×	√	√	×	×
Canada	√	√	√	√	√	√	√	√
Chile	√	√	√	√	√	√	√	√
Czech Rep.	√	√	√	√	√	√	√	√
Denmark	√	√	√	√	√	√	√	√
Estonia	√	×	√	√	√	√	√	√
Finland	√	√	√	√	√	√	√	√
France	√	√	√	√	√	√	√	√
Germany/1	√	√	×	×	√	√	√	×
Greece	√	√	√	√	√	√	√	×
Hungary	√	×	√	√	√	√	√	√
Iceland	√	√	√	√	√	√	√	√
Ireland	√	√	√	√	√	√	√	×
Israel	√	√	√	√	√	√	√	×
Italy	√	√	√	×	√	√	√	×
Japan	√	×	×	×	√	√	√	×
Korea	√	×	√	×	√	√	√	×
Luxembourg	√	√	×	×	√	√	×	×
Mexico	√	×/1	×/2	√	√	√	√	√
Netherlands	√	√	√	√	√	√	√	√
New Zealand	√	√	√	√	√	√	√	√
Norway	√	√	√	√	√	√	√	√
Poland	√	×	√	√	√	√	√	√
Portugal	√	×	×	×	√	√	×	×
Slovak Rep.	√	√	√	√	√	√	√	√
Slovenia	√	√	√	√	√	√	√	√
Spain	√	√	√	√	√	√	√	√
Sweden	√	√	√	√	√	√	√	√
Switzerland	√	√	√	√	√	√	√	√
Turkey	√	√	×	×	√	×	√	×
United Kingdom	√	√	√	√	√	√	√	√
United States	√	√	√	√	√	√	√	√

Delegated authority								
Country	Make tax rulings	Design internal structure	Allocate budget	Fix levels/mix of staff	Set service standards	Influence staff recruitment criteria	Hire and dismiss staff	Negotiate staff pay levels
<b>Non-OECD countries</b>								
Argentina	√	√	×	√	√	√	√	√
Brazil	√	×	×	×	×	√	×	×
Bulgaria	√	√	√	√	√	√	√	√
China	√	√	√	√	√	√	√	×
Colombia	√	×	√	×	√	√	√	×
Cyprus	√	√	√	×	√	×	×	×
Hong Kong, China	√	√	×	×	√	√	√	×
Indonesia	√	×	×	√	√	√	×	×
Latvia	√	×	√	√	√	√	√	√
Lithuania	√	×/2	√	√	√	√	√	×
Malaysia	√	√	√	×	√	√	√	√
Malta	√	√	√	√	√	√	×	×
Romania	√	×	√	×	√	√	√	×
Russia	×	√	√	√	√	√	√	√
Saudi Arabia	√	×	√	×	√	√	×	×
Singapore	√	√	√	√	√	√	√	√
South Africa	√	√	√	√	√	√	√	√

Source: *Tax Administration 2013 - Comparative Information on OECD and Other Advanced and Emerging Economies*, OECD, 2013.

Table 3A.9: Comparative Performance Indicators of some key Tax Administrations

Tax Administration Function	Australia	New Zealand	South Africa	United Kingdom
<b>Registration &amp; Filing</b>	<ul style="list-style-type: none"> <li>• Percentage of new registrants</li> <li>• Total number of tax returns lodged on time</li> <li>• Total preventative compliance actions taken – field visits, phone calls and letters</li> <li>• Number of taxpayers contacted after a discrepancy in tax disclosure has been identified</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage of error free applications/returns</li> <li>• Employer registrations follow an appropriate trend</li> <li>• Goods &amp; service tax(GST) assessed to customer spending follows an appropriate trend</li> <li>• Percentage of customers who are aware of their obligations and entitlement</li> <li>• Percentage of customers who find it easy to comply</li> <li>• Number of tax and social policy/child support registrations/applications received</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage increase in the small business register</li> <li>• Percentage of corporate income tax (CIT)/VAT/personal income tax filing compliance</li> <li>• Number of new registered taxpayers</li> </ul>	
<b>Taxpayer Services &amp; Education</b>	<ul style="list-style-type: none"> <li>• Registrations percentage registration in agreed number of calendar days</li> <li>• Lodgements percentage electronic/paper</li> </ul>	<ul style="list-style-type: none"> <li>• Number of customer/self-help service contacts</li> <li>• Minimum percentage of attempted calls/correspondence answered within agreed time limits</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage uptake in electronic filing, declaration and payment submissions for all tax products</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage of posts received by HMRC that has been cleared within agreed number of calendar days</li> <li>• Percentage of post cleared within agreed</li> </ul>

Tax Administration Function	Australia	New Zealand	South Africa	United Kingdom
	<p>returns in agreed number of calendar days</p> <ul style="list-style-type: none"> <li>• Enquiries – per cent enquiries handled in agreed number of calendar days</li> <li>• Amendments &amp; objections – percentage amendments, objections &amp; reviews handled in agreed number of calendar days</li> <li>• Audits – percentage audits and reviews finalized advice</li> <li>• Complaints – per cent of initial contacts made; percentage of resolution</li> </ul>	<ul style="list-style-type: none"> <li>• Maximum average cost of a customer-initiated contact</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage uptake in electronic customs bills/declarations (EDI)</li> <li>• Percentage of first contact resolution in contact centre and branches</li> <li>• Total number of taxpayers assisted through e-filing mobile solution, contact centre with live assistance</li> <li>• Total number of problem solved by live assistance</li> <li>• Attendance increase in seminars and workshops</li> <li>• Number of learners &amp; educators participating in schools, ETV/ENEWS, PRIMEDIA</li> </ul>	<p>number of working days of receipt that has passed HMRC quality standards</p> <ul style="list-style-type: none"> <li>• Percentage of call attempts handled by contact centres</li> <li>• Percentage of reply on written complaints within agreed number of working days</li> <li>• Increase/decrease in cost to customers while dealing with HMRC</li> <li>• Percentage of new claims for benefits and credits dealt with on average within agreed number of calendar days</li> <li>• Percentage of transactions carried out online</li> </ul>
<b>Returns Processing &amp; Payments</b>	<ul style="list-style-type: none"> <li>• Percentage of on-time lodgement</li> <li>• Percentage of total liabilities paid in full by the due date</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage of payments made by customers on time</li> <li>• Percentage of child support assessments collected</li> </ul>	<ul style="list-style-type: none"> <li>• Average Processing turnaround time</li> </ul>	<ul style="list-style-type: none"> <li>• Total reinvestment of savings to maximize additional revenues</li> </ul>

Tax Administration Function	Australia	New Zealand	South Africa	United Kingdom
<b>Arrears Collection</b>	<ul style="list-style-type: none"> <li>• Percentage increment in debt collection action</li> <li>• Ratio of collectable debt to net tax collection</li> <li>• Ratio of cases of debt collection with or without intervention</li> <li>• Total debt relief provided during the year</li> <li>• Total collectable debt during the year</li> <li>• Total number of bankruptcies</li> </ul>	<ul style="list-style-type: none"> <li>• Donation rebates claimed follow an appropriate trend</li> <li>• Minimum percentage of income tax refunds issued within six weeks</li> <li>• Percentage increase of collectable debt to total debt</li> <li>• Percentage increase of collectable debt recovered</li> <li>• Percentage decrease in collectable debt to revenue assessed</li> </ul>	<ul style="list-style-type: none"> <li>• Debt book as a percentage of tax revenue</li> <li>• Cash recovery from debt book</li> </ul>	<ul style="list-style-type: none"> <li>• Debt roll rate – proportion of tax debt arising in the year that has been cleared within agreed number of calendar days</li> </ul>
<b>Audit &amp; Investigations</b>	<ul style="list-style-type: none"> <li>• Total value of compliance undertaking</li> <li>• Percentage of compliance actions resulting in adjustments</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage of quality audit cases (clear, complete, correct, appropriately referenced and timely)</li> <li>• Percentage of audited customers satisfaction</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage of audit coverage of registered taxpayers above the threshold</li> <li>• Percentage in-depth audit coverage of registered taxpayers</li> </ul>	<ul style="list-style-type: none"> <li>• Tax credits error and fraud – amount of tax credit money claimed by people who are not entitled to it</li> </ul>

Tax Administration Function	Australia	New Zealand	South Africa	United Kingdom
	<ul style="list-style-type: none"> <li>Total revenue collected from taxpayer information matching and audits during the year</li> </ul>	<ul style="list-style-type: none"> <li>Percentage of customers with confidence/trust in correctness of action</li> <li>Percentage of audits that result in material discrepancy</li> <li>Minimum discrepancy identified for every output dollar spent</li> </ul>	(PIT, CIT, VAT/Excise & PAYE) above the threshold	
<b>Appeals</b>	<ul style="list-style-type: none"> <li>Total number of cases resolved by Court</li> <li>Value of adjustments Number of cases heard by courts</li> <li>Cases of expert mediation for dispute resolution</li> <li>Percentage of completed prosecutions</li> <li>Total successful outcomes of in-house administrative prosecutions</li> </ul>	<ul style="list-style-type: none"> <li>Minimum percentage of litigation judgements in favour of the commissioner</li> <li>Minimum percentage of disputed cases completed within 15 months</li> </ul>	<ul style="list-style-type: none"> <li>Total amount of debt receivables under appeals against unaudited overdue</li> </ul>	<ul style="list-style-type: none"> <li>Increase in the number of criminal prosecutions</li> </ul>



Tax Administration Function	Australia	New Zealand	South Africa	United Kingdom
<p><b>Organizational Goals</b></p>	<ul style="list-style-type: none"> <li>• Total number of operational transactions</li> <li>• Total net revenue collected by tax type compared to forecast rate</li> <li>• Achieving targeted operating surplus</li> </ul> <p>Total number of new government clients</p>	<ul style="list-style-type: none"> <li>• Minimum percentage of policy advice papers that meet quality standards</li> <li>• Minimum percentage of ministerial satisfaction for policy advice</li> <li>• Maximum average cost per hour of producing policy advice outputs</li> <li>• Increasing percentage of digitized government transactions</li> </ul>	<ul style="list-style-type: none"> <li>• Percentage increment in revenue over previous year</li> <li>• Cost to tax revenue ratio</li> <li>• Unit cost per process</li> </ul>	<ul style="list-style-type: none"> <li>• Tax gap: difference between all tax theoretically due and tax actually collected and proportion of assesses who pay taxes on time (VAT used as lead indicator)</li> <li>• Total cost of collecting income tax</li> <li>• Total cost of administering tax credits/child benefits</li> </ul>
<p><b>Personnel Goals</b></p>	<ul style="list-style-type: none"> <li>• Number of full time equivalent employees (FTEs)</li> <li>• Staff engagement                             <ul style="list-style-type: none"> <li>– Percentage of female staff</li> <li>– Percentage of female team leaders</li> <li>– Percentage of female managers</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Leadership Index</li> <li>• Employment Gender/disability/demographics</li> <li>• Productivity per employee</li> <li>• Net staff turnover</li> </ul>	<ul style="list-style-type: none"> <li>• Effective Equity: disability/demographics</li> <li>• Productivity per employee</li> <li>• Net staff turnover</li> </ul>	<ul style="list-style-type: none"> <li>• Achieve a year-on-year improvement in narrowing the gap between HMRC's employee engagement index score and the civil service benchmark</li> <li>• Reduce number of average working days lost (AWDL) in the department as a whole to 6.5</li> <li>• Achieve sustainable improvement in leadership and skills capability</li> </ul>

Tax Administration Function	Australia	New Zealand	South Africa	United Kingdom
				<ul style="list-style-type: none"> <li>Strengthen the tax profession across HMRC through the development of a Tax Academy</li> </ul>

### Role of Chief Economists in the tax departments

One of the main roles of the chief economist would be to carry out all bespoke analysis for tax measures proposed in the annual budget. This would need to be done in a co-ordinated manner by an inter-disciplinary team, but the primary responsibility to present them to the Tax Council would be of the chief economist. This will require that the chief economist will be kept abreast of policy initiation, analysis and formulation by all persons in the Tax Policy and Analysis (TPA) wing. This can be achieved through regular internal meetings and electronic correspondence so that the chief economist remains fully briefed and can provide appropriate modifications, as necessary, to enhance the content and quality of outcomes of the analytical exercises. Thus, in effect, the chief economist would spearhead and chair TPA's analytical discussions.

The role of the chief economist will include post-budget follow-up analysis to assess the impact of budget measures. A clear framework will have to be developed for that so that there is standardized impact assessment work across the various analytical branches of TPA.

It would be imperative for the chief economist to undertake field visits to ensure that the TPA does not become an ivory tower. The work of the TPA will also have to be explained to field functionaries. This is first to ensure that there is no disconnect between the tax policy unit and the tax administration, which is very often the case, and second, to ensure that the opportunity to train other IRS officers on the basis of TPA's work on useful bespoke or customized analyses is not lost. Such connect with the tax administration will also provide the chief economist an opportunity to familiarise himself with the work in the tax administration as well as the problems, which may require policy correction, being faced by them.

The organization of analytical work in both its development and layout should be tight. An appropriate mechanism needs to be put in place so that peripheral research is not undertaken and there is no slack in research. At the same time, TPA analysts should not be discouraged from undertaking their own external research since only then can broad research interests be fostered and a research base generated. Nevertheless, there has to be a structure to disseminate information on such work, if carried out on official time. The chief economist should be informed about ongoing research by staff by his deputies. Indeed, if useful, such research results could also be presented in TPA seminars for sharing with other TPA analysts. Collaborative external research carried out with outsiders would be a typical example.

The chief economist, thus, should be the primary evaluator for the annual assessment and grading of the analytical portion of the work content of the deputies rather than the revenue department of the revenue board(s). In turn, the deputies would conduct similar assessment and grading of their subordinates.

Multifarious research topics should not crop up and be critiqued within the tax administration. All potential bespoke research should, and must, be first discussed with the chief economist and agreed upon. Internal TPA meetings, chaired by the chief economist, could provide a forum to present and discuss emerging and ongoing TPA work among the deputies. Presentations should not be overly technical, the objective being to encourage deputies from varying fields of interest from the four professions in TPA to contribute to lively discussions. This would help cross-fertilize thinking and analysis across TPA.

The natural tendency in a bureaucracy to work in silos has to be changed. An artificial separation might develop according to the cadre through which a staff member may enter TPA – economist, tax officers, operations research specialist, statistician, lawyers, and social researcher. This would result in erroneous and inefficient resource allocation for analytical tasks. For example, there are tasks that an economist or a statistician could both perform. Hence, analytical work should be considered as a whole rather than in silos separated by the type of entry into the TPA. Accordingly, for analytical discussions of a technical nature, the chief economist should call occasional meetings on topics and areas covered by individual deputies and their teams in which technical aspects could be jointly probed.

The chief economist should interface with tax professionals in academia and with practitioners through visits and seminar participation to enhance the TPA's use of up-to-date analytical methods in policy formulation. The chief economist should disseminate information gathered and lessons learned from the field as well as from external interface to TPA analysts through seminars, in particular, through the forum.

The aspects delineated above with the objective of installing a sharpened CE role and office with high quality and ample support staff should enable rapid progress in producing solid analysis for tax policy and administration policy formulation through a process of analytical discourse within the TPA and successful interaction with other ministry officials.

### Enterprise Risk Management

Organizations have to be built to last and to achieve enduring success in their strategic and operational goals. Therefore, capability needs to be built to deal with threats that put them and their mandates at risk. Further, they have to operate in an environment in which resources are limited and demands on them seemingly limitless. These are conditions in which any modern organization operates. This is equally true for the tax administrations. They must, therefore, make strategic and operational choices calculated to achieve their organizational goals in the rapidly changing environment in which they operate. They can do this only on the basis of sound risk management.

Currently, neither of the Boards have either a formal structure or a rigorous process whereby this is achieved. Decisions get taken based largely on the perceptions and priorities of the individuals involved.

No doubt both Boards have taken some steps towards a risk-based approach. While the CBEC has set up the risk management division for customs, the CBDT is setting up a directorate of risk management. The selection for scrutiny and audit in both Boards is risk based. However, this is highly transactional in orientation and not based on a comprehensive risk management framework. It is important to distinguish between the operational and strategic aspects of risk management.

Enterprise risk management is an iterative process that involves the following five steps:

- a. Identify strategic and operational risks
- b. Assess the likelihood of their occurrence and impact
- c. Develop risk mitigation plans for each of the risks
- d. Implement the risk plan
- e. Monitor and evaluate the effectiveness of actions taken

In short, this is the classical management cycle of plan-do-check-act. And the feedback loop is critical to the success of the plan.

Risk treatment plans need to take into account the risk appetite of the organization and accordingly decide on the following options with respect to each of the strategic or operational risk:

- a. Reduce
- b. Transfer
- c. Avoid
- d. Accept

The choice made will result in a number of actions including policy change, legislative change, business development plan, technology acquisitions, competency enhancement plan, tax payer education and outreach, targeted audits and enforcement, etc. It is critical that the actions taken are rigorously monitored and evaluated continuously. This feeds into the improvement in risk management as the feedback tells the risk managers how accurate their risk assessment was and how effective the treatment strategy was.

In most organizations, there is a tendency to focus only on operational risks and this is true of the CBDT and the CBEC. What is needed is the strategic dimension to the risk management framework. This is because strategic risks need to be treated at the policy level. The absence of such a framework results in inadequate preparedness, as the strategic risks in many cases threaten the organization's mandate. Sound risk management involves an exercise of continuously scanning the environment to identify emerging risks and opportunities and positioning the organization to meet them. Operational risk management has to fit in this overall framework to be successful. Therefore, it is essential to specify the strategic and operational risks and monitor the risk register for the occurrence of the risk and how it has been handled. Enterprise Risk Management (ERM) function has to become an integral part of the organizational structure of the Boards. Therefore, a regular update has to be given to the Boards on the risks that have arisen and how they have been handled.

### Role of Chief Financial Officer (CFO)

The Chief Financial Officer (CFO) plays a crucial role in the management of the organization and is a key member of the management team of the organization along with other functionaries such as Chief Executive Officer, Chief Operating Officer and the head of people function. This team typically makes up the management board of an organization in the corporate sector. The recommended structure for CBDT and CBEC is in line with this approach.

The CFO of each Board will play a key role in the development of the strategic plan along with the other members of the Board. He will be tasked with

- negotiating the expenditure budget for the Board and getting it approved by the Ministry of Finance
- arriving at financial metrics to show the spread of expenses across various functions
- allocating and re-allocating resources for each of the functions to meet their projected service levels
- developing productivity and cost optimisation plans for each of the functions
- deciding on the budget norms for key support activities such as learning and development

Another key function would be related to developing annual operational plans and deciding on capital and revenue expenditure for each function based on the expected volume of work and productivity norms. The CFO will also be responsible for policy relating to the delegation of financial powers and to present it to the Board for approval. Once the budgets are approved, the functional department will have the authority to spend it, as long as the planned outcomes are delivered. This will lead to a flexible budgeting policy and link performance to budget allocation.

The CFO will review the amounts spent and the outcomes delivered on an on-going basis. For this purpose, there needs to be an integrated financial management system comprising a transaction processing system and a management information system (MIS).

The CFO will be responsible for laying down the internal control policies of expenditure and budgeting. The financial management system will be managed under his watch.

The Principal Controller of Accounts, apart from his reporting to the Controller General of Accounts, will also report to the CFO.

## Appendix III.9

**Table 3A.10: Estimated number of principal Chief Commissioners and Chief Commissioners in each Board for different functions**

Function	CBDT		CBEC	
	Chief Commissioner	Principal Chief Commissioner	Principal Chief Commissioner	Chief Commissioner
Independent Evaluation Office	1	1		1
Chief Economist	1	XXXXX		1
Large Business Service	8	1		6
Finance & Accounts	2	1	1	2
Strategic Planning and Risk Management	1	1	1	1
Taxpayer services	2+1*	1	1	2+1*
Compliance Verification	50	18	5	10
Dispute Management	10	1	1	4
Quality Assurance and Continuous improvement	2	1	1	2
Inspection	4	1	1	2
Tax Collections/Debt Recovery	6	1	1	3
Enforcement	18	1	1	15
Information and Communication Technology	2	1	1	2
Human Resource Management	2	1	1	2
Vigilance	-	1	1	-



Function	CBDT		CBEC	
	Chief Commissioner	Principal Chief Commissioner	Principal Chief Commissioner	Chief Commissioner
<b>Infrastructure and Logistics</b>	2	1	1	1
<b>Training</b>	-	1	1	-
<b>Regional Cadre Controls</b>	-	18	15	-
<b>Total</b>	111	49+1 =50	33+1=34	54
<b>Cadre-restructuring</b>	91	26	14	38
<b>Additional post requirement</b>	20	24	20	16

\*There are two common posts of Principal Chief Commissioners between CBDT and CBEC. In the total, this has been equally allocated to the CBDT and the CBEC.

One post of Chief Commissioner is not allocated to either, and so can be adjusted.

NB - The above allocations are indicative and not based on a detailed work assessment.

## Appendix III.10

**Global practices on autonomy for tax administrations**

At present, the two Boards have very little financial authority. In all major decisions, papers have to be routed through the Internal Financial Unit (IFU) under the financial adviser of the MoF. The process is extremely dilatory and sapping and involves a huge expense of energy and time in answering queries and pursuing matters. Further, questions are raised not only on financial aspects but also on business decisions, which are best left to the judgment of the Boards. This is not to find fault as the problem, at least partly, is structural. Indeed, the term IFU is, in a sense, an oxymoron as far as the Boards are concerned. Although IFU is internal to the ministry, it is external to the Boards. It services the whole Ministry of Finance and has little stake in the success of the Boards' initiatives and little involvement in the development of plans, programmes and projects. It is dominated by a mind-set of financial and expenditure control and the Boards gain little by way of financial advice. While the importance of financial control cannot be minimized, it is but one of the functions of a financial adviser.

Over the past decade, a number of developing countries, with different political structures, have introduced reforms in tax administrations. The arresting element about this reform of tax administration is that many of these countries are adopting similar organizational forms. More precisely, there is a pattern in each of these countries in that traditional tax departments are being separated from the MoF, and are granted the legal status of semi-autonomous tax/revenue authorities. Earlier, in most developed and developing countries, tax collection-cum-administration was carried out in traditional fashion by line departments within the Ministry of Finance. However, over the past decade (especially in Africa and Latin America), there has been an accelerating trend toward establishing semi-autonomous tax/revenue authorities.

While there are many variations around a similar basic theme, the principal characteristics include personnel systems outside civil service purview, self-financing mechanisms (often a given percentage of gross collections), and boards of directors that usually include key functionaries from the Ministry of Finance and other key ministries in addition to private sector representatives.

Although each country that established a semi-autonomous tax/revenue authority has done so under differing circumstances, there does exist a pattern with respect to underlying political and economic conditions. In general, there has been dissatisfaction with the level and efficiency of revenue collections, especially in the face of fiscal deficits and expanding public expenditure needs. Additionally, private sector complaints regarding tax evasion and generalized corruption within the public sector, combined with high taxpayer compliance costs, have led to calls for wholesale reform of tax administrations. It has been generally perceived that reforms and/or restructuring of revenue collection functions within the existing finance ministry would not generate any notable and/or sustainable improvement.

The overriding rationale for transferring the tax collection function from the Ministry of Finance to a semi-autonomous tax/revenue authority is to enhance revenue performance, to reduce fiscal deficits, meet rising public expenditure needs, and attack ingrained corruption. The transfer is expected to upgrade the tax administration's efficiency by setting up improved systems, insulate tax administration functions from undue political interference, and enhance accountability. A semi-autonomous legal status on the newly established institution is conferred in a variety of ways. Each currently operational SARA (semi-autonomous revenue authority) has adopted a veritable gamut of approaches to the most pressing organizational and institutional issues. Although there are many similarities in these approaches, there are also a large variety of solutions. The following summarize the conceptual and practical arguments that have been put forward in favour of establishing a SARA:

- Public revenue enhancement reflected in higher tax ratios and real revenue growth
- Greater efficiency in public resource utilization via financial and administrative independence/autonomy
- Employment of competent, disciplined, and more qualified staff via the freedom to offer higher compensation than the civil service and the freedom to recruit and fire on own terms
- De-politicization of tax administration
- Reduced corruption that improves the credibility of taxation in particular and the government in general
- Improved taxpayer services and reduced taxpayer compliance costs
- Better work ethic and modification of administrative culture from reactive, bureaucratic, and hostile to proactive and professional
- Comprehensive accounting for all tax revenues
- Integration of tax and taxpayer-related databases

As in any case, there also exist counter arguments against a semi-autonomous tax/revenue authority, some of which are given below.

- SARA represents an enclave approach to public sector reform, but in the absence of broader public sector reforms, it will become isolated and far less effective.
- It creates an inherent conflict with the MoF, the entity that is ultimately responsible for all fiscal matters; i.e., a disjuncture between accountability and authority.
- It generates resentment in other public sector entities and leads to enhanced public sector institutional rivalries.

- It tends to over-emphasize tax collection rather than fundamental and more broad-based administrative reforms, most particularly within the broader public expenditure and financial management system.
- It interferes in the formulation of tax policy, an essential responsibility of the MoF and the legislature.
- It creates a “super entity” which, without strong and honest leadership and the setting up of solid accountability mechanisms, may not only abuse its taxing powers but also become another source of governmental corruption.
- It establishes an “unnecessary” organization whose tax collection functions, given the political will and resources, could be upgraded within already existing departments of the MoF.

There may be some validity to the argument on both sides. But fundamental idea is that establishment of a semi-autonomous tax/revenue authority is no panacea; it does not offer a “quick-fix” solution to a developing country’s revenue and tax administration problems. The mere existence of low revenue/tax ratios, corruption, administrative inefficiencies within the finance ministry, and tax evasion does not automatically call for the creation of a semi-autonomous tax/revenue authority. It might be “right” in some – but not in all – circumstances. What a semi-autonomous tax/revenue authority does is that it establishes a platform from which changes can be facilitated, but its initial impact and, more importantly, longer-term successful performance, depends on the strength and quality of the semi-autonomous tax/revenue authority leadership, political will, and sustained public and private sector support.

One question that needs exploration in the context of a semi-autonomous tax/revenue authority is whether autonomy improves performance. Overall, the semi-autonomous tax/revenue authorities show a mixed performance record, due in part to the problems of sustainability associated with many of these authorities. The best performers across a range of indicators have been Peru, Kenya, and South Africa, although others have had more limited success in some areas. The studies suggest two preliminary findings:

- First, performance improved most when autonomy was relatively high in comparative terms (Peru, Kenya, and South Africa). The corollary is that performance improved least in cases where autonomy was low (Mexico), and performance varied, initially improving, then levelling off or falling, in cases in which autonomy decreased over time (Venezuela and Uganda).
- Second, when autonomy was stable, performance tended to improve, albeit slowly in some cases.

Thus, there is an observable trend of improved performance in cases with a modicum of sustained autonomy over time, suggesting that two causal factors play a role: the level of autonomy and its stability (with a likely interaction term between the two). The cases suggest that stability is necessary but not sufficient. Some relatively higher level of autonomy is also necessary. Put differently, greater stability can help compensate for lower autonomy.

Table 3A.11 below gives a list of countries which established semi-autonomous tax/revenue authorities.

**Table 3A.11: Year of establishment of semi-autonomous tax/revenue authorities**

Country	Date of Establishment
Argentina	1988
Bolivia	1987, defunct in 1988, re-established in 2000-01
Bulgaria	--
Colombia	1991
Ecuador	1997-99
Ethiopia	--
Ghana	1996
Guatemala	1998-99
Guyana	2000
Jamaica	1981
Kenya	1995
Lesotho	2001-03
Malawi	1995-2000
Malaysia	1994
Mexico	1997
Peru – national	1988-91
Peru – municipality of Lima	1996-97
Rwanda	1998
Sierra Leone	2002
Singapore	1992
South Africa	1996-97

<b>Country</b>	<b>Date of Establishment</b>
Tanzania	1995-96
Uganda	1991
Venezuela	1993
Zambia	1993-94
Zimbabwe	2000

*Source: Research by Arthur Mann, DAI/Fiscal Reform Project, [www.fiscalreform.net](http://www.fiscalreform.net)*

As the foregoing discussion shows, the degree of autonomy varies across different tax administrations. It is also relative to the normal degree of freedom given to departments in the governments of different countries. It is, however, a sound principle that organizations responsible and accountable for certain tasks should also have reasonable control over resources and the freedom to deploy them according to their judgment. How much freedom is determined by the social, political and economic context of the governments they are a part of.

# Chapter IV

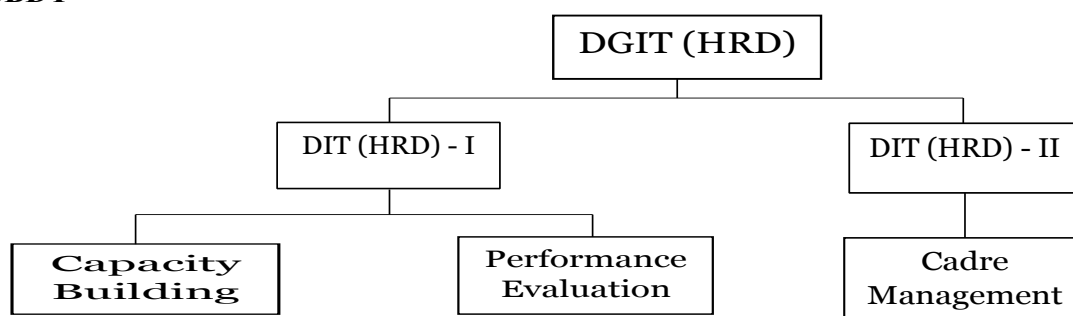
## People Function

### Appendix IV.1

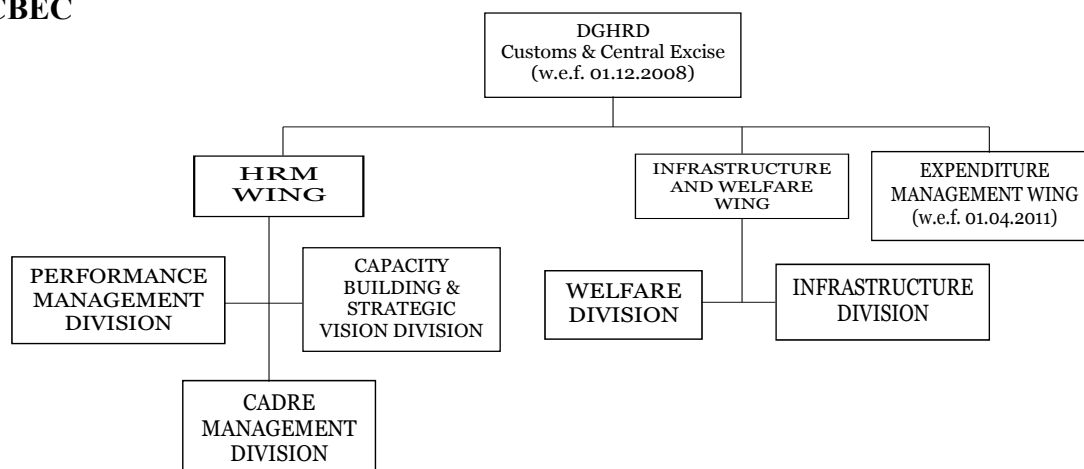
#### Directorates General of Human Resource Development

Both the CBDT and CBEC have directorates of human resources development (HRD). They are headed by an officer of the rank of principal chief commissioner. The CBDT created the HRD directorate in 2007 and the CBEC in 2008. Their structures are also almost the same in terms of the people function, except that the CBEC directorate has two more functions relating to welfare and infrastructure. In the case of the CBDT, infrastructure work and staff welfare is done by another directorate, a separate vertical altogether. The CBDT, after the present cadre restructuring, has also brought the directorate of organisation and management services as part of the HRD directorate. There is a common divisions in both the Boards for cadre management, performance appraisal management and training and capacity building. The structure of the HRD directorates in CBDT and CBEC are as below:

#### a) CBDT



#### b) CBEC



The cadre management division is basically tasked with carrying out time-to-time assessment of the officer and staff requirements in various functions of the two departments. They function in an inclusive manner and create groups by the inclusion of officers from field functions and staff associations to estimate the requirement. The present cadre restructuring exercise has been an output of this division.

The performance management division is to prepare a more appropriate framework on performance evaluation of the officers and staff. The division in the CBDT directorate has embarked on an elaborate performance management system and is stated to have submitted a report to the Board. HRMS is a product of this work and will be a part of the ITBA system being put in place by the directorate of systems. The CBEC is yet to start on this comprehensive work.

Capacity building is another aspect of the HRD directorates. This division is in addition to the training arms of the Boards, the National Academy of Direct Taxes (NADT) and National Academy of Customs Excise & Narcotics (NACEN), discussed below. As yet, no clear work allocation and role definition of this division in the directorate has been arrived at. At present, they process the foreign trainings carried out by the CBDT and CBEC either under mid-career training programmes (MCTP) or for the odd training programme that come to the two Boards from time to time. But, foreign training programmes are also processed sometimes by the foreign tax division (FTD) in CBDT and the international co-operation (IC) division in the CBEC. So, there is no coherent policy framework for capacity building.

### **Training at NADT and NACEN**

The main function of the training academies is to impart training to officers of the two tax departments on tax laws and other related issues. The trainings are carried out for two groups – induction training for newly recruited IRS officers and training for in-service officers. Induction training for IRS officers is for two years. Emphasis is on tax laws and related issues. No training module is on tax administration. The newly inducted officers are also sent on on-the-job training as part of induction training.

For in-service officers, training calendars are prepared at the beginning of each financial year containing the schedule of various courses. The training modules are designed according to the needs of field formations, and sometimes, in consultation with them. These courses are conducted with the help of largely in-house faculty. Of late, both the training academies have started training for newly promoted officers, either to Group ‘A’ or within Group ‘A’ to higher levels.

Staff level training is done at regional training institutes (RTIs) and at ministerial staff training units (MSTUs).



### National Academy of Direct Taxes

NADT is located at Nagpur. Nine direct tax RTIs for training of Group ‘B’ & ‘C’ officers and 23 MSTUs for training of ministerial staff spread across the country are part of the training organisation in the CBDT. The funding and administration of MSTUs, however, are with the Principal Chief Commission having cadre control for the region.

### National Academy of Customs Excise & Narcotics

NACEN is located at Faridabad. Nine RTIs for training Group ‘B’ & ‘C’ officers work under the supervision of NACEN. No MSTU is there for indirect taxes.

Both the academies are stated to be following the National Training Policy (NTP), 2012, of the Government of India for manpower capacity building. The main thrust of the national policy is to look at the individual officer as a vital resource to be valued, motivated, developed and enabled to achieve the organization’s mission and objectives. It also aims to match individual officer’s competence with the job he is supposed to perform. The gap between competencies for current and future roles through requisite training has not yet been assessed. In fact, transfers/placements do not take into account the competency aspect. These aspects have not yet been attempted in either Board. CBDT’s HRMS intends to achieve that.

Both Boards have placed emphasis on training and developing trainers by exposing them to international best practices in pedagogy so as to conceive, design and implement training modules to meet the present and imminent challenges before the two tax departments. But whether this has been put in place cannot be stated with confidence.

During interaction with the two academies, where directors of RTIs were also present, it was stated that physical infrastructure is in an abysmally poor state. They also stated that there is manpower crunch, and often they do not get adequate staff from the field. This is a major constraint in training in the two Boards. The comparative working strength of trainers/staff in the two academies is indicated in Table 4A.1 below.

**Table 4A.1: Comparative working strength of trainers/ staff**

Post	NACEN	NADT
Chief Commissioner/D.G./CCIT	1	1
Commissioner/A.D.G./CIT	11	8
Addl./Jt. Commissioner	8	14
Dy/Asstt. Commissioner, Dy/Asstt. Director (Systems)	13	24

Post	NACEN	NADT
Supdt./Appraiser/ITO	30	22
Inspector/Examiner/PO	11	24
A.O./P S	10	13
Steno Grade I & II	3	16
Executive Asstt./Tax Asstt./LDC	9	42
Asstt. Director (OL)/Sr. /Jr. Hindi Trans.	0	5
Office Suptd.	-	15
Staff car driver	11	10
Head Havaldar/Havaldar/ MTS	38	83
<b>Total</b>	<b>145</b>	<b>277</b>

NTP, 2012, also states that each ministry/department shall provide adequate funding to meet the training requirement in the organisation. It has also recommended that each department shall set aside 1.5 per cent of its salary budget for training purposes. Keeping in view the need for a competency-based framework of training, this was further raised to 2.5 per cent of the salary budget. In practice, however, the budget allocation for training in both the two Boards is less than NTP stipulation. Table 4A.2 gives the fund allocation during the last three FYs, and in the current FY.

**Table 4A.2: Fund allocation**

(In Rs. crore)

**a) NADT**

Year	Desired allocation as per National Training Policy,2012	Actual sanctioned expenditure	Gap (percentage in bracket)
2011-12	44.93	47.45	2.52 (+5.6%)
2012-13	50.42	46.7	-3.72 (-7.4%)
2013-14	54.55	56.21	1.66 (+3.0%)
2014-15( BE)	65.00	60.12	-4.88 (-7.5%)

**b) NACEN**

Year	Desired allocation as per National Training Policy, 2012(Rs. in crore)	Actual sanctioned expenditure (Rs. in crore)	Gap (Rs. in crore and percentage)
2011-12	63.3	37.8	-25.5 (-40.3%)
2012-13	67.9	44.3	-23.6 (-34.7%)
2013-14	74.9	59.1	-15.8 (-21.1%)
2014-15(BE)	94.2	80.1	-14.1 (-15.0%)

As seen from the Table above, NACEN seems to have more of a resource crunch, the saving grace being that there seems to have been an improvement every year vis-à-vis the NTP recommendation. But it continues to be woefully short, with a gap still of 15 per cent. NADT, on the other hand, in two out of the four FYs, had more than the NTP recommendation; in the current FY, there is a gap of 7.5 per cent, while in FY 2013-14, the gap was 3 per cent. There is thus a case for consistent allocation. The above calculation is only for non-plan revenue expenditure. All major projects are funded through capital expenditure. It has been learnt during interaction that for LBSNAA, Mussoorie, funds are allocated under plan funds. The reasons for the difference in the treatment of allocation was not available.

**Innovative steps in training**

NADT has entered into an MoU with the National Academy of Legal Studies and Research (NALSAR) to augment and synergize specialization in direct tax and business laws, and to share intellectual resources developed in the two institutes. IRS officers enrol with NALSAR during induction training and NALSAR awards them a Master's degree in 'Taxation and Business Laws' on successful completion of the course requirement. The departmental examinations conducted by the NADT for newly inducted officers are recognized by NALSAR as course requirement.

NACEN has launched an e-learning platform and put into operation at least four training modules on this platform. NACEN has already operationalized the five e-learning modules on operational issues such as how to draft a show cause notice, on-site post clearance audit, customs classifications, and how to conduct search operations under central excise, service tax and customs laws. Intellectual property rights law in India is also part of this module. Similar, modules have also been launched by NADT. RTI, Bengaluru, has virtual classrooms, which are being utilized for remote delivery. The upcoming Advance Training Centre facility at NADT will also have two virtual classrooms wherein remote speakers can address/interact with the gathering in a seamless

manner. All the DTRTIs and NADT are on the National Knowledge Network, a grid of institutions connected through an extra high bandwidth data layer. This shall facilitate beaming of lectures live between the NADT and the DTRTIs. Apart from the above, the NADT library is in the process of providing access to e-books and e-journals centrally procured by NADT to all officers in the field. The TRAC has been informed that currently, CRISIL data and online journals on taxation like Taxsutra are available online for imparting knowledge.

NACEN is also a WCO accredited training centre in the Asia-Pacific Region and the e-learning programmes of WCO (WCO-CLIKC) are available to officers in India on the NACEN e-learning platform. The number of departmental officers already registered on the WCO-CLIKS e-learning programme stands at 543, including 217 probationers. Another 280 officers are registered for modules launched by NACEN.

### Directorates General of Vigilance

The two Directorates General of Vigilance are the apex bodies for vigilance related matters under the two Boards. They are separately headed by an officer of the rank of principal chief commissioner, called Director Generals (DG), who are also the Chief Vigilance Officers of the Boards. They interface with the Central Vigilance Commission (CVC) and the Central Bureau of Investigation (CBI). Both the Directorates also have four zonal units each, located at New Delhi, Mumbai, Kolkata and Chennai.

The field formations under cadre controlling principal chief commissioners have their own vigilance wings for dealing with vigilance matters relating to the officers posted under their charge.

Broadly, vigilance matters relating to Group 'A' officers for whom the President of India is the disciplinary authority are dealt in the Directorate General of Vigilance and those relating to Group 'B' & 'C' officers for whom commissioners and other officers in the field formations are the disciplinary authority are dealt in the vigilance wing of the concerned formation.

An important function of the Directorate of Vigilance is to act as an interface between CBDT/CBEC and other government agencies like the CVC/CBI/ACB in vigilance/anti-corruption matters. DG (Vigilance) liaises with the CBI and CVC in the preparation of the Agreed List/ODI Lists of officers and for exchange of other inputs for preventive vigilance. The Agreed/ ODI Lists of Group 'A' officers is prepared in the Directorate of Vigilance (Hqrs.) and for Group 'B' officers in the zonal units to keep a watch on the activities of suspect officers. The zonal units also co-ordinate/supervise the work of vigilance units in field formations for early disposal of disciplinary proceedings.

While the two Boards have a similar vigilance set-up, there are some important differences. In the CBDT, post-charge-sheet stage vigilance work is handled by DIT (Vigilance) who reports to DGIT (Vigilance). Litigation on these vigilance charge sheets in the Board is handled by another IRS officer of the rank of commissioner, who reports directly to Member (P&V). In the CBEC, this is done by a normal administrative unit of the secretariat, and not by an IRS officer. The advantage of the CBDT set-up is that an IRS officer brings the perspective of the tax administration, and deals with the matter with reason, rather than as just an administrative exercise as in the CBEC.

Another notable difference is in the matter of issue of vigilance clearance to Group 'B' officers. In the CBDT, the zonal units of Directorate General of Vigilance maintain complete vigilance profile of all Group 'B' officers and issues vigilance clearance to them as and when asked by the field formations. In the CBEC, the zonal units do not maintain a complete vigilance profile of Group 'B' officers and the cadre controlling chief commissioners are responsible for issuing

vigilance clearance in respect of Group 'B' officers. CBDT procedure brings more objectivity to the work as a specialized unit is responsible for the work.

### **Complaint Handling Policy**

A three-pronged strategy is normally followed in the department for the execution of vigilance related work, preventive vigilance, investigative vigilance and punitive vigilance. Preventive vigilance is done by conducting surprise vigilance checks at vulnerable locations, generally in co-ordination with the CBI, conducting systems studies to find out grey areas in tax collection and suggest rationalization of processes, periodic rotation of officers at sensitive posts/locations to avoid the building up of a nexus, and conducting vigilance audits of field formations to ensure compliance of CVC instructions in vigilance matters. Investigative vigilance is basically for speedy redressal of complaints having a vigilance angle and to detect complicity of officers. This may be on the basis of investigative/audit agencies. Punitive vigilance is where misdemeanours are observed in regular departmental proceedings. These are also for expeditious completion of formal inquiry proceedings and imposing deterrent penalties on unscrupulous officers.

There is also a well-defined policy on complaints relating to corruption and malpractices in the departments and their further investigation from the vigilance angle. Complaints are mainly received either directly in the vigilance directorate or from the following sources:

- Complaints to CVC made under Public Interest Disclosure (Protection of Informers) Resolution (PIDPIR), commonly known as the whistle-blower's resolution, or otherwise
- CBI and other police authorities when they do not intend to investigate the complaint on their own
- The President's Secretariat and the Prime Minister's Office
- Any administrative authority under the Boards
- MPs/MLAs/VIPs, individuals and non-governmental organizations

Apart from written complaints from these sources, information about misdemeanour/corrupt activities of official are also received verbally from any person who is unwilling to submit it in writing. No action is taken on anonymous/pseudonymous complaints as mandated vide DoPT OM No. 104/76/2011-AVD.1 dated October 18, 2013.

### **Procedure for complaint handling and consultation with CVC**

Generally, all complaints received through the CVC in which the CVC calls for a report are investigated by the zonal units of the Directorate of Vigilance. Other complaints, from whatever source, containing serious allegations or allegations against any Group 'A' officer are also assigned to zonal units for investigation. The remaining complaints, which normally contain non-

serious allegations against Group 'B' & 'C' officers, are sent to the commissioners/chief commissioners for further action. During the course of investigation, the version of the official against whom allegations are made is also recorded before arriving at any adverse conclusion against him. On completion of the investigation, if vigilance issues emerge, the matter is referred to the CVC or CVO for first-stage advice. However, in administrative matters without any vigilance angle, like unauthorized absence etc., the CVC/CVO's advice is not required and the concerned disciplinary authority may proceed to issue a charge sheet. Thereafter, punitive action is initiated against the delinquent officer by issuing a charge memorandum which lists the misdemeanours of the charged officer (CO) along with the details stated in the imputation of misconduct. The charged officer is given an opportunity to submit his defence on the charges levelled against him. Oral inquiry proceedings are started if the charges are denied by the CO. After the conclusion of the oral inquiry, the inquiry report is analysed to obtain the second-stage advice of the CVC/CVO if the report of the inquiry officer or the views of disciplinary authority are in disagreement with the first-stage advice of CVC/CVO.

The CVC's advice is essentially required before initiating disciplinary proceedings against Group 'A' officers. However, the composite cases, which involve one or more Group 'A' officers along with other categories of officers are also referred to the CVC for advice. Similarly, the CVO's advice is necessary before initiating proceedings against Group 'B' officers and in composite cases involving one or more Group 'B' officer along with Group 'C' & 'D' officers. The disciplinary authority in the case of Group 'A' officers is the Finance Minister and for all retired officers (except Group 'A') the minister of state for revenue and they discharge this function on the basis of the powers delegated to them by the President of India. The commissioner and other officers in the Commissionerate act as disciplinary authority in respect of other category of officers.

## Appendix IV.3

## Statement of vacancy position in two Boards as on January 1, 2014

## a) Central Board of Direct Taxes

Posts	Sanctioned Strength		Working Strength	Vacancy Position	
	Pre-Restructuring	Post-Restructuring		Pre-Restructuring	Post-Restructuring
Principal Chief Commissioner	0	26	0	0	26
Chief Commissioner*	116	91	101	15	+10
Principal Commissioner	0	300	0	0	300
Commissioner@	731	635	724	7	+89
Addt./Jt. Commissioner	1,253	1,575	802	451	773
Dy./Asst. Commissioner	2,092	2,294	1,674	418	620
Reserves (Group 'A')	0	620	0	0	620
ITO	4,448	5,942	4,272	176	1,670
AO	814	1,384	741	73	643
PS	823	1,051	661	162	390
Inspector	9,490	13,293	7,202	2,288	6,091
Executive Assistants	13,905	19,837	8,609	5,296	11,228
TA/Steno	11,886	14,781	6,415	5,471	8,366
Notice Server/LDC/Driver	3,707	3,974	3,298	409	676
Group C	7,365	11,138	4,472	2,893	6,666
EDP	321	610	69	252	541
OL	203	354	170	33	184
Other Posts	639	639	4	635	635
<b>Total</b>	<b>57,793</b>	<b>78,544</b>	<b>39,214</b>	<b>18,579</b>	<b>39,330</b>



## b) Central Board of Excise and Customs

Post	Sanctioned Strength		Working Strength	Vacancy Position	
	Pre Cadre Restructuring	Post Cadre Restructuring		Pre Cadre Restructuring	Post Cadre Restructuring
Principal Chief Commissioner	0	14	0	0	14
Chief Commissioner*	47	38	47	0	+09
Principal Commissioner	0	100	0	0	100
Commissioner@	295	340	256	39	84
Additional/Jt. Commissioner	593	932	342	251	590
Dy./Asstt. Commissioner	1,550	4,168 #	1,249	301	2,919
Sr. P.S./P.S.	342	492	195	147	297
Steno	1,285	1,733	469	816	1,264
Supdt./Appraiser	13,948	19,108	12,972	976	6,136
Inspector/Examiner/PO	20,163	25,203	16,796	3,367	8,407
CAO	155	349	36	119	313
AO	984	1,600	821	163	779
Executive Assistant	5,197	4,850	2,842	2,355	2,008
Tax Assistant	5,432	6,432	2,025	3,407	4,407
LDC	908	1,917	518	390	1,399
Drivers	2,090	1,385	1,059	1,031	326
Head Havaldar/Havaldar	12,614	15,190	8,696	3,918	6,494
Dy. Asstt. Director (OL)	43	79	18	25	61
Hindi Translator	192	237	113	79	124
Programmer/Asstt. Programmer	80	5	7	73	-2
Other Group 'C'	69	69	38	31	31
MTS	821	634	498	323	136
<b>Total</b>	<b>66,808</b>	<b>84,875</b>	<b>48,997</b>	<b>17,811</b>	<b>35,878</b>

\* The Chief Commissioners were in the pay-scale of Rs.67,000-79,000 i.e. HAG before cadre restructuring. After cadre restructuring their pay-scale has changed to Rs.75,500-80,000 i.e. HAG+.

@ The Commissioners were in the pay-scale of Rs.37,400-67,000 + Grade pay Rs.10,000 i.e. SAG before cadre restructuring. After cadre restructuring their pay-scale has changed to Rs.67,000-79,000 i.e. HAG.

# This includes 2118 temporary posts in Junior Time scale for a period of 5 years.

## Appendix IV.4

**Balanced Scorecard for Indian tax administration****Four Perspectives**

There is a perception that that the tax administration system in India is oriented solely towards collection of revenue and quite often, this is done at the cost of fairness in the administration of tax policies. At the same time, tax officials feel that there is pressure from the Finance Ministry to meet unrealistic revenue collection targets and therefore, the ambiguities in tax laws, coupled with large scale tax evasion, force them to adopt a revenue maximizing approach. Neither the tax payer nor the revenue department is happy with the outcome.

It is widely accepted that the tax department cannot be focused on only one dimension of revenue generation. It needs to align itself to the larger vision of government to use tax policies not just to generate revenue but to foster economic development and inclusive growth. There is a need to promote a culture of compliance.

Given the above objectives, strategies to attain these need to address the following:

- a. Clarity, certainty and stability of tax laws
- b. Rational and analysis based revenue forecasting and targets based on such forecasts
- c. Enlargement of the tax payer base
- d. Clarity and effectiveness in communication of tax policies to promote culture of compliance
- e. Digitization of the processes creating easy to use, ICT-based systems
- f. Enhancement of the quality of processes to foster compliance and to lower compliance cost
- g. Creation of efficient processes for tax administration, providing incentives to voluntary compliance and identifying cases of noncompliance
- h. Enhancement of quality through appropriate review and assurance processes
- i. Development of competency and knowledge base of tax officials
- j. Creation of an environment for team work and ethical behaviour

Therefore, the top leadership of Tax Administration function cannot be guided by only one measure. It is suggested that they need to create strategies to deliver results on the following four perspectives:

- a. Revenue
- b. Tax Payer
- c. Internal Process

d. Learning and Development

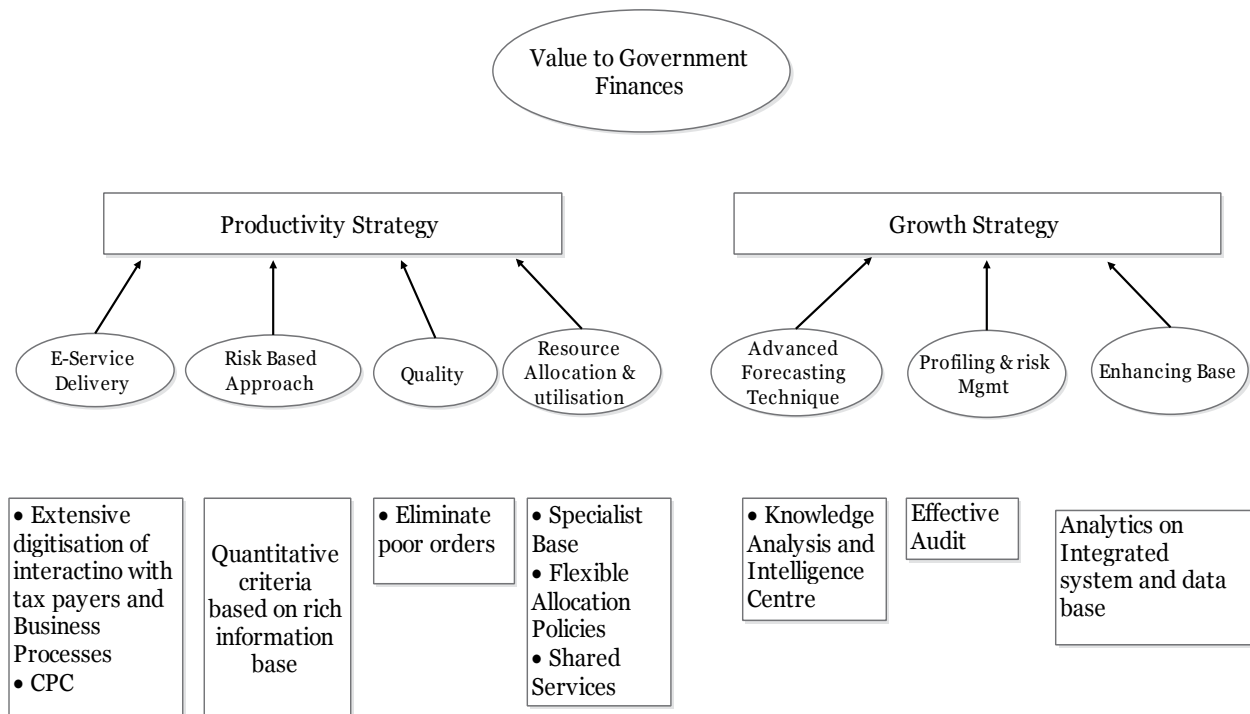
**Developing a strategy map**

This multi-dimensional approach can be referred to as the balanced scorecard. In most cases, the scorecards that an organization uses trace multiple measures and the approach is to enhance effectiveness of each function, not to optimize the performance of the system as a whole. Balanced Scorecard overcomes this deficiency by aligning the focus of different functions so that they contribute to effective deployment of strategy.

We have already listed the various factors that need to be taken into account for an effective tax administration system. The Mission, Values and Vision of the organization will result in the strategy that the organization has to follow. This strategy has to be woven into the fabric of the organization and there has to be alignment of objectives developed by different functional units in the organization. The practice is to create the strategy map, which will enable the organization to deploy a coherent strategy across the organization, specifying goals at the level of organizational units and individual members. In the Balanced Scorecard, the objectives will be linked at various levels, creating a strategy aligned organisation .Given below are the components of the strategy map across the four dimensions.

a. Revenue Perspective

The objective here will be to collect the tax revenue due to the Government and at the least cost. The strategy map here can be pictorially represented as follows:



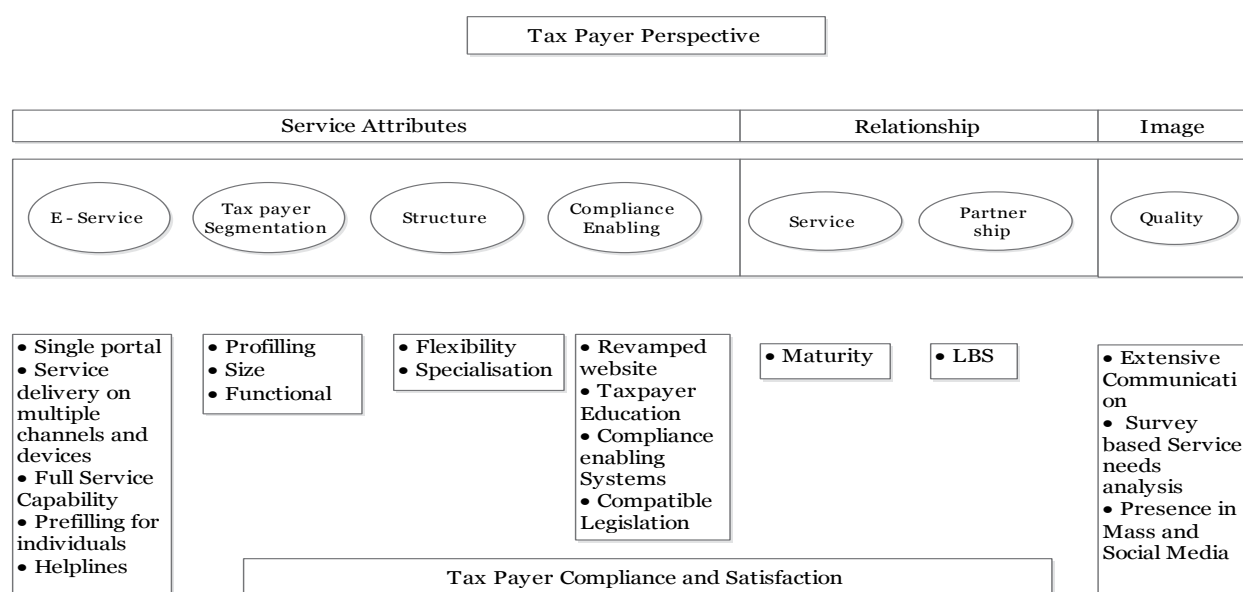
E-services approach makes ICT the backbone of the tax administration. While it makes it easy for the tax payer to interact with the tax administration, extensive ICT usage also enables provision of analytical support to the Department, thus enhancing their capability. Section II.6.b of this report deals with customer focus. In that, there is a detailed description of the e-service model. Components of this model and its Governance has been dealt with in Chapter 7, which deals with ICT. Section VII.3 of this Chapter deals with the road to sustainable ICT governance.

Another strategy to enhance productivity is through adopting risk based scrutiny/audit selection. This has been dealt with in Section VI.5 of this report, which deals with other processes. The focus here will be to strengthen the review and supervision process in order to ensure high quality of orders. Productivity enhancement will take place through prevention of errors. This has been discussed in Section II.5 of this report. Appropriate allocation of personnel and moving them where they are needed in order to utilize them better contributes towards enhanced productivity.

The growth strategy will focus on those areas facilitating better forecasting of revenue and targeting the right segments for scrutiny. KAI centre provides the data analytic capability. This has been described in Section III.7 of this report. In addition, growth strategy will focus towards removing revenue leakages. This will be carried out through better profiling of tax payer, looking at the integrated data of the direct and indirect tax systems and using external feeds to identify evasion. When it is supported by good risk management tools, the cases taken for scrutiny will be able to reveal any leakage that may have taken place. The information based approach will lead to extending the base of tax payers, leading to growth in revenue.

b. Taxpayer Perspective

The taxpayer experiences the tax administration through the attributes of its service, the relationship he or she experiences and the image it portrays. This can be represented as follows:



Service attributes, relationship approach and the image of tax administration are three critical areas for focus to deliver better Tax Payer Service. ICT needs to become the platform through which information is accessed, interactions take place, transactions are processed and the tax payer experiences good service. The use of ICT, structures and processes can be effectively used to enhance the service levels. This has been discussed in Chapter VII as well as Chapter II of this report. Taxpayer segmentation, based on their industry category and their size and other characteristics, will enable the administration to customize the service for their needs. Service oriented towards “one size fits all” will not work. Effective taxpayer segmentation so that taxpayers with similar characteristics are handled together and an internal organization which promotes knowledge and competency in each of these segments make for better taxpayer experience. An informative and easily navigable website, dissemination of information to tax payers, compliance enabling systems as well as compatible legislation ensure better compliance.

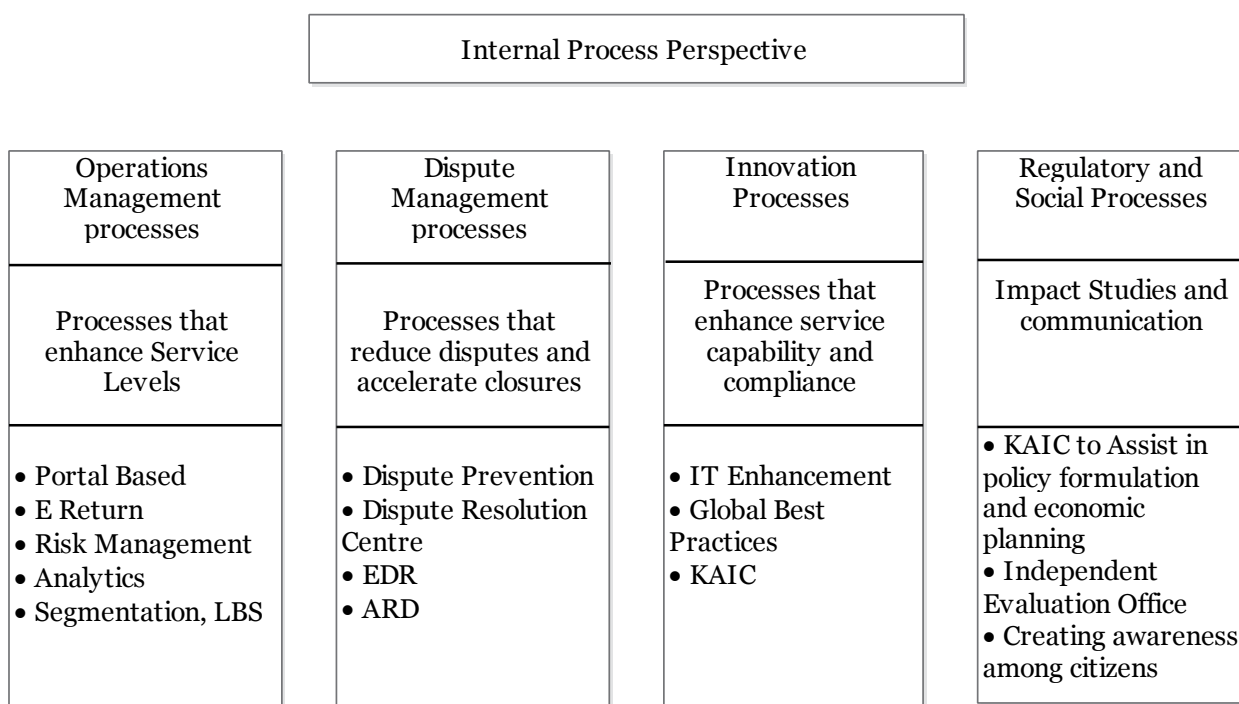
Revenue and taxpayers need to work in partnership to achieve economic development. For this relationship to take place, each needs to understand the other. While the tax payer needs to be aware of the policies and the means to comply with it, the tax administration needs to understand the profile of the tax payer and the nature of industry that he or she is part of. Relationship is fostered through the service features as well as by creating a partnership structure. The maturity model, described in Section II.4.a of this report shows the capabilities that can be progressively embedded in the website so that they become customer friendly. In some cases, we can enhance the level of service by creating Relationship Managers, as in the case of LBS described in Section III.5 of this report.

Ultimately the image has to be of a responsive organization, which makes it easy to deal with it, which values compliance and which does not tolerate transgression. While the service attributes and relationship enable the creation of the right image, the tax administration also needs to promote it through the competency of its personnel, through ease of use of its computerized system and through its communication channels. Chapter II describes a number of services, offered through Mass and Social Media, which can enhance the image of the Tax Administration as a tax payer service oriented organization.

#### c. Internal Process perspective

The sub-processes here focus on operational efficiency as well as in Dispute Prevention and Dispute Management. The processes should not only result in continuous improvement but it should also lead to innovation in use of its technology tools. Ultimately, tax administration is a societal system and should constantly evaluate how it is promoting economic activity and inclusive growth.

This process can be depicted as follows:



Operations management processes are improved through business process reengineering, digitization and enabling structure. Process improvement is facilitated through the use of shared services and having the right type of specialist help. These have been discussed in Chapters II, VI and VII. The business excellence function has been introduced for global benchmarking and continuous improvement.

Chapter V is dedicated to disputes management. Activities for preventing disputes from arising, use of alternate dispute resolution methodologies and of settlement processes are some of the features by which disputes can be settled before moving to the litigation stage. Only cases in which the tax administration stands on strong ground will move to the litigation stage and a structure to handle that process well in order to have an excellent success rate has been introduced.

Innovation processes focus on ways and means to enhance service capability and compliance. The KAI centre will use analytic tools and big data to develop insights into organizations and industry, thereby creating conditions for increased compliance. The business excellence group, working along with The SPV set up for ICT, will be scanning the technology horizon for innovative ways to enhance service capability.

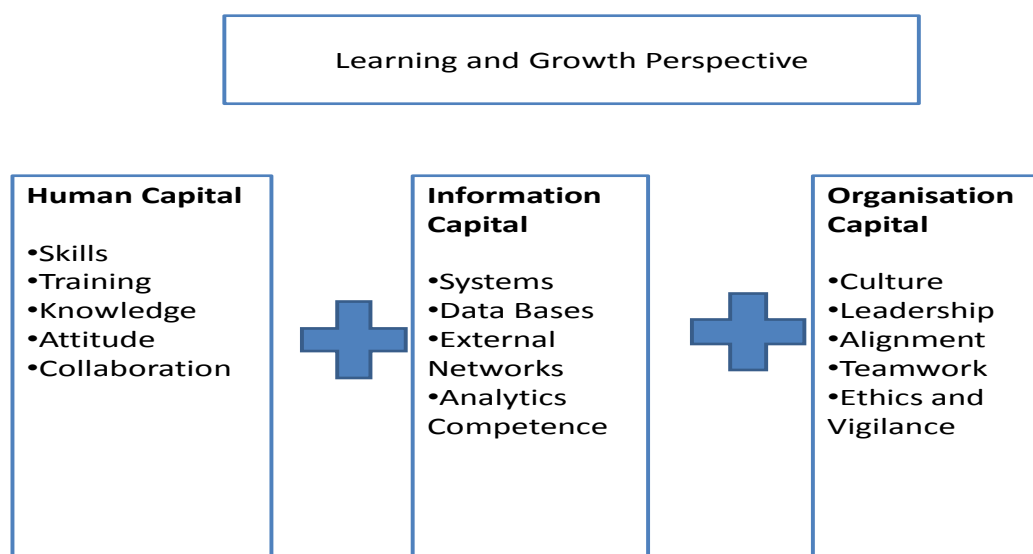
The impact of tax systems on the economy and society need to be studied so that appropriate policy responses can be made. The KAI centre, as described in Section III.7 of this report, will be doing scenario planning and will build predictive models. The Independent Evaluation Office, as described in Section III.4.c of this report, will evaluate the impact of tax policy.

The internal perspective is closely linked to the revenue perspective as it will serve to improve productivity and growth. This perspective ensures that taxpayers experience an efficient system that delivers on its promises and creates an image of a progressive organization.

d. Learning and Growth Perspective:

This is the institution building perspective. This perspective emphasizes skills and competence, the power of its information networks, data and knowledge base and the alignment of each part of the organization to meet its goals efficiently and with values. There are three sub-processes, namely human capital, information capital and organisation capital. These are called capital as the performance of the institution improves through continuous building of these capital and in getting increased returns from it.

This is pictorially represented as follows:



Human capital will ensure the building up of capacity not only for current needs, but also for emerging needs. Chapter IV extensively discusses the approach to selection, education and performance management. Through appropriate people policies, the organization will be able to mould people to bring in the right amount of capabilities to work, build their competencies and improve through a rigorous performance assessment process. The system will also instil collaboration as a key value.

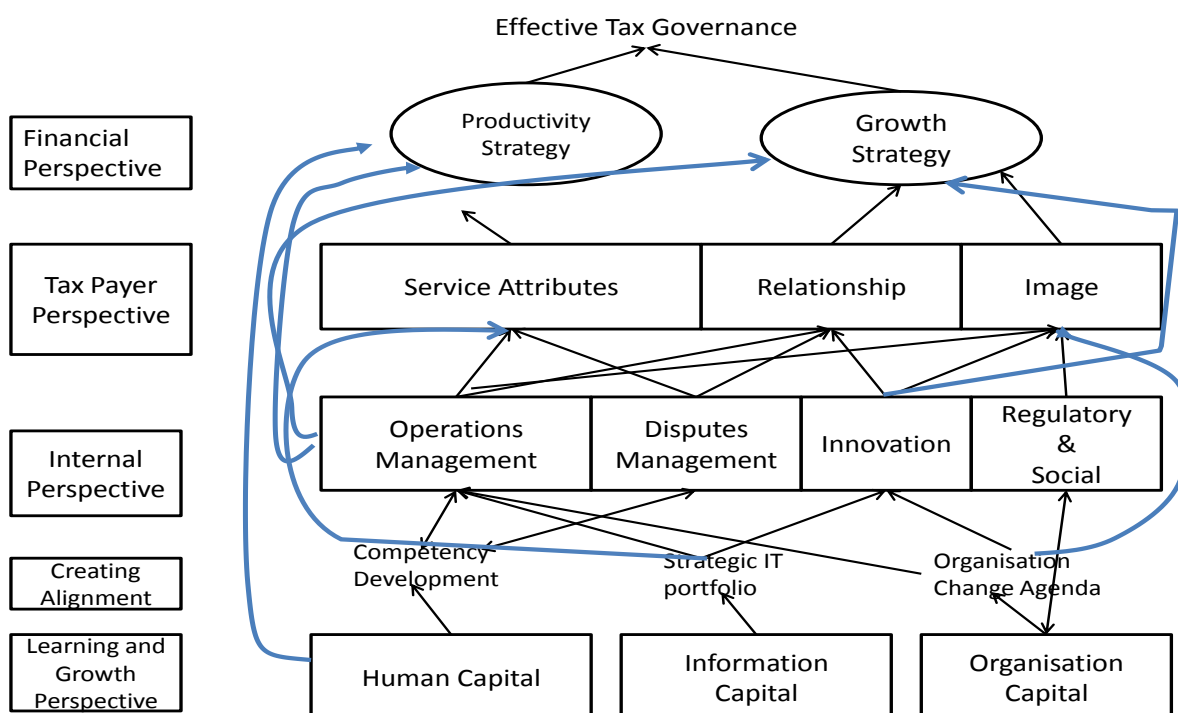
Information capital goes beyond application systems. It gets into the building of data bases using its internal data as well as external networks. It focuses on promoting competencies to leverage the data and information bases that the organization has built up. This has been discussed in Chapter VII.

Organisational capital is the soft framework on which the organization sits. There has to be a culture of sharing between direct and indirect tax departments, it has to align itself to different external systems so that relevant information can be accessed and fed back and it has to be innovative. The most important of all is the building up of an ethical framework. This deals with the culture of the organization. Chapters III and IV deal with the enabling structure as well as how right values will be instilled.

Learning and development or institution development perspective brings to bear competencies that impact internal processes and taxpayer service, ultimately impacting the revenue perspective. It creates alignment and facilitates creation of a motivated and prepared work force.

This is a critical building block on which the institution sits. We need to create strong alignment, through linking competency development to what is needed, looking at the power and use of its Information Technology portfolio and through the impact of a motivated and prepared workforce to continuously effect change in the system.

The Balanced Scorecard, with its linkages, is shown below:





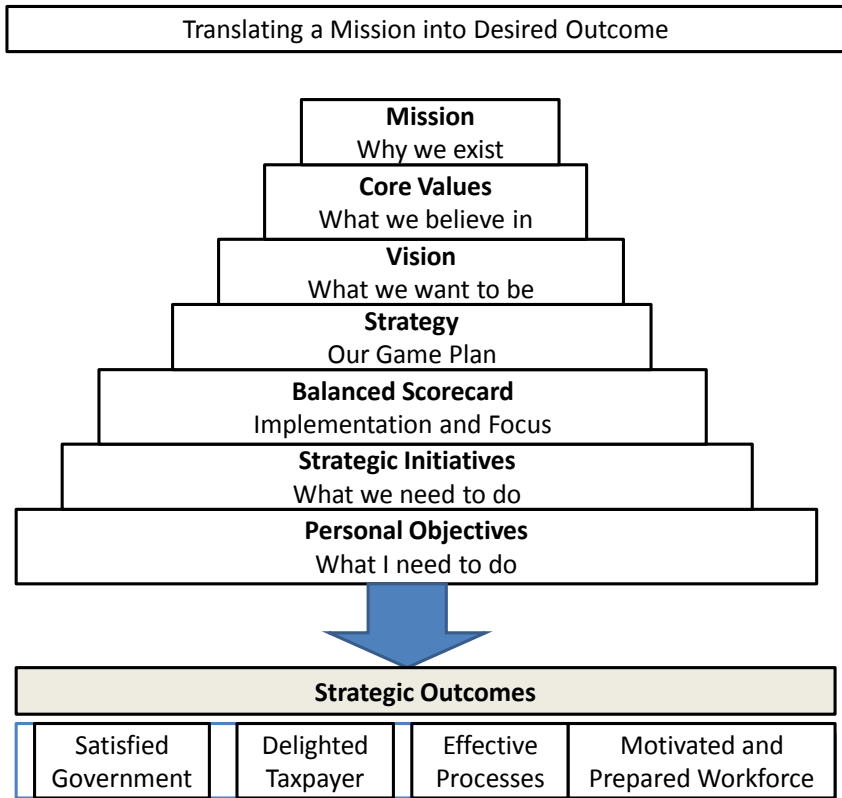
## **Building a Monitoring system**

The strategy map provides the strategic themes which link the four perspectives to achieve the mission, values and vision of the organization. This strategy map details the strategy to arrive at objectives for each function across the organization.

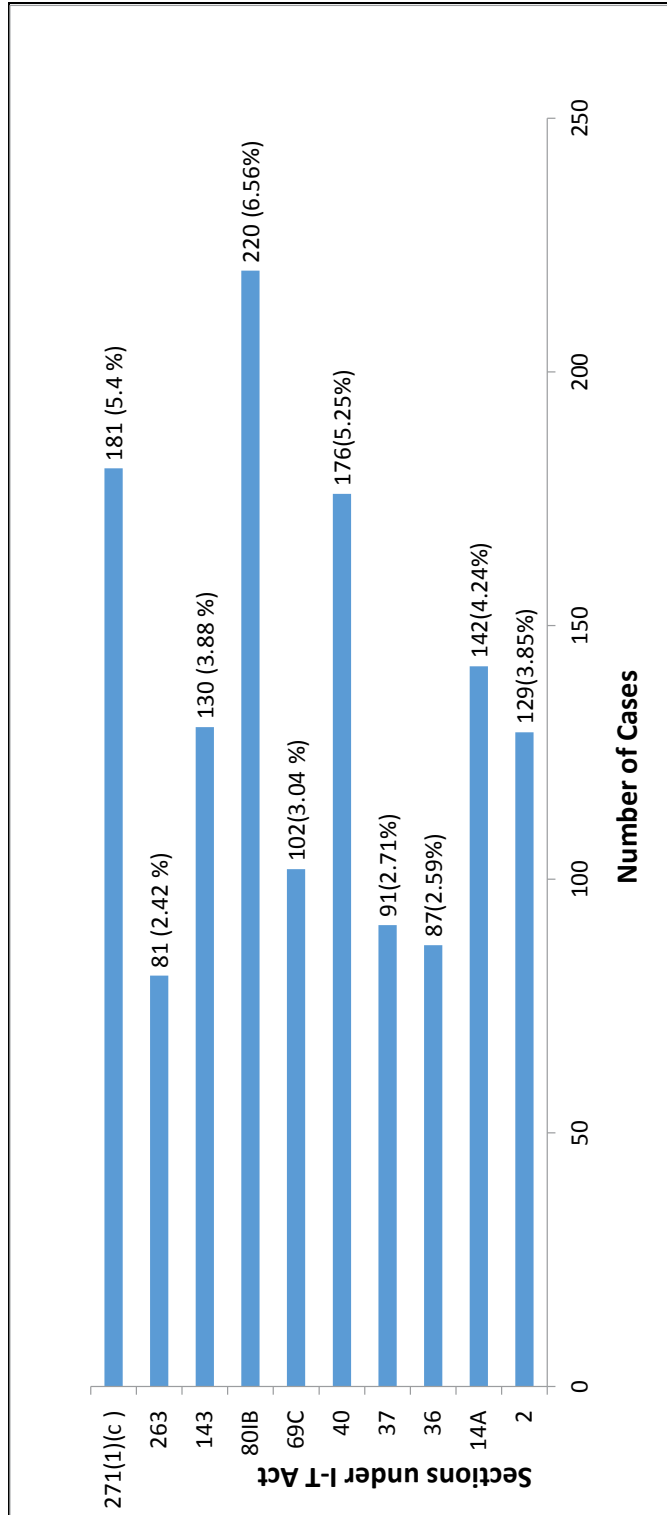
For each of the strategic themes, we need to develop objectives. For instance, for the Dispute Resolution process, we could start with the first objective of eliminating avoidable disputes. This will translate into key initiatives, such as review of legacy cases so that the existing list of disputes can be pruned down based on a review. We need to set indicators for measurement of performance in respect of each of these initiatives. The performance indicators will have both lead measures as well as lag measures. The lead measures will show up performance immediately whereas the lag measures will indicate performance which can be observed only after a period of time. Given that the success rate of the department in respect of cases is poor, it is necessary to critically review the legacy cases to remove those which do not have chances of success. The lead measure will be the number of cases dropped, where the target could be fixed at 50 per cent immediately. The lag measure will throw up the quality of cases continued. The lag measure, which can be observed over the next few years as the cases get decided, will observe the success rate and the target could be to win 75 per cent of the cases.

## **Linking Strategy to Performance**

The balanced scorecard framework makes the organization aligned to its strategy across more than one perspective. As can be observed, the strategy map for the Balanced Scorecard for the Tax Governance System shows the complete alignment. As the Dispute Resolution example shows, a strategy map is the starting point to arrive at measures and targets. In the Dispute Resolution system, the report has shown how it has been expanded to a number of performance areas, the objectives set for each of them, the initiatives that need to be started to achieve the objectives and the lead and lag indicators for measuring the performance. The diagram below shows how the mission, values and vision of the organization are the basis for setting the strategy and this framework allows it to be measured in a rigorous manner.



Graph 5A.1: Pendency of the cases before the High Court under the top 10 Sections of the I-T Act from June 2012 to September 2013



**Graph 5A.2: High Court-wise pendency of the cases under the I-T Act from June 2012 to September 2013**

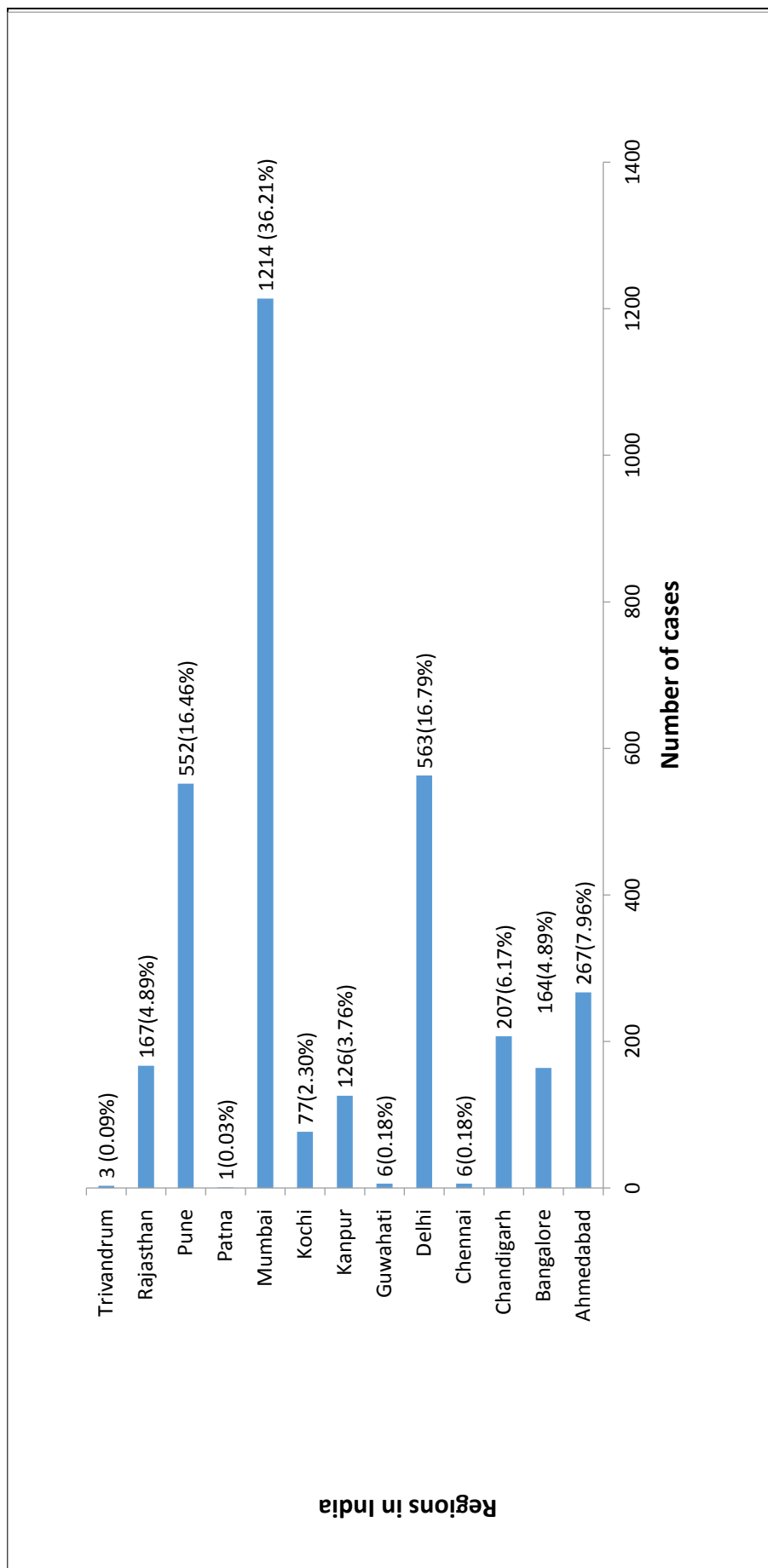


Table 5A.1: Disposal and age-wise pendency of adjudication of cases in Central Excise

Authority		Section 11A Cases (A) <sup>1</sup>			CENVAT Cases (B)			Other than A & B			Grand Total				
		2010-11	2011-12	2012-13	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13		
Commissioner	Disposal	Number	3142	3057	3772	1429	1865	1489	413	326	421	4984	5248	5682	
		Amount (Rs. Crore)	17077.5	19947.0	22152.5	5562.5	7155.7	6235.6	1800.2	1248.9	2222.8	24440.1	28351.6	30610.9	
	Closing Balance	Number	1848	2191	2064	835	883	830	203	194	127	2886	3268	3021	
		Amount (Rs. Crore)	8870.4	10904.7	11823.2	4198.7	3349.3	3424.5	867.4	1363.6	1181.6	13936.8	15617.6	16429.3	
	Less than one year	1500	1755	1692	713	755	727	190	162	92	2403	2672	2511		
	One to three years	331	340	253	121	88	88	12	10	28	464	438	369		
	More than three years	17	96	119	1	40	15	1	22	7	19	158	141		
	Additional/Joint Commissioner	Disposal	Number	4081	4230	4060	2562	2519	2395	796	342	432	7439	7091	6887
			Amount (Rs. Crore)	788.9	838.1	912.6	421.5	425.9	403.6	-	51.1	65.2	1210.5	1315.1	1381.3
		Closing Balance	Number	2272	2476	2578	1699	1687	1756	239	278	127	4210	4441	4461
Amount (Rs. Crore)			490.9	1506.4	1537.7	309.3	308	340.4	35.1	48.2	36.0	835.4	1862.7	1914.2	
Less than one year		2130	2284	2398	1645	1522	1624	208	268	90	3983	4074	4112		

<sup>1</sup> In the Central Excise Act, 1944, the litigation cases are categorized under two broad heads – demand cases due to difference in interpretation of statute and offence cases due to infraction of statute. Cases under Section 11A belong to the demand case category whereas CENVAT cases are due to wrong claim of input tax credit. Other than these two categories, the rest of the cases are classified under the head “Other than A & B”.

Authority		Section 11A Cases (A) <sup>1</sup>			CENVAT Cases (B)			Other than A & B			Grand Total		
		2010-11	2011-12	2012-13	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
Authority	One to three years	142	142	179	54	114	128	31	5	31	227	261	338
	More than three years	0	50	1	0	51	4	0	5	6	0	106	11
Deputy/Assistant Commissioner	No.	6677	6206	5529	5128	5125	5006	4340	5530	5139	16145	16861	15674
	Disposal Amount (Rs. Crore)	129.2	160.4	112.7	94.1	123.7	87.0	140.2	75.9	146.2	363.4	359.9	345.9
Deputy/Assistant Commissioner	Closing Balance	2902	3070	2656	2760	2977	2931	2530	3205	3039	8192	9252	8626
	Closing Balance Amount (Rs. Crore)	62.6	90.7	91.6	54.9	35.3	43.9	105.8	104.3	94.9	223.3	230.3	230.4
Superintendent	Less than one year	2824	3006	2563	2671	2872	2825	2491	3151	2579	7986	9029	7967
	One to three years	78	64	90	87	62	106	39	53	415	204	179	611
Superintendent	More than three years	0	0	3	2	43	0	0	1	45	2	44	48
	Number	66	51	109	155	267	194	299	1079	1954	520	1397	2257
Superintendent	Disposal Amount (Rs. Crore)	0.2	0.1	0.4	0.6	0.7	1.1	0.08	0.6	7.1	0.8	1.4	8.6
	Closing Balance	37	21	99	76	91	201	142	345	914	255	457	1214
Superintendent	Less than one year	0.08	0.04	0.03	0.3	0.4	0.3	0	0.01	1.8	0.4	0.4	2.2
	One to three years	37	21	96	76	86	197	142	345	829	255	452	1122
Superintendent	More than three years	0	0	3	0	5	4	0	0	85	0	5	92
	Number	0	0	3	0	5	4	0	0	85	0	5	92

Authority		Section 11A Cases (A) <sup>1</sup>			CENVAT Cases (B)			Other than A & B			Grand Total		
		2010-11	2011-12	2012-13	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13	2010-11	2011-12	2012-13
	More than three years	0	0	0	0	0	0	0	0	0	0	0	
	Number	13966	13544	13470	9274	9776	9084	5848	7277	7946	29088	30597	
	Amount (Rs. Crore)	17995.8	20945.6	23178.2	6078.6	7705.9	6727.3	1940.4	1376.5	2441.3	26014.8	30028.0	
<b>Grand Total</b>	Number	7059	7758	7397	530	5638	5718	3114	4022	4207	10703	17418	
	Amount (Rs. Crore)	9424.01	12501.9	13452.5	4563.3	3692.9	3809.2	1008.3	1516.1	1314.3	14995.6	17710.9	
	Less than one year	6491	7066	6749	5105	5235	5373	3031	3926	3590	14627	16227	
	One to three years	551	546	525	262	269	326	82	68	559	895	883	
	More than three years	17	146	123	3	134	19	1	28	58	21	308	

Source: CBEC

**Table 5A.2: Disposal and age-wise pendency of adjudication of cases in Customs**

Amount in Dispute			2010-11	2011-12	2012-13	Grand Total
Less than Rs. 10 Lakh	Disposal	Number	26,714	26,438	36,675	89,827
	Closing Balance	Number	7,779	4,982	14,657	27,418
	Less than 1 yr		7,463	4,750	5,693	17,906
	One to three years		224	191	1,735	2,150
	More than three years		92	41	7,229	7,362
Between Rs.10 Lakh to Rs. 1 Crore	Disposal	Number	920	1,190	1,214	3,324
	Closing Balance	Number	1270	967	956	3193
	Less than 1 yr		1031	831	794	2656
	One to three years		181	96	97	374
	More than three years		58	40	65	163
Less than Rs. 1 Crore	Disposal	Number	325	402	408	1135
	Closing Balance	Number	789	335	435	1559
	Less than 1 yr		632	224	289	1145
	One to three years		101	70	82	253
	More than three years		56	41	64	161
Grand Total	Disposal	Number	27959	28030	38297	94286
		Amount (Rs. Crore)	5912.2	8046.3	6855.8	20814.3
	Closing Balance	Number	9838	6284	16048	32170
		Amount (Rs. Crore)	7629.8	5913.8	8336.2	21879.8
	Less than 1 yr		9126	5805	6776	21707
	One to three years		506	357	1914	2777
	More than three years		206	122	7358	7686

Source: CBEC



**Table 5A.3: Disposal and age-wise pendency of adjudication of cases in Service Tax**

		<b>March, 2010</b>	<b>March, 2011</b>	<b>March, 2012</b>	<b>March, 2013</b>
<b>Failure of Registration</b>	<b>Number</b>	501	478	410	293
	<b>Amount (Rs. Crore)</b>	61.79	42.39	59.94	55.01
<b>Late Filing of S.T.3 Returns</b>	<b>Number</b>	7,000	6,486	1,404	1,710
	<b>Amount (Rs. Crore)</b>	1.08	1.61	0.08	0.25
<b>Delayed Payment of Service Tax</b>	<b>Number</b>	2,271	893	653	517
	<b>Amount (Rs. Crore)</b>	10.27	23.42	7.9	189.86
<b>Failure of Service Tax (failure to pay)</b>	<b>Number</b>	9,105	8,950	7,640	9,803
	<b>Amount (Rs. Crore)</b>	2,822.04	4,768.84	10,547.33	22,685.37
<b>Suppression of taxable value</b>	<b>Number</b>	5,915	6,311	4,831	6,100
	<b>Amount (Rs. Crore)</b>	7,663.66	10,752.99	12,539.81	24,836.29
<b>Others</b>	<b>Number</b>	5,043	4,615	4,355	7,169
	<b>Amount (Rs. Crore)</b>	1,032.37	3,529.22	3,098.42	9,933.49
<b>Total</b>	<b>Number</b>	29,835	27,733	19,293	25,592
	<b>Amount (Rs. Crore)</b>	11,591.21	19,118.47	26,253.48	57,700.27

Source: CBEC

**Table 5A.4: Number of court cases filed under different acts of indirect taxes up to December 2013**

<b>Central Excise &amp; Customs Acts &amp; Rules</b>	<b>Number of Cases</b>
Customs Act, 1962 (CA'62)	359
Customs Tariff Act, 1975 (CTA'75)	12
Central Excise Act, 1944 (CEA'44)	1,134
Central Excise Rule, 1944 (CER'44)	11
Finance Act, 1994 (FA'94)	144
CENVAT Credit Rule, 2004 (CCR'04)	143
Export Oriented Undertaking (EOU)	20
Export Exemption Schemes	22
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS'85)	11
Others*	15
<b>Total</b>	<b>1871</b>

<b>Others*</b>	<b>Number of Cases</b>
Customs Excise Service Tax Drawback Rules, 1995 (CESTDBK)	1
Customs House Agents Licensing Regulations, 2004 (CHALR)	8
Kar Vivad Samadhan Scheme, 1998 (KVSS)	2
Service Matters	2
Cess	2

**Table 5A.5: Number of court cases filed under different zones up to December 2013**

<b>Zone</b>	<b>Number of Cases</b>	<b>Zone</b>	<b>Number of Cases</b>
Ahmedabad	170	Meerut	61
Bengaluru	155	Mumbai	280
Bhopal	49	Mysore	19
Bhubaneswar	9	Nagpur	40
CBN	2	Nasik	9
Chandigarh	100	Patna	18
Chennai	130	Pune	52
Cochin	62	Ranchi	11
Coimbatore	57	Shillong	25
Delhi	136	Vadodara	197
Hyderabad	70	Vizag	44
Jaipur	73	DRI	22
Kolkata	43	DGCEI	6
Lucknow	31	<b>Total</b>	<b>1,871</b>

Table 5A.6: Number of cases filed under various Sections &amp; Rules of indirect taxes up to December 2013

Name of the statute	Section of the Act & Rules	Major issues involved	Total number of cases under respective Acts & Rules	Number of cases	Percentage
Customs Act, 1962	Section 14	Valuation of goods	359	89	24.79
	Section 12	Dutiable goods	359	80	22.28
	Section 25	Power to grant exemption from duty	359	61	16.99
	Section 104	Power to arrest	359	20	5.57
	Section 27	Claim for refund of duty	359	11	3.06
	Section 28	Recovery of duties not levied or short-levied	359	9	2.51
	Section 110	Seizure of goods, documents and things	359	9	2.51
	Section 28AA	Interest on delayed payment of duty	359	5	1.39
	Section 111	Confiscation of improperly imported goods, etc.	359	4	1.11
	Section 112	Penalty for improper importation of goods, etc.	359	4	1.11
	Section 9A	Anti-dumping duty on dumped articles	12	9	75.00
Section 3(5)	Special Additional Duty (SAD)	12	2	16.67	
Central Excise Act, 1944	Section 4	Valuation of excisable goods for purposes of charging of duty of excise	1134	293	25.84
Central Excise Act, 1944	Section 3	Duties specified in the First Schedule and the second Schedule to the Central Excise Tariff Act, 1985, to be levied	1134	275	24.25
	Section 5A	Power to grant exemption from duty of excise	1134	207	18.25
	Section 11AC	Penalty for short-levy or non-levy of duty in certain cases	1134	95	8.38

Name of the statute	Section of the Act & Rules	Major issues involved	Total number of cases under respective Acts & Rules	Number of cases	Percentage
CENVAT Credit Rules, 2004	Section 11B	Claim for refund of duty and interest, if any, paid on such duty	1134	40	3.53
	Section 2(f)	Definition of manufacturing	1134	29	2.56
	Section 3A	Power of Central Government to change excise duty on the basis of capacity of production in respect of notified goods	1134	22	1.94
	Section 11A	Recovery of duties not levied or not paid or short levied or short paid	1134	23	2.03
	Section 4A	Valuation of excisable goods with reference to retail sale price	1134	15	1.32
	Section 9	Offences and penalties	1134	14	1.23
	Rule 4	Conditions for allowing CENVAT credit	143	106	74.13
	Rule 6	Obligation of the manufacturer or producer of final products	143	20	13.99
	Section 66	Chargeability of Service Tax	144	97	67.36
	Service Tax, Finance Act, 1994				

## Appendix: V.2

## Global best practices in dispute management

**Dedicated organization for dispute management**

Advanced tax administrations, such as UK's HMRC and Australian Tax Office (ATO), provide for a dedicated organizational setup for management of disputes with adequate independence in functioning so that the taxpayer has confidence in the administration's objectivity and fairness. They engage in proactive measures to ensure that avoidable disputes are not generated and only a few matters turning on important issues escalate to litigation. They usually have standard operating procedures, which are published and available to taxpayers as well.

US IRS resolves frequently disputed or burdensome tax issues that affect a significant number of business taxpayers by issuing guidance under the Industry Issue Resolution (IIR) Programme. For this, the US IRS solicits suggestions from taxpayers, representatives and industry associations. For each issue thus selected, a resolution team is formed from the litigation wing as well as from the Treasury (Ministry of Finance).

**Enhanced Relationship**

An emerging concept in the taxation landscape is 'enhanced relationship' arrangements between taxpayers and the tax administration. The focal point of such arrangements is a collaborative approach between taxpayers and tax officers. In return for complete disclosure of tax positions by taxpayers, tax officers provide certainty to taxpayers regarding positions to be upheld during the assessment review.

Currently, there exist a few successful examples of enhanced relationship arrangements; most are pilot programmes that have been adopted by a small number of multinational companies.

- **The Netherlands** – The Netherlands has been at the forefront of the evolution of 'enhanced relationship' with 'horizontal monitoring' introduced in 2005. This allows taxpayers to resolve issues with the Dutch tax administration at the stage of pre-filing. The taxpayer voluntarily notifies the tax officer of any issues (along with relevant facts) with a possible/significant tax risk. The revenue authorities undertake to provide timely advice on tax positions. The 'horizontal monitoring' regime is designed to provide taxpayers with a higher level of compliance certainty. The most visible outcome of this is a reduction in the number and the sharpened rigour of tax audits as all relevant facts and tax positions are discussed in advance.
- **Australia** – Australia has a voluntary system of annual compliance arrangements (ACAs)<sup>2</sup> to build enhanced positive relationships and compliance outcomes with large business. ACA is an administrative arrangement developed to manage a compliance relationship with

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<sup>2</sup>Source-<http://www.ato.gov.au/Business/Large-business/In-detail/Compliance-and-governance/Annual-Compliance-Arrangements/>

the taxpayer in an open and transparent environment by making full and true disclosures of major tax risks in a real-time environment. Subject to true and full disclosures, and a commitment to adhering to corporate governance principles, ACAs provide practical certainty for tax return, shortly after lodgement, subject to issues that may need further examination.

- **France** – In France, a tax audit pilot was launched in 2013 with 10 large business taxpayers selected to participate and test the new programme. Under the new tax audit procedure, businesses participating in the programme would receive expedited (within 3 to 9 months) review from the revenue authorities in the form of an opinion as to whether tax returns are compliant with the provisions of law. This was intended to bring greater transparency.
- **United States** - US IRS also has a programme of pre-filing agreements (PFA) for large business and international taxpayers. The programme encourages taxpayers to request consideration of an issue before the tax return is filed. This helps in resolving potential disputes and controversies *ex-ante*.

### Consistent interpretation

An important strategy adopted by advanced tax administrations for minimization of disputes is to ensure clarity and consistency of interpretation. Examples of such practices are given below.

- **Australia** – ATO adopts a precedential view approach to resolve disputes in cases which require interpretative decision making. Precedential views are set out in the form of –
  - Publicly issued rulings and draft guidelines
  - ATO interpretative decisions (ATO IDs)
  - Decision impact statements (DIS)

These precedential views serve as a link between ambiguous legislative provisions and purposive interpretation to serve justice. This resolves conflict at the audit/assessment stage.

A public ruling provides interpretation of law as administered by the ATO. Typically, such rulings deal with priority issues that require clarification and are issued either as rulings or determinations. For instance, the ATO recently finalized determination of the taxation<sup>3</sup> in relation to the denial of deductibility of interest on a full recourse loan where the loan was used to prepay interest on another loan is a capital protected borrowing.<sup>4</sup>

<sup>3</sup> Source - <http://law.ato.gov.au/atolaw/view.htm?docid=PRP/PRP0000/NAT/ATO/00001>

<sup>4</sup> TD 2013/1

The practice of tax officers to search for and apply ATO IDs<sup>5</sup> and draft guidelines ensures that decision-making on interpretative issues is accurate and consistent. For instance, the ATO issued an ATO ID<sup>6</sup> dealing with applicability of capital gains tax to bonus shares.

Further, the ATO also issues decision impact statements<sup>7</sup> (DIS). DIS informs taxpayers and tax practitioners of the implications of recent court/tribunal decisions. The objective is to promote transparency in tax administration and provide taxpayers with increased certainty. Such statements are required to be published within eight weeks of the pronouncement of court/tribunal decisions. A DIS is usually not published until all appeals have been dealt with and there is a final decision. DIS provides the gist of the ruling followed by the ATO's viewpoint. A recent DIS issued in a case<sup>8</sup> in which the ATO outlined its response to the question of whether income tax and goods & service tax had been properly paid in relation to the conduct of an applicant's property development and construction business.

- **New Zealand** – New Zealand's Inland Revenue<sup>9</sup> often provides binding rulings when a reference is made to it by taxpayers. Such rulings aim to outline Inland Revenue's interpretation of how the relevant tax provisions will apply to a particular business arrangement. There are broadly four types of rulings –
  - a) **Public rulings** – A public ruling interprets how a tax law applies to a defined arrangement with widespread application. In case a taxpayer's situation is identical to the defined arrangement, such a taxpayer, subject to applying and meeting the condition specified in the ruling, can apply the ruling.
  - b) **Private rulings** – A private ruling, similar to the AAR in India, caters to the issues of a single taxpayer or a group of taxpayers of how tax laws apply to a particular business arrangement. The rulings apply only to person/s named in the ruling.
  - c) **Product rulings** – A product ruling provides interpretation of how the tax law applies to 'consumers' of a particular 'product', i.e. an arrangement entered into by numerous taxpayers on identical terms.
  - d) **Status rulings** – Such rulings can be applied for by taxpayers to vouch for the continuity of stands taken by them pre-amendment owing to private/public rulings.

To access these rulings, the taxpayer needs to apply for it in a prescribed application and inform the authority about the business arrangement on which the ruling is solicited. Apart

<sup>5</sup> Source - <http://www.ato.gov.au/Business/Consolidation/In-detail/Rulings,-determinations,-interpretative-decisions-and-practice-statements/Consolidation--ATO-Interpretative-Decisions/>

<sup>6</sup> ATO ID 2013/19

<sup>7</sup> Source - <http://www.ato.gov.au/Tax-professionals/Legal-practitioners/In-detail/Litigation-and-case-law/Decision-impact-statements/>

<sup>8</sup> A & C Sliwa Pty Ltd and Commissioner of Taxation [2011] AATA 390

<sup>9</sup> Source - <http://www.ird.govt.nz/>



from this, the taxpayer also needs to provide requisite information and give a draft for the ruling. Once it receives an application, the Inland Revenue allocates application to various groups on the basis of technical issues involved. The relevant group performs legal analysis of the issues within an agreed timeframe. If there are further questions on the matter, the group may contact the taxpayer. Once a conclusion is reached, the group sends a draft ruling, even a contrary ruling, to the taxpayer. The taxpayer can provide his comments on the draft ruling also. After due consideration of the comments of the taxpayer, the Inland Revenue finalizes the ruling, and publishes it, except in the case of a private ruling.

- **United Kingdom** – Her Majesty’s Revenue and Customs (HMRC) publishes detailed tax manuals putting out their views on almost every aspect of taxation [including General Anti-avoidance Rules (GAAR)]. When a new, complex legislation appears in a draft form, a technical guidance manual is also released. While tax manuals are intended for use by the HMRC officers, they are published for the public too and are referred to even by the courts. Some illustrative examples of statements are on partnership mergers and demergers, taxation of commission, cash-backs and discounts, capital allowances and tax treatment of transactions in financial futures and options.
- **Canada** – The Canadian Revenue Authority (CRA) issues advance income tax rulings and technical interpretations that can be relied upon by the taxpayers. The Income Tax Rulings Directorate, which issues such rulings, maintains a well-educated, trained and experienced staff. They deal with any income tax issue that arises. This directorate provides its interpretation of complex technical issues in a number of ways to the public. Technical interpretations provided to the public are not income tax rulings and are not binding on the CRA. Advance income tax rulings are released to the public for information purposes only. An advance income tax ruling is regarded as binding upon the CRA, subject to any qualifications stated in the ruling and the comments specified thereon. Thus, rulings can be relied upon to dispose of a case only if the facts pertaining to it are identical to those pertaining to the case for which the ruling was given. For instance, CRA had issued advance income tax rulings on numerous issues on an application made by the taxpayer such as on the proposed reformulation of the group structure.<sup>10</sup>

The directorate also prepares interpretation bulletins (Its)<sup>11</sup> which provide the CRA’s interpretation. While they do not have the force of law, it can generally be relied upon to reflect the CRA’s interpretation of income tax law in force at the time of publication, to be applied on a consistent basis by its staff. The directorate also prepares a newsletter called Income Tax Technical News (ITTN). This publication provides the CRA’s interpretation of income tax law (in force at the time of publication) on an *ad hoc* basis. The ITTN allows for a more rapid dissemination of new or revised interpretations and the interpretations therein carry the same weight as those in Its. Reference in this regard can be made to various

<sup>10</sup> For instance, CRA, on November 19, 2012, issued an advance income-tax ruling in the case of Peartree Financial Services Ltd

<sup>11</sup> Source - [http://www.cra-arc.gc.ca/E/pub/tp/it-index/it-index-e.html#\\_toc01](http://www.cra-arc.gc.ca/E/pub/tp/it-index/it-index-e.html#_toc01)

technical interpretations issued by the CRA, for instance, technical interpretation issued in relation to employees' fringe benefits<sup>12</sup> dealing with amounts to be included in income (Part A) and amounts not to be included in income (Part B). Such references further lay down variety of items and contain related discussion thereon.

In sum, the CRA provides its interpretation of Canada's tax laws to the public as an administrative service. Whilst courts are not bound by CRA interpretations, in several Canadian court cases, a court has given weight to CRA's published interpretations in making its decision.

### ADR mechanism

- **United Kingdom** – In the UK, most tax disputes are settled by out of court agreements following discussions between HMRC and the taxpayer. Relatively few disputes are referred to courts for resolution. UK HMRC uses ADR processes for three segments of taxpayers – (1) large taxpayers with complex tax affairs, (2) small and medium-sized enterprises and (3) individual taxpayers. HMRC often engages in the following types of ADR –
  - i. Facilitated discussion – A mediator facilitates discussion and brings parties together but offers no opinion on the merits of the arguments. He also informs the two parties how the decisions would play out in the tribunals/court. The mediator may or may not be a specialist in the subject matter of dispute.
  - ii. Facilitative mediation – For facilitative mediation, an external and independent mediator is jointly engaged by HMRC and the taxpayer. He brings the two parties together but offers no opinion on the merits of the arguments being advanced.
  - iii. Evaluative mediation – In this, the mediator will bring parties together in the same way as in facilitative mediation. Further, the mediator will also provide his/her view as a specialist on the subject matter of the dispute.
  - iv. Non-binding neutral evaluation – In this, a neutral third party who is an expert in a particular field provides a non-binding opinion. This is suitable for cases where the issue is not tax related but determination thereof has tax consequences.
- **Australia** – Australian ATO considers that most tax disputes are capable of being resolved. It also considers that it has statutory responsibilities as the administrator of tax laws. In ATO, ADR, both formal and informal, helps both ATO and taxpayer to resolve disputes in a timely and cost-efficient manner. Consequent to an increase in emphasis on ADR, only a small percentage of disputes are resolved through litigation. Australia provides various

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<sup>12</sup> IT-470R (Consolidated)

options for ADR like conferencing, mediation, conciliation, case appraisal, neutral evaluation before the Administrative Appeals Tribunal, mediation, and arbitration before the Federal Court. Typically, mediation is the most widely used form of ADR by the ATO.

Further, ATO has provided a Code of Settlement Practice as a guidance note to its staff on settlement of tax disputes in relation to all taxpayers in cases where settlements can be considered according to established practices. It provides the necessary checks and balances to settle with complete transparency and accountability. Although the code has been written mainly with income tax in mind, it is applicable to all laws. The settlement can be approached at any stage of the dispute. Often, these settlements are in the form of mediation, negotiations, etc depending upon the circumstances. During formal settlement negotiations, there are at least two tax officers present, and there is collaboration between senior tax officers with relevant expertise or knowledge from the business line. This allows a decision maker (from either side) to be able to make a settlement decision based on the full knowledge of the taxpayer's settlement offer, the advice received from the Settlement Advisory Panel and the legal or other expert opinions relevant to the matter being considered.<sup>13</sup> In the event of a breakdown in negotiations, neither party is prejudiced as a result of a position taken in the course of trying to resolve the matter.

The objective behind ATO adopting ADR processes is to assist in decreasing legal costs by resolving disputes expeditiously and thereby help build and enhance relationships, and encourage continuing tax compliance. The ATO does not consider arbitration a viable alternative for resolution of tax disputes because they feel that it would not create a binding precedent. They, however have an elaborate process for conciliation and mediation. Mediation is the most frequently used ADR process in Australia. ATO also relies on a number of other initiatives such as the Civil Dispute Resolution Act, 2011, Access to Justice (Civil Litigation Reforms) Act, 2009, etc. for making the conciliation procedure available to its taxpayers.

- **United States** – US IRS provides for fast track settlement in the form of an alternative ADR mechanism. It expedites case resolution and expands the range of dispute resolution options available to taxpayers. It is available for three segments of taxpayers and its delivery is different for different segments of taxpayers. For large and mid-size businesses, fast track settlement allows the opportunity to mediate disputes in the presence of a neutral appeals official. For the small business and self-employed taxpayers, audit issues are resolved within 60 days from the acceptance of the application. The same is true for tax exempt entities and for the taxpayer government entities.

The US IRS also established the Appeals Arbitration Programme as part of a pilot programme, to improve tax administration, provide customer service and reduce taxpayer

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<sup>13</sup> The Settlement Advisory Panel assists the ATO in its administration of settlement proposals in tax disputes. The role of the panel is wider than that of the Settlement Commission in India as it also provides objective advice to decision makers on whether it is appropriate to enter into a widely-based settlement on a particular dispute, and what the terms and conditions of such settlement would be.

burden. Revenue Procedure 2006-44 later formalized the arbitration process, making it a part of the usual business process followed by the IRS. The arbitration procedure in the US IRS is optional for both the taxpayer as well as for the appellate channel. Either party can submit a request for arbitration (after consulting with the other party) even when a case is in appeals, after settlement discussions have failed. This can be done when all other issues are resolved except for certain specific factual issues. Thus, it is only available for specific factual issues and not those issues that require interpretation of a law, regulation, ruling, etc.

The parties enter into a written arbitration agreement once the request for arbitration is approved. They agree to be bound by the arbitrator's findings and to incorporate the findings and final computations into an appeals closing agreement that the parties will execute, thereby making it binding in nature. The parties are also obliged to not appeal on the findings of the arbitrator nor contest them in any judicial proceeding. The findings by the arbitrator are not applicable for taxable years not covered by the arbitration. No party can use the findings of facts made by the arbitrator as precedent.

To enhance the efficacy of the ADR mechanism, the US IRS also has 'loop backs' to negotiation at each stage of dispute resolution. This practice has successfully evolved under the ATO model and provides a cost-effective, less time consuming dispute resolution. Settlement of GSK's out of court settlement of its multi-billion TP dispute with the US IRS (in 2006) is a classic example of 'loop-back' to negotiation as an effective tool of expeditious settlement of disputes. In this case, GSK initiated the MAP under the US-UK TREATY, but in 2004, the competent authorities were unable to reach an agreement to settle the longest-running dispute. It is reported that even though GSK was confident of the strength of its arguments, given the sheer size of the financial exposure and the resources being used in the case, GSK agreed to settle the dispute in out-of-court negotiation with a view to minimize cost and eliminate uncertainty in future TP litigation.

## Appeal process of some advanced tax administrations

### UK (Direct Taxes) processes

Assessment orders of UK's HMRC normally indicate the taxpayer's right to appeal, the time limit for appeal and the name and place of the authority where the appeal is to be sent. A taxpayer is required to appeal within 30 days if he disagrees with the order. Most appeals are settled by agreement after considering the reasons of appeal and decisions are amended. The agreement is in writing and a taxpayer has to inform HMRC within 30 days in case he changes his mind. Sometimes, on receipt of communication from HMRC, the taxpayer can request an amendment in the amount of tax or penalty.

If an appeal cannot be settled by an agreement, HMRC offers the taxpayer a review. The taxpayer can also ask HMRC to review its decision or ask the First-tier Tribunal to consider his appeal. A taxpayer cannot have both the options at the same time. For review, HMRC appoints an officer who was not earlier involved with the decision appealed against to carry out a review. A taxpayer has to ask for a review to the review officer in writing. The review is usually completed within 45 days. In some cases, it can take longer and in such cases, HMRC will get in touch with the taxpayer to ask him whether he agrees to a longer period. If HMRC does not write to the taxpayer telling him the outcome of the review within the review period, he can send his appeal to the tribunal. When the review is completed, the review officer informs the taxpayer of his decision in writing.

If a taxpayer disagrees with the decision reached by the review officer, he can ask for his appeal to be heard by an independent tribunal. A taxpayer, who wants a tribunal to consider his appeal or application, is required to send it to the tribunal. If he has not been offered a review, he can ask for a review at any time after sending his appeal to HMRC. If the taxpayer is not satisfied with the decision of the tribunal, an appeal would lie with the Tax and Chancery of the Upper Tribunal. For filing an appeal before the Upper Tribunal, the taxpayer would require permission to appeal from the first tribunal. Normally, such an appeal can be filed if there is an error of law or breach in proceedings or if the tribunal failed to give proper reasons for its decision.

### Australia's (Direct Taxes) processes

Australian ATO provides that a taxpayer with simple tax affairs can lodge an objection within two years of the assessment notice. A taxpayer with more complex tax affairs (e.g. capital gains or losses), however, has four years to lodge an objection. This period can be extended in appropriate circumstances. In the application, the taxpayer is required to prove that the assessment is excessive. The application must raise the disputed issue and the burden of proof is on the taxpayer to raise the objection.

Once the objection of the taxpayer is submitted, the same officer who made the original decision is not involved in deciding on the matter, thereby bringing independence of

consideration of the application. If the decision is not made within 60 days, the taxpayer can write to the ATO requiring a decision to be made. Generally, if no decision is made within a further 60 days, the objection is deemed to be disallowed and this enables the taxpayer to pursue other remedies without further delay. The taxpayer can either file an appeal to the Federal Court or can ask for a review by the Administrative Appeals Tribunal. Further appeals on questions of law lie with the Full Court of the Federal Court. The final stage in the appeal process involves an appeal to the High Court, which only occurs if the court gives special leave to appeal.

If a taxpayer is dissatisfied with an administrative action taken by the ATO, he can complain, without charge, to the Commonwealth Ombudsman. The Ombudsman has a dedicated specialist adviser on taxation heading a team of experts for investigation and resolution of taxpayers' disputes with the ATO. Complaints need not be limited to technical legal matters. The complaints can also relate to the fairness and efficiency of ATO procedures and policies.

### **US's (Direct Taxes) processes**

The process of appeal in the US IRS starts with a taxpayer, not agreeing with IRS findings, requesting a meeting or a telephone conference with the supervisor of the person who issued the findings. If he is still not satisfied, he may appeal to the Appeals Office of the IRS. The Office of Appeals can settle most differences without expensive and time-consuming court trials. The Appeals Office is separate from - and independent of - the IRS Office. The Appeals Office is the only level of administrative appeal within the IRS. Most differences are settled at this level. But, if the appellate process does not resolve the dispute, the taxpayer can file further appeal to the US Tax Court.

As far as the monetary limit for filing appeals at various appellate levels are concerned, there is no express limit in the ATO, HMRC and the US IRS. However, the process and forum of appellate authorities for small cases are different. In the US IRS, if the total amount for any tax period is less than US \$25,000, the taxpayer can make a small case request instead of filing a formal written protest. Similarly in the ATO, if the amount of tax disputed is less than Aus \$5,000, a taxpayer can elect to have his claim resolved in the Small Taxation Claims Tribunal.

### **Indirect taxes**

While the process of appeal for indirect taxes in the ATO, UK HMRC and the US IRS are akin to the process as described for direct taxes, these tax administrations have standardized processes for all tax types. However, there are some minor deviations. In HMRC, for example, if the taxpayer is unable to reach an agreement on a decision, he can approach the independent tribunal to decide the matter, whereas, in direct taxes, the taxpayer is required to first appeal to HMRC before moving to the tribunal.

# Chapter VI

## Key Internal Processes

Appendix VI.1

### Tax payments

Diagram 6A.1: Tax payments and information flow

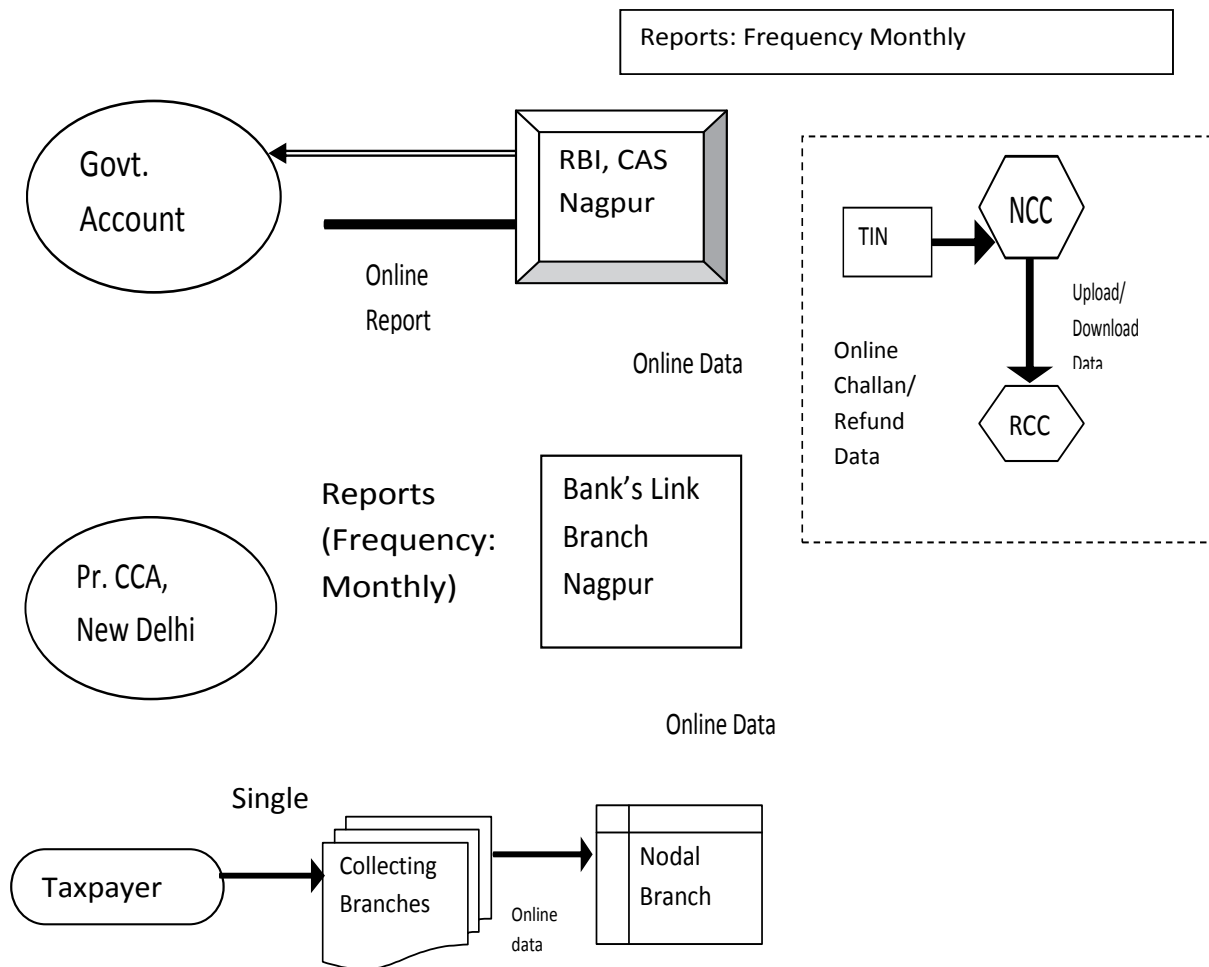


Diagram 6A.2: OLTAS in direct tax

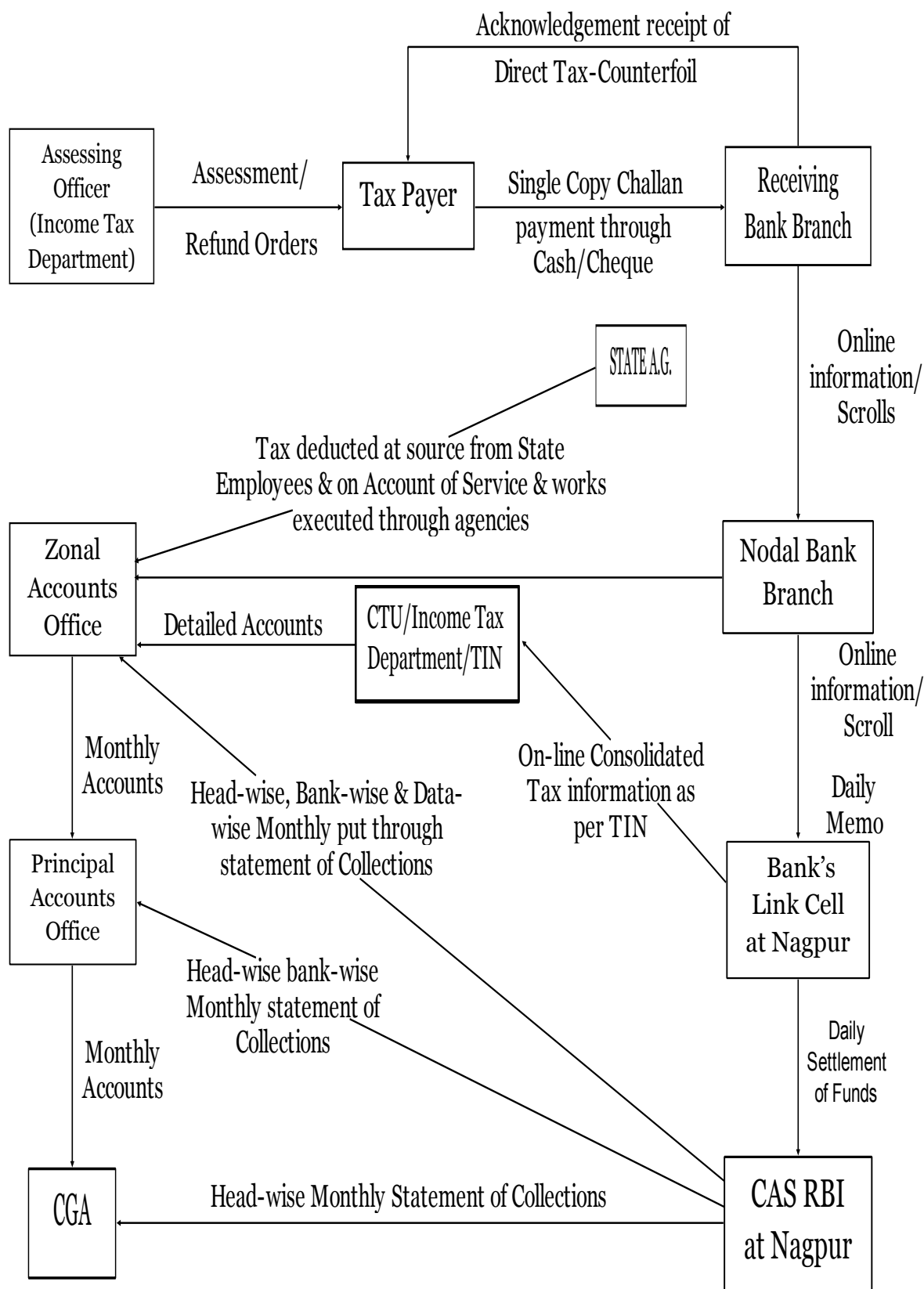
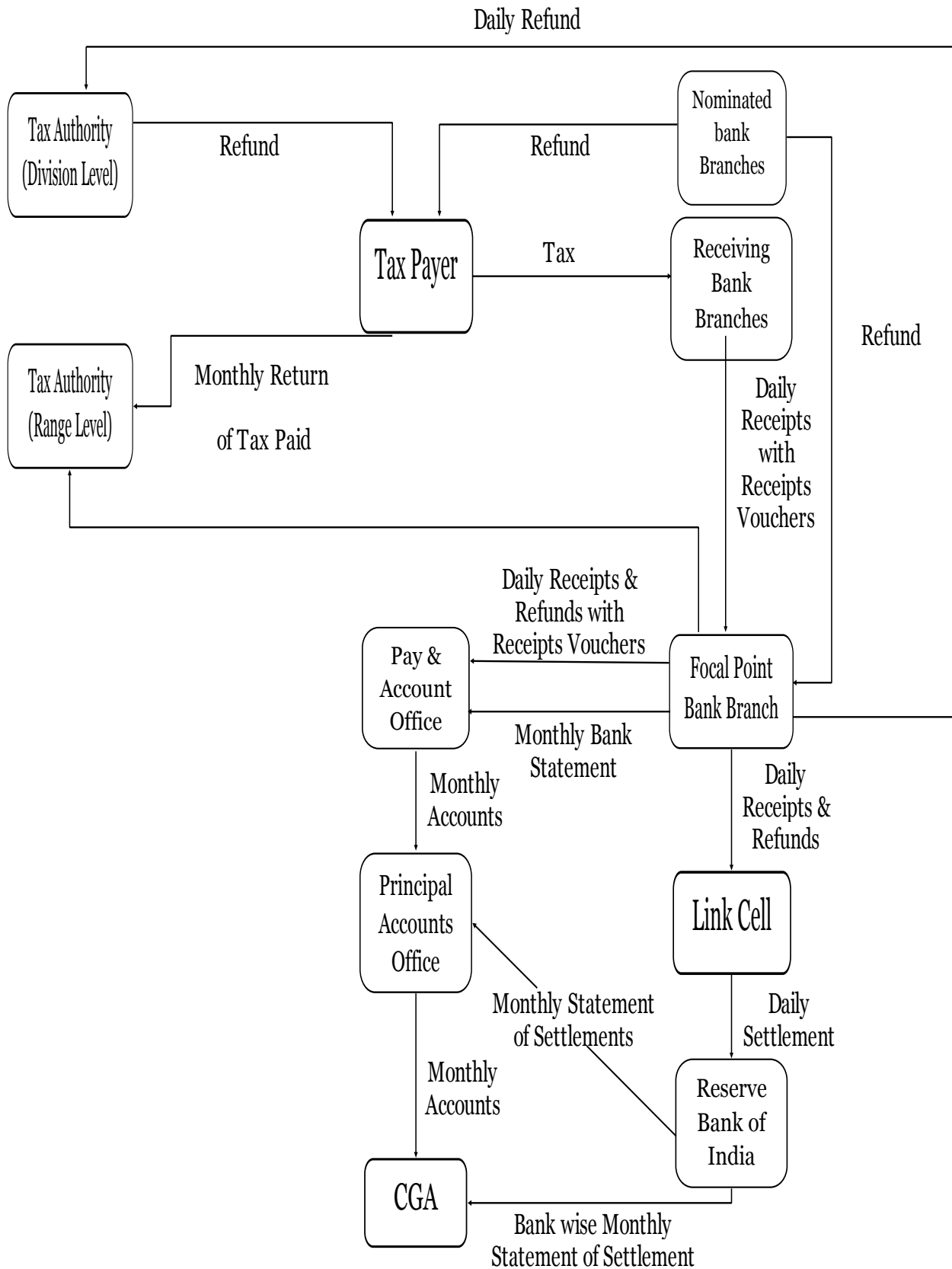




Diagram 6A.3: EASIEST in indirect tax



## Appendix VI.2

## Global practices on FTC

Most developed countries define the various types of income tax eligible for FTC, eligible taxpayers, circumstances under which a taxpayer is eligible for FTC, the method of computing and claiming FTC and the documentary evidence needed to claim FTC. Taxation (International and Other Provisions) Act, 2010, in the United Kingdom prescribes the regulations for FTC. In Australia, Section 770.10 of the Income Tax Assessment Act, 1997, provides for “Entitlement to foreign income tax offset”. Similar regulations are prescribed by the Canada Revenue Agency under Section 126 of its Income Tax Act, 1985. Sections 901 to 907 of the Internal Revenue Code of the United States of America provide the mechanism for claiming FTC. Table 6A.1 summarizes the US Internal Revenue Code sections that authorize and limit the FTC.

Table 6A.1: US IRS FTC Codes

Code Section	Description
901	Allows direct credit for taxes paid to a foreign country by a US taxpayer based on realized net income.
902	Allows deemed paid or indirect credit for foreign taxes based on the proportion of taxes paid by a corporation on its distributed earnings and profits.
903	Allows direct credit for taxes (typically foreign withholding taxes based on gross receipts) paid "in lieu of" the generally imposed net income tax.
904	Limits the amount of credit available in each year, including carryovers of credit.
905	Provides guidelines on foreign tax adjustments, redetermination and proof of credits.
906	Allows foreign tax credit for non-resident alien individuals and foreign corporations engaged in a trade or business in the United States.
907	Contains credit limitation for foreign oil and gas income.
960	Allows an indirect credit for deemed distributions.

Under the different country tax codes, citizens and domestic corporations can typically claim a credit for the eligible foreign taxes they pay or accrue. But it can also debar some foreign taxes from being eligible for the FTC.

The tax codes identify the eligible taxpayers such as US citizens and domestic corporations and also mention specifically who would not be entitled for FTC. There is also a clear identification of eligible taxes. The US IRS mentions under the eligibility criteria that only foreign income, war profits, and excess profits taxes would qualify for FTC (IRC section 901(b)), and to be creditable, a foreign tax must be a compulsory payment to a foreign government, and an income tax, or a tax in lieu of an income tax. But payments such as penalties, interest, fines or custom duties are not considered to be eligible for FTC.

## Appendix VI.3

## Global practices on tax recovery

An important aspect of tax recovery (tax debt management) is that it involves significant customer interaction with corresponding pressure on resources. Some examples illustrate how revenue bodies respond to this. The Canada Revenue Agency has tasked a Debt Management Call Centre with managing high volume calls for several tax and government programmes, while the UK HMRC uses specialized debt collection agencies as one of its debt collection strategies. These agencies allow efficient handling of debt-related customer contact, including mitigation of fluctuations in demand by balancing inbound calls with outbound activities. In Australia, ATO<sup>14</sup> launched a GST Voluntary Compliance Programme. In the first two years of the programme, ATO collected \$568.8 million in GST through additional debt collection activities; extra funding was provided to address GST compliance, which helped it to collect an additional \$1.3 billion in GST revenue.

The US IRS had carried out a multi-year study of collection trends to map the correlation between the age of tax demand and the probability of the tax being collected. The IRS collectability curve that emerged from this study shows that the correlation is linear and negative – the older the tax demand, the lower is the probability of it being collected. Such analysis may not be available for India, but based on anecdotal evidence and experience, one can safely assume that such a correlation is also true for India.

In the US, the tax department and the taxpayer also try to resolve disputes administratively. Before issuing any notice of deficiency, a non-statutory letter known as the 30-day letter or preliminary notice of deficiency is issued. This 30-day letter does not stop the running of the statute of limitations and is not required by the Internal Revenue Code (IRC). It gives a fair idea of the grounds on which extra tax is being demanded.

In fact, in most tax administrations, an efficient strategy for dispute resolution normally looks at early intervention, efficient workload management and systematic learning. A formalized feedback mechanism is needed to ensure that learning from disputes would lead to reducing the future workload and safeguarding system integrity. Once a debt has been accepted, methods of assisting the tax payer to repay the debt may need to be put in place. All of this is best achieved by a separate line function.

In the UK HMRC too, a separate business payment support service<sup>15</sup> has been instituted. This is designed to meet the needs of all businesses and individuals who experience difficulties in paying the tax due in full and on time. This service is for customers who are aware that they may be unable to pay their dues in full before the payment deadline.

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<sup>14</sup> <http://www.ato.gov.au/Business/GST/In-detail/Risk-management-and-compliance/Compliance/Targeting-GST-compliance/>

<sup>15</sup><http://www.hmrc.gov.uk/payinghmrc/problems/bpps.htm>

From January 2010, the Netherlands Tax and Customs Administration also implemented the policy of calling taxpayers who filed an objection to their tax assessment in order to avoid further escalation. The goal is to provide better service and prevent unnecessary objection procedures by involving taxpayers at an early stage. The policy was implemented following regional pilots that showed positive results.

### **Risk-based approach**

The Dutch Tax Administration built its strategy to enforce tax debt collections on encouraging tax-payers to pay voluntarily. But if taxpayers fail to do so, the tax administration adopts coercive collection measures based on a risk-oriented approach. This initially meant that available capacity was used to obtain the maximum return. In addition, the process was designed in such a way that all debtors are reached (equality before the law). The risk-oriented approach of the Dutch Tax and Customs Administration involved two stages. In the *first stage*, a distinction is made between good, not-so-good and bad taxpayers. Under the Dutch risk model, a scorecard methodology and objective data were used to calculate a “score” for each debtor, indicating the likelihood that they would settle their debts within a year. These scores were based on a yearly calculation facilitated by an econometric model. In the *second stage*, the scores were used as one of the main variables in selecting the most effective measures. This selection process was supported by a modern computer system. Besides the scores referred to above, other factors were also taken into account to include the nature and size of the tax claim and the debtor’s payment record. A payment record was measured using a points system, in which points were awarded and deducted for positive and negative behaviour respectively. As a result, taxpayers receive differentiated treatment based on fixed and objective risk profiles.

The Irish Revenue administration has also over the last few years strategically pursued (one at a time) a number of ‘holes’ in the system in which a lot of taxes have gone unpaid. These were labelled ‘special investigations’. These investigations included bogus non-resident accounts, offshore accounts, one-off single premium insurance policy, offshore assets, etc. To effect incisive investigation, the Irish administration set up a risk evaluation analysis and profiling (REAP) system where in taxpayers were profiled and allocated risk scores/ratings. It is understood that this helped in better recovery of taxes.

## Appendix VI.4

**Global practices on TP documentation**

Over the last 20 years, transfer pricing documentation requirements are being increasingly recognized by the tax administrations. Existing guidance on documentation contained in the OECD Transfer Pricing Guidelines is often not considered sufficient to meet the transfer pricing compliance requirements as different countries have different emphasis due to variations in the economic conditions of the countries. There, however, have been efforts at an international level to develop a standardized description of the documentation that MNEs should provide to tax authorities to demonstrate the arm's length nature of their cross-border intra-group transactions. But the number of countries introducing specific documentation requirements or guidance is growing every year. The European Union, within the framework of the OECD TPG, had brought out documentation requirement guidelines to standardize documentation in the European Union. In March 2003, the Pacific Association of Tax Administrators ("PATA"), whose members include Australia, Canada, Japan and the United States, released principles under which taxpayers can create uniform transfer pricing documentation so that one set of documentation would meet the respective transfer pricing documentation provisions of each of the four member countries. Some tax administrations require companies to supplement the tax return by completing a form that provides additional information on transfer pricing. Generally, most countries require taxpayers to report whether they have entered into cross-border related party transactions, and if so, they need to provide additional information such as identity of the foreign related parties, the amounts involved in the transactions, the pricing methodology applied and whether the taxpayer has produced contemporaneous transfer pricing documentation to support transfer prices (e.g. Australia, Norway). Some other countries use targeted transfer pricing questionnaires. In most cases, the completion of these is mandatory and it can be done in the framework of the risk assessment of a specific taxpayer, and so the transfer pricing questionnaire is requested after an initial review of the taxpayer's tax return and account by the tax administration (e.g. South Africa, New Zealand).

More recently, the French National Assembly passed legislation on September 17, 2013, providing for stricter transfer pricing documentation requirements. The transfer pricing documentation provision is part of a bill to address tax fraud and economic and financial crimes (read below for more information). The date of enactment of the provision currently is unclear, and its application is expected to be clarified soon. The new provision requires mandatory submission of an "abridged version" of the entity's transfer pricing documentation within six months of the due date for filing the income tax return (in most instances, a date that is nine months after the close of the fiscal year).

The US IRS also requires contemporaneous documentation - as described in Treasury Regulations, Section 1.6662-6(d)(2)(iii) - to be in place at the time the return is filed in order to obtain penalty protection. A proactive approach to analysing and documenting intercompany transactions on an enterprise-wide basis is vital to managing transfer pricing audit risk for multinational companies.

Keeping the balance between the burden on the taxpayer and requirement of the tax administration, it is important that for different transactions, specific documentation requirements should be developed. For example, intra-group services can be one such transaction.<sup>16</sup> The international experiences on that is given below:

- In January 1999, the ATO (Australian Tax Office) issued its tax ruling – Income tax: international transfer pricing for intra-group services (TR1999/1) – on services.
- The Belgian Income Tax Code (ITC) has specific rules that govern the benchmarking of intra-group services.

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<sup>16</sup> Intra-group services would include charges by the parent entity on management services, administrative services, co-ordination, control and administrative services, research and development, product development, technical services, purchasing, marketing and distribution, engineering services, staff-related matters, such as recruitment and training, financial services, legal services and other commercial services that typically can be provided with regard to the nature of the MNE's business.

**Appendix VI.5****Administration of direct tax investigations**

In India, direct tax investigations are conducted by the specialized investigation directorates, which function under the supervision and control of the Member (Investigation), CBDT. This administrative arrangement to investigate tax evasion or tax crimes in India is akin to what is available in many other countries. Some countries, however, deploy different administrative structures to detect tax evasion or tax crimes. In countries, such as Australia, Canada, Germany, Greece, Ireland, Japan, Korea, New Zealand, South Africa, Switzerland, the United Kingdom and the United States, tax crimes (including tax evasion) investigations are conducted by the tax administration itself through a specialized investigations division. In other countries such as Austria, Netherlands, Portugal, Sweden, Spain, and the United States, investigations conducted by the tax administration are directed by public prosecutors.<sup>17</sup> In some other countries, like Iceland and Turkey, tax crime investigations are conducted by a specialist tax agency, which is under the supervision of the Ministry of Finance but outside the tax administration. In Belgium, the Czech Republic, Denmark, Finland, France, Luxembourg, Mexico, Norway, Slovak Republic and Slovenia, tax crime investigations are conducted by the police or public prosecutor.

**Penalty and Prosecution**

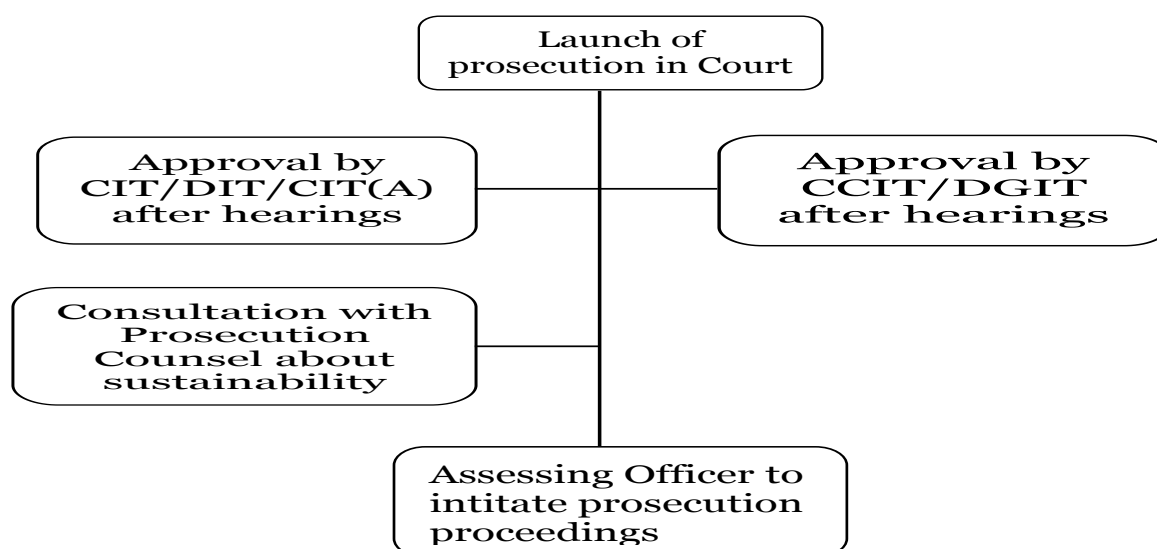
Sections 275A to 280 of the I-T Act gives the powers and functions for institution of prosecution for a variety of defaults/offences committed by assesseees. The prosecution is launched by the assessing officer concerned after receiving sanction from the Commissioner. The prosecution wing in the field functions under CCIT with CIT (Judicial) as the Controlling Authority. DCIT (Prosecution) under CIT (Judicial) assisted by inspectors and other staff is the nodal officer to attend to day-to-day functions. DCIT (Prosecution) is responsible for co-ordination of prosecution cases between the assessing officer and the prosecution counsel and monitors the disposal of prosecution cases.

The procedure for launching prosecution is given in Diagram 6A.4 below.

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<sup>17</sup>The United States first carries out an administrative investigation, following which the case is referred to a prosecutor.



**Diagram 6A.4: Launching of prosecution**

Data on prosecution cases as available from the CAG in its report no. 28 of 2013 on “Administration of Penalty and Prosecution” is given in Table 6A.2.

**Table 6A.2: Status of Prosecution cases**

**Total number of cases pending as of March 2013 : 3,088**

**Total number of complaints as of March 2012 : 10,538**

Financial Year	Prosecution launched	Cases decided	Convictions	Compounded	Acquitted
FY 08	263	280	11	13	256
FY 09	162	146	14	13	119
FY 10	312	599	32	291	276
FY 11	244	356	51	83	222
FY 12	209	593	14	397	182

Prosecutions are enforceable at the instance of the court. The conviction rates in these cases are very low as can be seen from the Table above. It should, however, be stated here that cases prosecuted in a particular FY may have been launched some time ago; hence there is no one-to-one correlation. The data, nevertheless, gives an idea of the conviction rates. For instance, the US IRS states that prosecution was initiated in 4364 out of the 5,314 criminal investigation cases undertaken in FY 2013, and the conviction rate is 93 per cent.<sup>18</sup> The Australian ATO also states that their conviction rates are comparably high. To ensure greater focus on prosecution of tax cases including tax evasion, the government has recently introduced Sections 280A,

<sup>18</sup> Conviction rate is the percentage of convictions compared to the total number of convictions, acquittals, and dismissals.

280B, 280C and 280D in the I-T Act to set up special courts and special public prosecutors, but the accompanying rules are yet to be issued.

Apart from the poor conviction rate, the CAG audit has also found that there is considerable delay in initiating prosecution cases. Table 3.7 of the CAG report mentioned above gives the following statistics:

All-India	Within time prescribed	Up to 5 years	5-10 years	10-15 years	15-48 years	Total
Total	101	1,231	624	286	352	2,594

*Source: CAG Report on 28 of 2013*

The Table above shows that launching prosecution was delayed by up to five years in around 50 per cent of the prosecutable cases; in more than 10 per cent of the cases, it took between 15 and 48 years to initiate prosecution. These figures indicate that almost no attention is paid to prosecution cases.

Some of the key issues in the administration of prosecution cases raised in the CAG report are summarized below:

- (a) There are wide discrepancies in data on pending/disposed cases, putting questions on the authenticity and reliability of prosecution data. Physical verification of prosecution records has also not been carried out since FY 2008.
- (b) There is no regular posting of officers to handle prosecution cases.
- (c) Prosecutions have been launched and pursued even where companies had already been liquidated or were declared sick by Board for Industrial & Financial Reconstruction (BIFR). Even 11 years after Supreme Court judgments and 5 years of opinion from the Ministry of Law, 76 cases were still being pursued, frittering away valuable time and the resources of the ITD.
- (d) CBDT's co-ordination and follow up of cases in courts was grossly inadequate as revealed by non-attendance/non-representation in court proceedings. The enforcement of CBDT's policy and procedures on prosecution counsels has not been effective. CAG found that no prosecution counsels had been appointed at various stations, which implies that there was virtually no follow up on cases.
- (e) Compounding of offences as a mechanism of alternate dispute resolution was not exercised to reduce litigation and realize due revenue.

All these point to the need to have a dedicated administrative structure to handle prosecution function. This will be in sync with international practices.

## Global practices

The Canada Revenue Agency (CRA) has a distinct and separate programme which is responsible for investigation of suspected cases of tax evasion and fraud, called Criminal Investigations Program (CIP). The sources leading to a CIP investigation includes cases referred from other CRA programmes (e.g. Audits). The CIP objectives are to strategically investigate, assess, penalize and recommend for prosecution significant cases of tax evasion and/or fraud under the Income Tax Act and the Excise Tax Act and, where appropriate, the Criminal Code. The roles and responsibilities of CIP investigators are different from that of CRA auditors.

The United States IRS-CI (Internal Revenue Service-Criminal Investigation) undertakes tax crime investigation in the US. IRS-CI investigates potential criminal violations of tax law and related financial crimes, including tax evasion. It is the only federal agency that has the statutory authority to investigate criminal violations of the Internal Revenue Code, and to refer these cases for prosecution. IRS-CI has dedicated attorneys who advise special agents on legal issues and review cases before they are forwarded for criminal prosecution.

The DGFIP of France is responsible for conducting tax audits aiming at detecting and combating serious tax frauds. DGFIP files prosecution complaints for tax crimes, establishing the act and intention elements of a suspected tax offence.

The Australian Taxation Office (ATO) is entrusted with the task of deterring, detecting and dealing with tax evasion and fraud and takes action against taxpayers, intermediaries and others who engage in tax crimes. ATO undertakes compliance activities, including civil audits and criminal investigations to tackle tax crimes. Criminal investigations and more extreme elements of tax and excise evasion are dealt with by the serious non-compliance unit (SNC), a business area within the ATO.

Within the South African Revenue Service (SARS), a specific division exists to combat tax evasion. Its activities include conducting criminal investigations aimed at laying criminal charges and provide the assistance for investigation and prosecution of the tax offence.

## Appendix VI.6

### Current tax administration for NGOs

The provisions regarding exempted institutions are administered at the CBDT level by Member (IT), CBDT and Director General of Income Tax (E) and the directorates of exemption (DIT (E)) working under him/her in seven cities, namely, Delhi, Kolkata, Ahmedabad, Mumbai, Chennai, Hyderabad and Bangalore. However, in areas that are not under the jurisdiction of these directorates, the provisions are administered by the territorial commissioners of income tax.

Applicants are granted exemption after they register under Section 12A of the I-T Act. The registration process is initiated by making an application in Form 10A. Copy of the instrument of creation of the trust or institution and accounts of prior years (if any) has to be submitted along with the form. On receipt of the application, the DIT (E) orders the rejection or acceptance of the application u/s 12AA(2). Receipt and disposal of applications is recorded in a register maintained in the office of the DIT. The Act also provides exemption to donors to such trusts and institutions u/s 80G. Section 80G (2)(iv) prescribes the amount of deduction and section 80G(5) lists the preconditions for donations to become tax deductible in the hands of the donor. Application for approval u/s 80G is made in Form 10G. Application made in Form 10G has to be disposed of by the DIT within six months of its receipt. A register has to be maintained to record the receipt and disposal of applications made in Form 10G. No formal procedure has been prescribed in the act and rules for the rejection of applications for registration. Approval can be granted for a period of 5 years, but is generally granted for three years. There is no distinction between initial approval and subsequent renewals. The forms (10A & 10G) do not ask for PAN information of the trusts and institutions.

Section 2(24)(iia) defines income of trusts and charitable institutions. Section 10 lists eighteen categories of non-governmental agencies that can apply for tax-exempt status under the IT Act. Section 11(1) allows deductions from the income of the tax-exempt entities, which includes sums applied towards charitable or religious purposes and the amount accumulated and set apart for application towards charitable purposes, not exceeding 15% of such income. Section 11(2) also allows institutions to accumulate and set apart income for specific purposes for five years. It requires a notice to be given in form 10 to tax authorities before filing the return. The sums set apart have to be invested in modes prescribed under section 11(5).

### Global practices

#### UK HMRC

Organizations can apply to HMRC for recognition as a charity for tax purposes, by applying in a specified form (Form ChA1) to HMRC Charities. If HMRC Charities is satisfied that the organization is established for wholly charitable purposes and satisfies the other conditions, it will:

- allocate a charity tax reference number for use on all correspondence and claims

- write and advise the entity of its decision and the entity's charity tax reference
- explain how to find and use the gift aid claim forms

If HMRC Charities is not satisfied that an organization satisfies the conditions to be recognized as a charity for tax purposes, it writes to the person and explains the decision and arranges, if necessary, for a tax record to be created at the appropriate office.

Once HMRC Charities recognizes an organization as a charity for tax purposes, they set up a record so that any repayment claims made can be processed. HMRC also gives a reference number to use on all claims and correspondence. Relief can be claimed only from the date on which HMRC recognizes the organization as being eligible to claim tax reliefs. This date is known as the effective date. Benefits of recognition as a charity for tax purposes are:

- benefit from tax reliefs available to charities, including relief from income tax, capital gains tax or corporation tax
- claim tax repayments, for example on bank interest and gift aid donations

HMRC Charities also has a Helpline which can:

- advice on applying for recognition as a charity for tax and gift aid purposes
- advice on VAT relief for charities
- advice on VAT relief for disabled and older people
- registering as a CASC
- help complete a company or trust tax return
- advice about gift aid, payroll giving and making a repayment claim
- blank ChR1 forms and continuation sheets
- any other charity or CASC tax enquiries

HMRC has dedicated help lines and contacts for authorized agents. In most cases, HMRC can be contacted by using the HMRC online services, by phone and in writing. In some cases, queries can be emailed.



## Chapter VII

# Information and Communication Technology

### Appendix VII.1

#### Expenditure on ICT

Tables 7.1 and 7.2 below show the total ICT expenditure as a percentage of revenue body expenditure, for OECD and non-OECD countries respectively. Viewed over the five-year period 2007-12, the average ICT costs for all OECD country revenue bodies are reported fairly consistently at around 12 per cent of total expenditure on the revenue body; for non-OECD countries the average investment in ICT was much lower at the commencement of this period but there are some notable exceptions to this pattern (e.g. Brazil, Latvia, and Singapore)<sup>19</sup>:

**Table 7A.1: Total ICT expenditure as percentage of total revenue body expenditure – OECD Countries**

Countries	2007	2008	2009	2010	2011
Austria	6.9	12.1	10.4	13.5	15.4
Belgium	7.7	8.4	7.8	6.4	6.1
Canada	8.4	11.4	12.6	11.3	10.5
Chile	5.1	5.5	5.2	5.6	5.7
Czech Rep.	13.4	13.8	13.7	3.4	20.4
Denmark	15.1	14.5	16.2	14.5	14.8
Estonia	n.a.	13.8	11.5	11.5	15.8
Finland	21.4	18.3	20	n.a.	27.5
France	5.3	4.1	4.2	3.6	3.6
Germany	5.3	5.7	6.4	6.5	6.5
Greece	n.a.	n.a.	n.a.	n.a.	n.a.
Hungary	11.7	13.3	12	4.8	5.2
Iceland	n.a.	29.8	30.4	16.4	16.8
Ireland*	11.8	n.a.	n.a.	13.6	10.2

<sup>19</sup> Tax Administration – Comparative Information on OECD and Other Advanced and Emerging Economies, 2013, OECD

<b>Countries</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Israel	n.a.	8.4	8.8	5	5.2
Italy	3.9	5	4.9	4.6	5.2
Japan	8.5	8.1	8.3	8.5	8.6
Korea*	6.4	8	6.3	8.8	7.1
Luxembourg	n.a.	4.9	5.5	2.1	3.6
Mexico	4.5	4.5	3.9	4.1	4.1
Netherlands	24.7	19.1	18.1	16.2	14.2
New Zealand	20	21.4	19.2	24.5	22.5
Norway	19.9	22.4	21	21.9	20.8
Poland	n.a.	5.1	2.8	1.4	1.6
Portugal	1.7	2.5	2.4	1.4	1.2
Slovak Rep.	13.6	n.a.	n.a.	8.6	15.5
Slovenia	7.4	n.a.	n.a.	n.a.	n.a.
Spain*	n.a.	5.3	4.6	5.7	5.6
Sweden	17	17	19.5	16.8	17.7
Switzerland	9.4	8.2	8.9	2	2.6
Turkey	3.8	6.2	3.6	0.8	2.2
United Kingdom	n.a.	23.3	21.2	20.3	22.8
United States	15.1	15.8	14.9	15.4	15
<b>OECD ave. (unw.)</b>	<b>11.1</b>	<b>11.9</b>	<b>11.6</b>	<b>9.5</b>	<b>11</b>

**Table 7A.2: Total ICT expenditure Percentage of Total Revenue Body Expenditure – non-OECD countries**

<b>Countries</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Argentina*	1.5	1.1	0.7	0.6	0.8
Brazil	n.a.	n.a.	n.a.	16.2	15.5
Bulgaria	n.a.	1.9	n.a.	0.6	2.4
China	n.a.	n.a.	n.a.	n.a.	n.a.
Colombia	n.a.	n.a.	n.a.	3.4	3.5
Cyprus	n.a.	n.a.	n.a.	2.3	3
Hong Kong, China	n.a.	n.a.	n.a.	9.1	9.6



Countries	2007	2008	2009	2010	2011
India	n.a.	n.a.	n.a.	7	7.1
Indonesia	n.a.	n.a.	n.a.	4.2	1.5
Latvia	n.a.	9.5	14.8	13.3	9.8
Lithuania	11.9	10.6	6.7	7.3	7.8
Malaysia	4	12	27.5	5.9	2.4
Malta	n.a.	8.3	7.9	0.2	0.2
Romania	n.a.	n.a.	n.a.	n.a.	2.7
Russia	n.a.	6.7	5.7	5.9	6.9
Saudi Arabia	3.4	1.2	6.7	n.a.	n.a.
Singapore	32.3	31.3	33.8	40.4	39.4
South Africa	n.a.	4.7	4.5	n.a.	n.a.

n.a. is not available

*\* Argentina: Ratio to total cost including customs; IT expenditure includes hardware and software equipment as well as all kinds of services and technical assistance on this matter; Luxembourg: Only direct taxes. Spain: IT costs include only capital expenditures and external applications. Administrative costs and wages of the IT Department (2,259 people that develop and manage the whole system) should be added.*

India's ICT expenditure appears much lower than that of OECD as well as non-OECD countries over the period from 2004-05 to 2013-14. Table 7A.3 below gives the year-to-year ICT expenditure in percentage terms. ICT expenditure in the tax department in India is much lower in comparison with other countries.

**Table 7A.3: Country-wise ICT Expenditure as percentage of total expenditure**

Year	2007-08	2008-09	2009-10	2010-11	2011-12
India*	5.8	7.6	6.4	4.6	7.0
Australia	19.5	21.7	22.9	21.7	21.5
Austria	6.9	12.1	10.4	13.5	15.4
Czech Rep	13.4	13.8	13.7	3.4	20.4
Denmark	15.1	14.5	16.2	14.5	14.8
Netherlands	24.7	19.1	18.1	16.2	14.2
New Zealand	20.0	21.4	19.2	24.5	22.5
Norway	19.9	22.4	21.0	21.9	20.8
United States	15.1	15.8	14.9	15.4	15.0
OECD Average	11.1	11.9	11.6	9.5	11.0

Source: OECD

\*Calculated using Demands for Grants data for CBDT and CBEC combined

The OECD survey<sup>20</sup> also furnishes data that appear to show a correlation between enhanced use of ICT and improved performance. Of the 10 revenue bodies reporting ICT expenditure consistently in excess of 15 per cent of total expenditure over the five-year period, just about all perform favourably across a series of performance-related measures as illustrated in Table 7A.4 below.

**Table 7A.4: Service/efficiency/performance indicators**

Country	Overall e-filing rates*	Electronic payment rates*	Average staffing ratio*	Total costs/GDP**	Costs/net revenue**	Debt levels/net revenue**
<b>Australia</b>	√√	√	√√	√	√	√√
<b>Finland</b>	√	n.a.	√√	√	√	√√
<b>Iceland</b>	√√	n.a.	√√	√√	√√	×
<b>Netherlands</b>	√√	√√	×	×	√	√√
<b>New Zealand</b>	√√	√√	√√	√	√	√√
<b>Norway</b>	√√	n.a.	×	√√	√√	√√
<b>Sweden</b>	√	√√	√√	√√	√√	√√
<b>Singapore</b>	√√	√√	√√	√√	√	√√
<b>United Kingdom</b>	√	√√	√	√	√	√√
<b>United States</b>	√	√	√√	√√	√√	√√

\* √√ above average    √ average    × below average    ×× well below average

\*\* √√ very favourable    √ favourable    × unfavourable    ×× very unfavourable

<sup>20</sup>OECD ibid

### Global practices

Brazil, which scores very high on the ICT intensity of its operations, has a captive service provider, SERPRO (a PSU), for its Federal Revenue Ministry (SRF). Yet SRF maintains a strong co-ordinating directorate, namely, COTEC, with its own strength in IT and related skills. The procurement of equipment, etc. by tendering is done by SERPRO.

Leave alone SERPRO, even SRF has a fair amount of autonomy. Although operating within the confines of overall government hiring policy, there is considerable independence and discretion in the policy itself. SRF as well as SERPRO devise their own examinations, reflecting specialization in tax audit/accounting, ICT, and related fields, enabling them to directly hire specialized professionals in the early or midstream stage of their careers.

SERPRO is a public sector SPV that is the primary service provider for the ICT needs of the Ministry of Finance, including SRF. While SERPRO primarily services the needs of SRF, it has contracts with other ministries as well – about 60 per cent of total contracts are with SRF and the other 40 per cent with other ministries.

COTEC has several units that interact with the relevant units of SERPRO. COTEC hires as “business analysts”, officers who have passed examinations on project management, information technology, and COTEC policy. Each unit of COTEC has a complement of business analysts who combine knowledge of information technology with knowledge of business processes and project management. There is no maximum period of stay at COTEC or in any particular unit of COTEC. The staffing of COTEC includes auditors (i.e. tax administrators), business analysts and IT specialists. Thus, even though SERPRO does the software development and maintenance, COTEC has a significant pool of ICT skills and knowledge.

HMRC has chosen to go with a single strategic partner that has overall responsibility for providing its ICT needs under the ASPIRE project, under which the contract has been awarded to Capgemini. HMRC also continues to have a strong in-house ICT team to drive its digital strategy. It is a major player in the government’s efforts to move to a single domain – gov.uk.

In Australian Customs, the agency’s ICT capability moved through different models, from complete outsourcing in 2003 to rebuilding internal capability in 2007–08. Their Cargo Management Re-engineering project for an integrated cargo system had a chequered history and suffered time and cost overruns. A capability review of the Australian Customs and Border Protection Service by the Australian Public Service Commission had this to say:

*Integrated Cargo System and the Customs Managing People and Self Service (COMPASS) were cited as two significant examples of poor management of large projects where delivery was problematic and business expectations were not fully met. The agency would benefit from enhanced working relationships between business owners and ICT staff to first develop an enterprise-wide ICT*

*architecture that reflects the overall agency business strategy before ICT projects can be prioritized and aligned to business needs and capabilities.*

It further notes

*However, a capability gap remains in the agency's ability to determine priorities given the lack of progress in developing and finalising a business enterprise architecture that is owned and driven by the Executive.*

*The recently announced structural changes creating a new Chief Technology Officer (SES 2) and placing information management under the new National Director Intelligence (SES 2) will help address this need.*

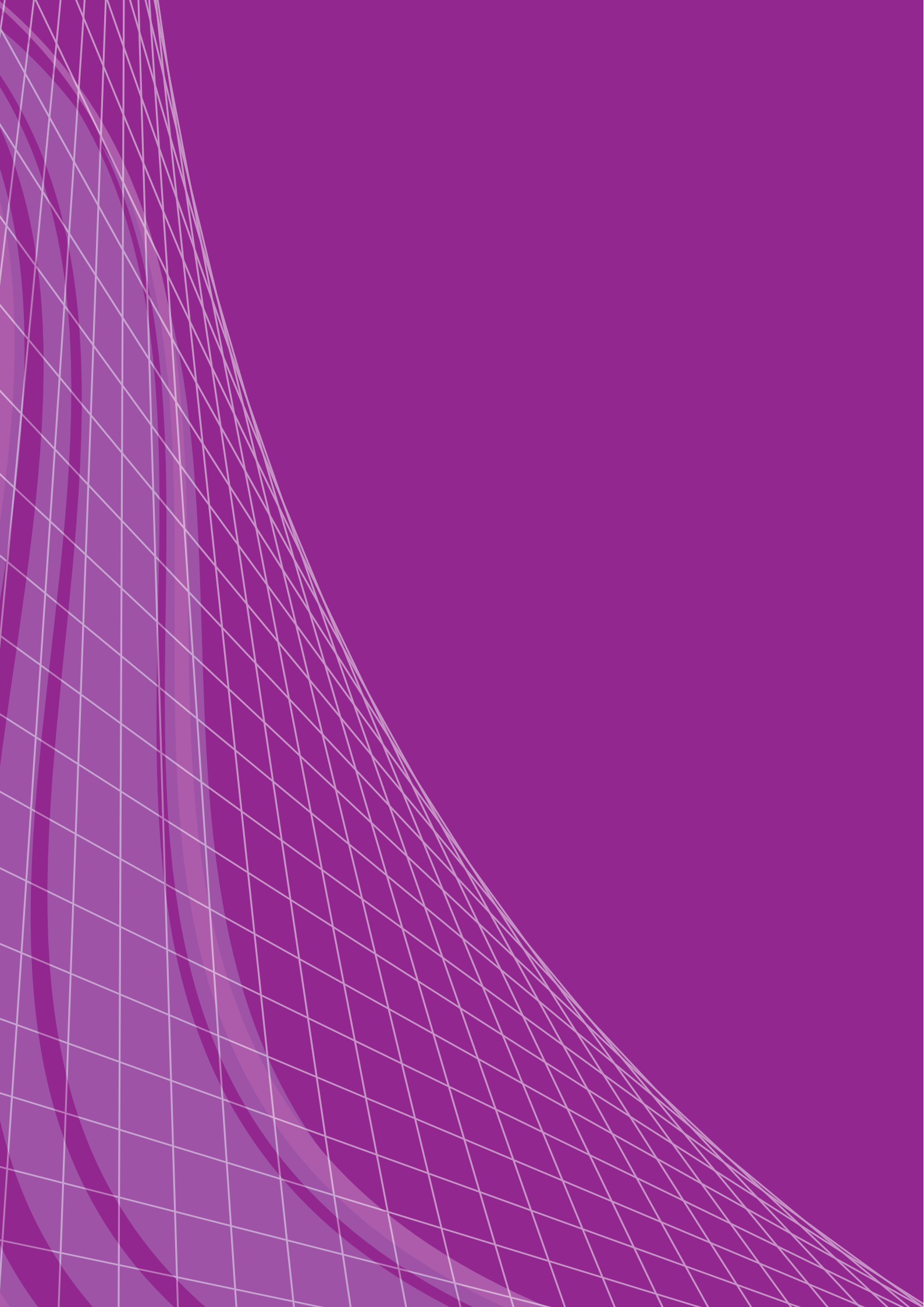
The Australian Taxation Office (ATO) has also been a leader in the extensive use of technology in all areas of operations, including enforcement and taxpayer services. It has invested heavily in data matching capabilities that are progressively maturing. It also uses data analytics extensively in areas such as fraud prevention, business process improvements, debt collections etc.

While almost all countries resort to varied levels of outsourcing, all retain strong in-house ICT capabilities that enable them to manage the ICT services and service providers effectively. Unlike in India, they have the flexibility of laterally inducting personnel with specific specialized skills in this domain and commonly do so. Very often, their ICT wings are headed by ICT professionals with the required background and standing in their field. Tax administrators who work in this area are usually persons who have specialized skills and knowledge and they are allowed to stay in their assignments as long as they are performing and are willing to continue. In other words, the HR policies facilitate growth in specializations.

Many countries have also progressed towards a government wide approach to the delivery of electronic services. The philosophy driving this move is to provide citizens a convenient, consistent and user friendly interface to navigate through the complexity of multiple touch points of government. Tax administrations, which have among largest interfaces with citizens in the developed world, are some of the key participants in these initiatives. In India, given the complexities of our diverse federal structure, a government wide common portal would appear a distant dream. However, providing a common portal across direct and indirect taxes would certainly appear to be a desirable and achievable objective and would go a long way in increasing convenience for taxpayers

# ANNEXURES





### TARC meetings with its stakeholders

Date	Name of the Stakeholder
11 <sup>th</sup> November, 2013	Meetings with CBDT & CBEC
25 <sup>th</sup> November, 2013	Meetings with officers of CBDT & CBEC in Chennai
26 <sup>th</sup> November, 2013	Consultations with industry representatives in Chennai
28 <sup>th</sup> November, 2013	Meetings with DG(HRD), CBDT & CBEC, New Delhi
29 <sup>th</sup> November, 2013	Meeting with DGIT(Admin), CBDT, New Delhi
29 <sup>th</sup> November, 2013	Meeting with Commissioner, DPPR, CBEC, New Delhi
07 <sup>th</sup> January, 2014	Meeting with DG(Sys),CBDT
07 <sup>th</sup> January, 2014	Meeting with DG(Vig),CBDT
09 <sup>th</sup> January, 2014	Meeting with All India Federation of Tax Practitioners(AIFTP)
16 <sup>th</sup> January, 2014	Meeting with DG(Vig) CBEC
21 <sup>st</sup> January, 2014	Meetings with officers of CBDT & CBEC in Mumbai
22 <sup>nd</sup> January, 2014	Consultation with industry representatives in Mumbai
23 <sup>rd</sup> January, 2014	Meetings with officers of CBDT & CBEC in Bengaluru
24 <sup>th</sup> January, 2014	Consultations with industry representatives in Bengaluru
18 <sup>th</sup> February, 2014	Meeting with DG(Sys), CBEC
20 <sup>th</sup> February, 2014	Meetings with officers of CBDT & CBEC in Kolkata
21 <sup>st</sup> February, 2014	Consultations with trade and industry representatives in Kolkata
05 <sup>th</sup> March, 2014	Meeting with Customs, Excise and Service Tax Appellate Tribunal(CESTAT)
06 <sup>th</sup> March, 2014	Meeting with Income Tax Appellate Tribunal (ITAT)
04 <sup>th</sup> April, 2014	Meetings with faculty members and probationers at National Academy of Direct Taxes (NADT), Nagpur

15 <sup>th</sup> April, 2014	Meeting with Federation of Indian Chambers of Commerce and Industry (FICCI)
16 <sup>th</sup> April, 2014	Meeting with Confederation of Indian Industry(CII)
17 <sup>th</sup> April, 2014	Meetings with officers of CBDT & CBEC in Delhi
21 <sup>st</sup> April, 2014	Meeting with Associate Chambers of Commerce and Industry in India (ASSOCHAM)
24 <sup>th</sup> April, 2014	Meetings with faculty members and probationers at National Academy of Customs Excise & Narcotics(NACEN), Faridabad

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### Composition of Focus groups

S. No.	Topic	Focus Group
1	Review the existing organizational structure including, (a) Structure, functional responsibility and accountability of the Board and its Directorates; (b) Field formation with special reference to deployment of workforce commensurate with functional requirements.	Mr. R R Singh, ex I-T Mr. Sunil Chopra, ex I-T Mr. Gautam Ray, ex CE Mr. BB Agarwal, CE Mr. Navneet Manohar, I-T Mr. Rajesh Pande, CE
2	Recommend measures for human resource management including, a) capacity building and deployment; b) responsibility, accountability, vigilance administration, and actions taken and needed.  Methodology for setting up and monitoring key performance indicators; assessment of staff and officers; grading and promotion systems; and structures to promote quality decision-making at high policy levels.	Mr. Sanjay Puri, I-T Mr. B K Jha, I-T Mr. Satya Poddar, E&Y Mr. Nikhil Chaudhary, I-T Mr. Pankaj Jindal, I-T
3	Review the existing use of technology in tax administration and recommend measures for greater use of information technology (IT) for: better governance and for more efficient, effective and transparent tax administration. The group shall also give recommendations for sustainable IT implementation and governance.  Review the existing system of data utilisation through data mining techniques, and carrying out analytics for various usages such as taxpayer service, revenue augmentation, etc, and also suggest measures to augment capacity in intelligence and investigation by collection and collation of data on real time basis including 360 degree profiling of HNWI and other hard-to—tax sectors/taxpayers	Mr. T. Koshy, E&Y Mr. Ravi Agarwal, I-T Ms. Kajal Singh, CE Mr. Mukul Swarup, BMR Mr. Satya Srinivas, CE Mr. R R Singh, ex I-T

S. No.	Topic	Focus Group
4	Review existing mechanisms and recommend measures for improved taxpayer services and taxpayer education programme including mechanism for time bound delivery of services and grievance redressal.	Mr. S. Madhavan, ex-PwC Ms. Neeta Lall Butalia, CE Mr. Himanshu Gupta, CE Mr. RK Bajaj, ex I-T Mr. Navneet Manohar, I-T
5	Strengthening the mechanism of dispute resolution so as to provide certainty, reduce litigation as well as reduce the time involved for resolution of tax dispute and compliance cost.	Ms. Bhavana Doshi, PwC Mr. Mukesh Bhutani, BMR Mr. Rajneesh Kumar, I-T Mr. Shravan Gotru, I-T Mr. Sunil Sinha, CE
6	Recommend measures for streamlining the assessment process including mechanism for providing inputs to assessing officers such as continuous industry wise analysis and benchmarking, and circulars for guidance.	Mr. Himanshu S Sinha, Deloitte Dr. Nagendra Kumar, CE Ms. V Usha, CE Mr. Bipin Sapra, E&Y Mr. K R Sekar, Deloitte

Note: I-T: Income Tax Department

CE: Custom & Central Excise Department

**TARC meetings**

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**Date of the meetings**

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21<sup>st</sup> October, 201322<sup>nd</sup> October, 201311<sup>th</sup> November, 201312<sup>th</sup> November, 201306<sup>th</sup> January, 201417<sup>th</sup> February, 201418<sup>th</sup> February, 201419<sup>th</sup> February, 201405<sup>th</sup> March, 201406<sup>th</sup> March, 201415<sup>th</sup> April, 201416<sup>th</sup> April, 201421<sup>st</sup> April, 201422<sup>nd</sup> April, 201423<sup>rd</sup> April, 201424<sup>th</sup> April, 201425<sup>th</sup> April, 201405<sup>th</sup> May, 201406<sup>th</sup> May, 201407<sup>th</sup> May, 201408<sup>th</sup> May, 201428<sup>th</sup> May, 201429<sup>th</sup> May, 2014

## Gazette Notification constituting TARC

MINISTRY OF FINANCE  
(Department of Revenue)  
**NOTIFICATION**

New Delhi, the 21<sup>st</sup> August, 2013

**F.No.A.50050/47/2013-Ad.I.** –The Government in its Budget, 2013-14, had, inter-alia, announced the setting up of a Tax Administration Reform Commission (TARC) with a view to reviewing the application of Tax Policies and Tax Laws in the context of global best practices and recommend measures for reforms required in Tax Administration to enhance its effectiveness and efficiency. Accordingly, it has been decided to constitute the Tax Administration Reform Commission with the following composition:

i)	Dr. Parthasarathi Shome	Chairman
ii)	Shri Y. G. Parande	Full-time Members
iii)	Ms. Sunita Kaila	
iv)	Shri M. K. Zutshi	Part-time Members
v)	Shri S.S.N. Moorthy	
vi)	Shri M.R. Diwakar	
vii)	Shri S. Mahalingam	

2. The Commission will have a fixed tenure of 18 months from the date of its constitution and work as an advisory body to the Ministry of Finance. The Commission will give its first set of recommendations with six months of its constitution and thereafter submit periodic reports after every three months.

3. The Terms of Reference of the Commission will be as follows:-

- a) To review the existing mechanism and recommend appropriate organizational structure for tax governance with special reference to deployment of workforce commensurate with functional requirements, capacity building, vigilance administration, responsibility of human resources, key performance indicators, assessment, grading and promotion systems, and structures to promote quality decision making at the highest policy levels.

- b) To review the existing business processes of tax governance including the use of information and communication technology and recommend measures tax governance best suited to Indian context.
- c) To review the existing mechanism of dispute resolution, covering time and compliance cost and recommend measures for strengthening the same. This includes domestic and international taxation.
- d) To review the existing mechanism and recommend capacity building measures for preparing impact assessment statements on taxpayers compliance cost of new policy and administrative measures of the tax Departments.
- e) To review the existing mechanism and recommend measures for deepening and widening of tax base and taxpayer base.
- f) To review the existing mechanism and recommend a system to enforce better tax compliance – by size, segment and nature of taxes and taxpayers, that should cover methods to encourage voluntary tax compliance.
- g) To review existing mechanism and recommend measures for improved taxpayer services and taxpayers education programme. This includes mechanism for grievance redressal, simplified and timely disbursement of duty drawback, export incentives, rectification procedures and refunds etc.
- h) To review the existing mechanism and recommend measures for “Capacity building” in emerging areas of Customs administration relating to Border Control, National Security, International Data Exchange and securing of supply chains.
- i) To review the existing mechanism and recommend measures for strengthening of Database and inter-agency information sharing, not only between Central Board of Direct Taxes (CBDT) and Central Board of Excise and Customs (CBEC) but also with the banking and financial sector, Central Economic Intelligence Bureau (CEIB), Financial Intelligence Unit (FIU), Enforcement Directorate etc. and use of tools for utilization of such information to ensure compliance.
- j) To review the existing mechanism and recommend appropriate means including staff resources for forecasting, analyzing and monitoring of revenue targets.
- k) To review the existing policy and recommend measures for research inputs to tax governance.
- l) To review the existing mechanism and recommend measures to enhance predictive analysis to detect and prevent tax/economic offences.
- m) Any other issue which the government may specify during the tenure of the Commission.

4. The Commission will be supported by a Secretariat consisting of a Secretary at the level of Joint Secretary to the Government of India and other officials and support staff. They will be appointed on deputation/contract basis.
5. The Commission will be provided information and quantitative data of Central Board of Direct Taxes/Central Board of Excise and Customs to enable it to do statistical analysis for making recommendations.
6. The Headquarters of the Commission will be in Delhi.

M. L. MEENA  
Joint Secretary









