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ARTICLES ON GOODS AND SERVICES TAX (GST) AUTHORED BY

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Reward compliance, reform GST

Policies that differentiate law-abiding citizens from black sheep must form the fulcrum of systemic improvement efforts

This story was narrated by a friend. He was frustrated by the 'every day' call he was getting from a government team to enquire about monthly GST payments and filing of GST returns. First, it used to be for the overdue return. Then they started following up on his 'not yet due' return, ie, the current month's return. While on the one side, he was pleasantly surprised that the revenue team has become pro-active, on the other, he realised that he was in trouble because he was behind in his GST payments by two months and so was unable to file GST returns. Of course, as provided in the GST Act, he must pay 18% interest for late filing.

Now comes the interesting part. Why was he not current?

Two reasons:

- The Service Tax Act, the precursor to GST, was amended in July 2011 whereby tax will be due based on invoicing. Earlier, it was due on collection. So, he was now supposed to fund GST, which is a huge burden for SMEs like his because customers don't pay on time.
- The bigger cause is the government. His I-T refund had grown to over Rs 2 crore and it was overdue for 3 years. He was unable to get through to the Central I-T Processing Unit at Bengaluru and the contact centre was giving the same mechanical reply 'refund is in process' for the last 12 months

Strange System

The pity is that the government has no penalty for delaying tax refund because they pay interest at a nominal 6% (while GST and even the I-T department charges 18% when I delay). This is money-making by the government – first don't pay on time and force your tax payers to delay your payment, and you make money due to interest differential.

Why should one suffer due to government inaction? The icing on the cake is – he gets threatening calls from tax authorities that if he does not pay, they will freeze his bank accounts!

There is a theory prevalent among senior government officers that most citizens will break the law if they can get away with it and that they are the only party standing between the crooks and public interest. This version is not entirely true. There are many citizens who will follow the rules partly because they are scared of the consequences and partly because of their parental upbringing. Clearly this number is dwindling. Why? Because these citizens see law-breakers are getting away due to connections and bribe, but they are penalised. We must reverse this trend immediately.

Punishing Honest

In the pre-GST era, State governments used to collect VAT and excise on which they had greater control due to past experience. Earlier, service tax was a Central revenue collected by the Centre and shared with the State government. Suddenly the GST era changed all that.

Service tax assessments have become very complicated due to State GST and Central GST. So the State government officials are unable to forecast the collections accurately and have decided to chase those they know are large tax payers, ie, compliant tax payers. So everyone is chasing the same set of people. Segregation and grading may help in chasing the people who are the real defaulters. All this call for corrective action.

Corrective Action

Segregate complaint citizens: The first step is to grade the tax payers or contributors to any government revenue based on their compliance track record and treat them differently based on their rating. Today, even honest government officials refuse to help the compliant because they are scared that they may be victimised later.

Compliance Rating must: We need compliance rating for I-T, GST, property tax and all revenue departments. Even banks and financial institutions must grade their customers on compliance record. Both Central and State governments must do it. But is it possible?

International Experience

The Organization for Economic Cooperation and Development (OECD) in 2004 categorised tax payer attitudes into disengaged, resistors, triers and supporters and devised a compliance strategy for each. (see infographics)

The same document suggests the following treatment strategies for tax administrations:

i. Compliance programmes need to provide a calibrated response to compliance behaviour — making it easy for those who want to comply and applying credible enforcement to those who don't

ii. Acting at all times with integrity and in a manner perceived to be fair and reasonable will encourage voluntary compliance

iii. Treatment needs to address the underlying drivers of compliance behaviour

iv. Enhanced capacity to influence taxpayer compliance behaviour often comes through strategic alliances and partnerships with other agencies, industry bodies and tax advisers

RIGHT TIME

Because of two reasons. This is the Budget time where policy announcements are made. Second, this is the second term of Narendra Modi, who wants to change the system fundamentally and has a clear mandate to do it.

Section 149 of the Central GST Act 2017 (No 12) has a special provision for rating tax compliance. This section, which is yet to be implemented, states:

1. Every registered person may be assigned a GST compliance rating score by the government based on his record of compliance with this Act.

2. Rating score may be determined on the basis of such parameters as may be prescribed

3. Rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed

MAKING IT BETTER

- Reduce delayed payment interest rate in GST and I-T to 12% per annum and increase tax refund interest rates to 12%. First rule of tax compliance is to have the same set of rules for both the tax payer and the government
- Delink filing of GST returns from paying GST taxes. Taxpayers, unable to pay their dues, can pay later with applicable interest. But timely filing will mean acknowledgement of dues and help in the tracking of GST transactions
- Set a timeline for implementing Section 149 of the Central GST Act
- Issue rules relating to the parameters of the rating in the Budget along with the benefits of high rating. The benefits should include incentives and reliefs for the compliant
- As referred in the OECD paper, the approach of tax authorities should be to 'make it easy' and 'assist to comply' for the top two categories of persons
- Implement compliance rating in I-T too
- Customers with high compliance rating must be given a long rope when they have genuine difficulties and the senior officials must be empowered to make exceptions for them. Government officials should be authorised by statute to differentiate taxpayers, based on the rating. This is critical to grant relief without fear of victimisation
- Enterprises with high compliance scores should be allowed to use this information to their advantage while seeking loans and bidding for contracts
- Citizens should be encouraged to carry their rating on their sleeves. Imagine that you are the most compliant citizen and you are invited to the Republic Day parade alongside the foreign dignitaries!

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Exempt skills training from GST

Treating it on a par with school or college education and not charging GST will attract youngsters

Prime Minister Narendra Modi while launching the 'Skill India Mission' on July 15, 2015, said, "If China is like a manufacturing factory of the world, India should become the 'human resource capital' of the world. That should be our target…" He also said that India has the potential to provide a workforce of 40-50 million to the world if the capabilities of the countrymen are honed through proper training in skills.

The Centre has announced a mission of skilling over 400 million people by 2022. Assuming an investment of Rs 15,000 per person, Rs 6 lakh crore would be required for it. The demand for skilled labour is estimated to be over 128 million between 2017 and 2022 in 34 sectors across industries, according to the Skill Development and Entrepreneurship Ministry's annual report for 2017-18. Over 18 million youth enter the workforce every year, including 6 million who exit agriculture in search of gainful employment. Clearly, skilling is a national priority.

There is a need to treat skill education on a par with school or college education for GST purposes. The rationale for concessional or nil GST for all forms of education is the same — it must be accessible and affordable to every citizen. Funding for skills training can be put into four categories based on who is paying – government, employer, student or through CSR.

1.Government-funded Skilling

The GoI has been funding skill training since 1948. But this grew rapidly after Modi's announcement of Skill India Mission. PM Kaushal Vikas Yojana was approved on March 20, 2015, with an outlay of Rs 1,500 crore. It was expanded to Rs 12,000 crore for 2016-2020, to impart skill training to one crore people over four years to be spent through the National Skill Development Corporation (NSDC). Apart from the Skills Ministry, 17 more Ministries were given budgets for vocational training. In the last five years, heavy investments have been made, and various programmes launched. The total sector outlay for 2017-18 was pegged at Rs 17,273 crore.

But the government-funded schemes had one fatal flaw. The two key stakeholders — student and employer — who employed the trainee had no skin in the game. The schemes' cumbersome checks and balances killed all incentives for innovation. The government cannot find the Rs 6-lakh-crore required to fund skilling. So these programmes cannot be sustained in the long-term and other funding models must be encouraged.

2. Employer-funded Skilling

Employers, especially in the Banking Financial Services and Insurance sector, skill and hire fresh graduates under their HR budgets. Since large employers hire mainly graduates, this funding model has been limited.

3. Student-paid Skilling

Millions of students in the IT industry pay for their own training. In fact, a large number of working professionals from the IT industry have to be upskilled in 'future skills' like Machine Learning, Artificial Intelligence and Data science in the next few years and these costs upwards of Rs 1 lakh per person. Many students will seek educational loans and, hence, this model will work only if the courses are aspirational and the salary after training is attractive to help them pay back the loans. But this is the best model in the long-term because the key beneficiary knows what is best for her/him.

4. CSR-funded Skilling

Companies must spend at least 2% of the net profit on CSR. CSR activities listed in Schedule VII of the Companies Act, 2013, include skill education and employment and livelihood support activities. The cumulative spending in the four years of FY15-18 has crossed Rs 50,000 crore, and includes Rs 34,000 crore by listed entities, according to a Crisil report. But the unspent amount is higher at Rs 60,000 crore during the same period underlining the need to improve the framework, says the report. This model has a lot of potential since the money available under CSR is bigger than government-funding

Sustainable Skill Model

In any country, school education and skilling are mostly funded by the government. This is because they are the foundation for human capital development. In a few countries like Singapore, the government even funds upskilling of working professionals. But our problem is the huge numbers to be skilled requiring Rs 6 lakh crore. How can India find this when we have to spend billions of dollars on defence, education, welfare and healthcare? So, any sustainable model for skill finding has to be a balance of all the four types of funding.

Current status of GST on skills

Government-funded programmes: Skill training undertaken by NSDC partners and implemented by NSDC under the Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY) skill training programme are exempted under GST. But there are quite a few restrictions. First, only training partners of NSDC are exempted. Second, training should be approved and implemented by NSDC. Further, even if the government issues skill contracts without payment of GST, the GST on the inputs cannot be set off and hence training partners end up absorbing the GST on inputs.

Employer-funded programmes: These attract 18% GST but input credit is available. GST can also be set off against GST charged by employers to their customers.

Student-funded programmes: Educational services provided by an educational institution – pre-school to higher education – are exempt from GST provided it leads to a qualification recognised by law or an authorised vocational course. Interestingly, a few key inputs needed by educational institutions like catering, security, housekeeping, entrance test administration are also exempt from GST so that the input credit is minimised — because the input credit cannot be set off against nil GST rate on the output.

Unfortunately, training programmes, camps, yoga programmes and other events are considered a commercial activity and are liable for GST. Hence, student-paid models for skilling will be treated as training and subjected to a GST levy of 18% unless the course is approved under the National Skills Qualification Framework and is certified.

CSR-funded programmes: CSR payments are considered as grants and as such are exempt from GST. CSR grants can be given to only non-profit organisations with a three-year track record. Since skill training must result in placements in the private sector, many of the skill training partners are 'for-profit' entities as per the design of NSDC and hence cannot receive CSR grants directly. So many of the CSR contracts are treated as works (service) contracts attracting 18% GST. As per the works contract notification, four CSR services are specially exempted from GST, but skill training is not one of the four. Hence CSR-funded projects end up with 18% GST even though nil rate is applicable.

What's Needed

Skills education needs huge funding and the government needs to encourage all the four modes of funding. Skill education should easily be accessible at the lowest cost. So skill training should be treated differently from commercial training and must be exempted from the 18% GST. This will help skill trainees from the lower middle-class who self-fund. CSR funding can save the 18% GST, which will enable more beneficiaries. Inputs for government-funded skilling must be exempted from GST as in the case of school education. The alternative is to reduce the GST to 5% for all the four categories of skill funding to make the compliance easy. This will also allow claim of Inputs GST Credit for government-sponsored schemes.

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Consider GST amnesty for the upright

Confusion in GST laws, frequent changes and cumbersome processes make this necessary for genuine players

The Goods and Services Tax (GST) is an indirect tax (or consumption tax) on the supply of goods and services. It is a comprehensive, multi-stage, destination-based tax–comprehensive as it has subsumed almost all indirect taxes, multi-staged as it is imposed at every step in the production process (but is refunded to all parties at the various stages of production except the final consumer) and destination-based as it is collected from point of consumption and not of origin like previous taxes.

The GST regime, which took effect on July 1, 2017, is a welcome change for the economy in the long-term. In the short-term, however, it has created huge challenges such as confusion in the GST laws and problems in the portal. The first filing of annual returns for July 2017 to March 2018 for audit and assessment is due on June 30, 2019.

There is a need to not penalise genuine players and use the first year audit as a learning opportunity for all. The government should consider amnesty for genuine players with only procedural defaults.

Why Amnesty

With just 10 months between the enactment and the effective date, there was little time for businesses to understand nuances. There is a GST Council, consisting of States' and Central representatives to decide the GST rates through consensus –a huge ask in our federal structure. Industries faced challenges ranging from understanding concepts, managing complex documentation, unclear treatment of several common transactions to high rates of certain goods and services.

A major area of concern is the functioning of the compliance portal. Initially, there were dozens of detailed forms to be filled every month. There were glitches in the software and its processing capacity, which resulted in frequent deferment of due dates of returns in the initial months.

The GST regime has three taxes – IGST, CGST and State GST. These have major implications for the service industry requiring them to set up multiple GST registrations in each State. There were five GST slabs with confusing exemptions. The input credit was expanded from direct inputs to all inputs.

The GST Council reduced the GST rate for some items like tractor parts from 28% to 18% and fertilizer from 12% to 5%. The initial cut was for enterprises with a turnover of Rs 20 lakh per year, which on being too low was revised to Rs 40 lakh per year. Many small enterprises didn't have adequate computerised systems to match the strict data needs of the GST regime. Moreover, the procedure was so complex that in just the first 10 months, there were 357 amendments and as of May 1, 2019, this has reached 627. An unprecedented state of flux has prevailed.

Genuine Vs Frauds

Audit in indirect taxes plays the same role as assessment in Income Tax. Deficiencies are pointed out in an audit report and assessees are given an opportunity to comply, failing which a chargesheet is filed.

So for the assessees, it is an opportunity to get clarity on government policies and correct their internal systems for compliance; for the GST department, it's a crucial procedure to verify the self- assessment done by the assessee, to identify the gaps in understanding the rules between the assessee and the department, to identify wilful defaulters to ensure their compliance and provide an opportunity to the assessees to correct their mistakes.

In any compliance audit, we come across three types of players:

• Mostly large companies that try to be 100%compliant because they account for everything in white money and want to be on the right side of law. They rarely default except when there is a genuine difference of interpretation.

• Many small and medium size companies that try to be 100% legal but are deficient on complying with procedures due to limited understanding. When procedures are cumbersome or changing continuously, they are lost and need guidance. These players account all their GST transactions in their books on time but miss out on their interpretations of input credit or supporting documents required to claim input credit. They have no intention to commit fraud. They correct their accounting and GST systems as soon as they realise their omissions from audit reports.

• The third are wilful defaulters. They do fraud transactions, create fictitious entries to align GST and Income Tax records to exploit the tax system. They are habitual defaulters and are on tax department radar. A review of past audit reports will easily identify them. The leadership of these companies attempt to cut deals with the department.

Dealing with Defaulters

The first two types are genuine long-term players. They would have accounted for the GST transaction in their accounting books and the input credit transactions would have been genuine.

Often the tax department treats the second and third type of players similarly, mostly in the following two ways. First make a deal — force the defaulter to admit default in part and let go of the balance default. The second approach is to threaten to treat them as habitual wilful defaulters with severe penalties.

The department heads, who come with IRS pedigree, many a time refuse to differentiate between wilful and non-wilful defaulters. It is a tragedy that the department supports wilful defaulters subject to making deals but does not help genuine players. So, the law abiding assessees pay the price while others get away. This must be corrected.

All the three types of players also delay their GST remittances due to the cash crunch. GST has to be paid immediately whereas the payment may be received over a period of 4-6months.

Helping Hand

• Treat defaults as genuine (unless proven otherwise) and hence defaulters as genuine

• Give opportunity to correct the mistakes without penalty

• Delayed payments and under payments are due to the state of flux. Waive interest on delayed payments or reduce to 6 % on a par with I-Trefund interest paid by government

• Provide 12-month instalment payment for delayed interest payment without penalties

• Based on the findings across multiple audits, identify common mistakes, issue circulars clarifying errors, initiate training for the assessee

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