

Issues taken up by Ms. Naina Lal Kidwai, President of FICCI with the Finance Minister Mr. P.Chidambaram during Pre Budget Consultations with the Trade and Industry Sector on January 16, 2013

Implement recommendations of key Committees

The Draft Reports of the Dr. Parthasarathi Shome Committee on GAAR and on retrospective amendment to Section 9 of the Income Tax Act have been received positively by the taxpaying community. It is understood that the Committee set up to examine taxation of IT / ITES sectors has also submitted its report. Government has announced its decisions on the recommendations made by the Expert Committee headed by Dr Shome on GAAR. FICCI recommends that other reports of the Committees are also placed in public domain and recommendations are acted upon.

Tax Rates

For the sake of a stable tax regime, FICCI has proposed to the Finance Minister that the existing rate of Corporate Tax should be continued unchanged.

For personal taxes, FICCI has recommended that the maximum rate of 30% be made applicable for an income above Rs.20 lakhs (as against the existing threshold of Rs. 10 lakhs).

A higher rate of tax on high income group taxpayers is uncalled for as this would discourage entrepreneurship. It could lead to professionals relocating to low tax domiciles such as Singapore, Dubai or London. Moreover, it is not the time to further damage the confidence of the investor community which has already been shaken badly on account of last year's tax amendments. The Government should not fuel the black economy by increasing tax rates.

With a view to provide a minimal level of protection to the domestic industry which suffers from cost disadvantages on account of higher local taxes and a higher cost of financing, the general basic customs duty rates on imported goods should continue at existing level.

Rates of Excise Duty and Service Tax have been raised last year to 12%. FICCI has recommended that these rates be left undisturbed till the introduction of GST.

Avoidance of Inheritance Tax

A substantial portion of the resources generated in the post-liberalization era is in listed entities which have helped the progress of the country. To impose a tax which could potentially require a promoter to dilute his shareholding in a company merely to pay incidence of Inheritance Tax is uncalled for. Moreover, such a tax could be onerous for illiquid assets e.g. self-occupied housing where the value of the property may have steeply escalated. The levy penalizes savings and investments and discourages capital formation. It

would also encourage tax avoidance through the creation of trusts and shell companies to which the assets can be transferred.

FICCI strongly opposes any imposition of Inheritance Tax. Such a tax should not, if at all, be imposed in a hurry and without extensive debate which must necessarily encompass the societal ramifications as these are likely to be significant.

Unaccounted Money

FICCI reiterated its recommendation that India may enter into an agreement with countries like Switzerland on the lines of similar treaties entered into by UK with Switzerland as a measure to expand the tax base and dealing with unaccounted money lying overseas.

Remove anomalies in the New Service Tax regime

A comprehensive service tax based on the concept of a Negative List of services has been introduced with effect from 1st July, 2012. With the introduction of negative list, taxation of services has become universal. Same principles should be followed for credit scheme as well. ALL input side tax costs forming part of the price of the final output good/service should be allowed as credit

Goods and Services Tax

GST is going to be a landmark reform in the field of indirect taxation and would have a beneficial impact on the economy of the country. Government of India should reach out to State Governments and come out with a clear plan of implementation and timing at the earliest. It is requested that the draft legislative framework should be placed in the public domain so that industry can study the impact and gear up for a smooth transition to the new system of taxation.

Recovery of Confirmed Demands

CBEC has issued a Circular on 1st January, 2013, directing its field officers to enforce recovery of duties / taxes held to be payable by the department in adjudication but against which appeals have been filed, if the appellant does not obtain a stay on the recovery from the appropriate forum within 30 days of filing of the appeal.

This Circular is deemed to be unjust and unfair to the assesseees since the appellants cannot dictate the appellate authority to dispose of the stay petition within a specified time period. Many a times there are vacancies in the posts of Commissioner (Appeals) and Members of Tribunal and the cases are not heard at all. In the circumstances, the onus of getting the stay petition processed cannot be placed on the assessee.

The said Circular needs to be withdrawn immediately.

It is also a matter of concern that the circular was issued without being placed in public domain and without consultations with the stakeholders.

Measures to improve tax administration and the Dispute Resolution Mechanism

It is time that Government shifts its focus to tax administration and take steps to streamline the Dispute Resolution Mechanism considering the rising trend of litigation.

For preparing this year's Pre-Budget Memorandum FICCI had specifically sought views of its constituents on these subjects and based on the deliberations of the FICCI's Taxation Committee, we have given detailed suggestions in the memorandum submitted to the Government. Some of the proposals are as follows:-

Indirect Taxes

- Timely adjudication of matters - strict timelines should be prescribed and enforced for adjudication of Show Cause Notices. If a show cause notice is not decided within say 3 years for reasons not attributable to the noticee, the proceedings should be deemed to have never been initiated. The period of 3 years should progressively be reduced to 1 year over a period of time.
- In disputes which have arisen following objections by the audit teams of the Comptroller and Auditor General (CAG), the show cause notices are issued but not adjudicated till the department settles the issue with the C&AG. Such show cause notices should be adjudicated by the department without waiting for a resolution of the issue with the C&AG so that at least the assessee can move forward with the appeal process and have the liability settled one way or the other.

Direct Taxes

- To provide suitable time limits within the law for disposal of withholding tax certificates, rectification applications, orders giving effect to the decisions of the appellate authorities, with in-built accountability and strict adherence.
- No penalty proceedings for concealment of income should be initiated on additions to income on account of a question of law.

Further suggestions for streamlining of tax administration and measures to reduce litigation are given in the annexure.

ANNEXURE

Suggestions for improving the Dispute Resolution Mechanism

Indirect Taxes

- Timely adjudication of matters - strict timelines should be prescribed and enforced for adjudication of Show Cause Notices. If a show cause notice is not decided within say 3 years for reasons not attributable to the noticee, the proceedings should be deemed to have never been initiated. The period of 3 years should progressively be reduced to 1 year over a period of time.
- Adjudication Officers should be disengaged from the duties of revenue collection to improve fairness in decision making.
- In disputes which have arisen following objections by the audit teams of the Comptroller and Auditor General (CAG), the show cause notices are issued but not adjudicated till the department settles the issue with the C&AG. Such show cause notices should be adjudicated by the department without waiting for a resolution of the issue with the C&AG so that at

least the assessee can move forward with the appeal process and have the liability settled one way or the other.

- The Revenue department has achieved substantial progress in setting up highly successful automated systems both for processing income tax returns as also import / export transactions on real time basis. The process of adjudication of disputes also needs to be automated so that it is possible to monitor the progress of disposal of adjudications/appeals.
- Advance Ruling mechanism - Currently in most cases applications for Rulings can be made only if there is a joint venture with a non-resident. Option should be available to seek advance rulings by all entities (i.e. including residents) and for ongoing transactions too.
- Streamlining of Instructions/Circulars by issue of Annual Master Circulars - Several circulars/instructions issued by Ministry of Finance should be reviewed annually. Similar to the practice followed by Reserve Bank of India (RBI) , at the end of each financial year a master circular should be issued replacing all previous year's circulars/ instructions and summarizing the clarifications provided in such circulars.

Direct Taxes

- Formation of a conciliation bench which can be approached by a taxpayer to help 'settle' tax disputes since presently the issue takes 10-15 years to settle till it is finally decided by the Apex Court.
- Constitution of cells manned by specialists to monitor appeals filed by tax authorities which should recommend for suo-moto withdrawal of cases which are covered by decisions of tribunals and courts and which are found without merit.
- Lay down position papers and guidelines on various contentious issues after consultation with the stakeholders. A central pool of specialists be put in place for guidance on assessment to avoid unreasonable disallowances, demand of roving queries and data from the taxpayer
- Dispute resolution panel to comprise of independent members.
- To provide suitable time limits within the law for disposal of withholding tax certificates, rectification applications, orders giving effect to the decisions of the appellate authorities, with in-built accountability and strict adherence.
- No penalty proceedings for concealment of income should be initiated on additions to income on account of a question of law.

FICCI Media Division