

# ACTION LEARNING PROJECT

## ROLE OF TRANSPARENCY AND VIGILANCE MECHANISMIN EFFICIENT INDIRECT TAX ADMINISTRATION



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## **INTRODUCTION**

The topic dwells on two different aspects of management of tax administration viz transparency and the other vigilance. While the former generally relates to the dealings with the client or tax payer, the latter generally relates to the aspects of disciplining the officers who deviate from the conduct expected of them in their personal and professional capacity, which may or may not involve bribery. The paper attempts to examine these definitions and if possible present a different perspective to these much used terms in the administration. It may be added that the analysis is as much applicable to any administration which deals with a large clientele from a position of advantage (deliberately refraining from using the word authority, as organizations can have advantage even without formal authority) as to the indirect tax administration.

2. For starters, we are detailing below the existing situation which adopts the current sense of these expressions and the distortions and deficiencies that have crept in even within this sense.

3. It is instructive to approach the topic of the transparency in tax administration from the point of view of the person who is at the receiving end of the services provided by the Department i.e. taxpayer. His normal expectation from the tax administration is:

- Customer centric approach
- Simple and easy to understand law
- Clearly laid down procedures
- Friendly Digital Platform to fulfil legal obligations and interaction with Tax Administration
- Quick and timely disposal of applications/ requests/permissions and claims
- Quick and timely response to taxpayer queries
- Quick and fair resolution of disputes
- Quick redress of grievances

4. Experience suggests that the disappointment of the tax payer with the Department in this regard normally emanates from the following factors:

- Absence of reason for delay in process
- Non availability of Grievance Redress Mechanism with legal backing in case of deficiency in Taxpayer services *vis a vis* standards
- Extreme risk aversion approach of Departmental officers in resolution of disputes
- Non availability of complete information on law and procedures at one place i.e. Department's National or local website in simple and narrative manner
- Lack of access to the status of Taxpayer's business document in process

5. The approach of the department with regard to the vigilance mechanism which is the second limb of the efficient tax administration is broadly guided by the CCS Conduct and Discipline Rules, the instructions of the Department of Personnel, the instructions of the CVC etc. The general approach in this regard is divided into preventive and punitive aspects.

6. Preventive vigilance:

- focuses on measures that deter the occurrence of moral lapses or unacceptable conduct
- operates at the systemic level by reducing opportunities for corruption and misbehaviour
- focuses on aspects like simplification of procedures, transparency, accountability, reducing discretion, and infusion of technology

Punitive Vigilance:

- focuses on detection and punishment for breaches of conduct rules and prosecution of offending civil servants in egregious cases, such as those involving corruption.

## **INDIAN CONTEXT**

7. The Customs, Central Excise and Service Tax Department in its Vision, Mission and Commitments under Citizen's Charter has committed to provide taxpayer friendly and efficient tax administration; creating a climate for voluntary compliance by providing information and guidance; make procedures and transactions as transparent as possible; carry out tasks with integrity and judiciousness It has also set Standards for delivery of various tax payer services.

8. As a responsive and taxpayer-friendly department, the following mechanism is put in place:

- Prompt acknowledgement of complaints within 48 hours of receipt and attempt to provide final replies within 30 working days of their receipt.
- In case, the complaint is not attended to, within the prescribed time norms or the remedy offered is not satisfactory, an appeal can be filed with the jurisdictional Commissioner / Chief Commissioner.
- Common complaints and grievances can also be taken up with the Public Grievance Committee, Permanent Trade Facilitation Committee, Regional Advisory Committee and in the Open House

9. The Tax Administration Reform Commission (TARC) constituted with a view 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, in its First Report have extensively commented on the wide gap in standards set in Citizen's Charter and the actual practice in taxpayer services. With regard to the specific aspect of vigilance and personnel management of the CBEC and CBDT it has been observed as in the executive summary is as follows;

Quote

**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 connected 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 s/he 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

Unquote

10. With regard to the role of transparency, the factors responsible for such gap between the promise of the Citizen Charter and performance as identified by them are:

- Cumbersome and unstandardized procedures
- Lack of awareness of procedures not only in taxpayers but also in tax administrators
- Inadequate staff (HR Management issue)
- No regular monitoring of Performance Management System (PMS) at supervisory levels
- Non availability of PMS for public scrutiny
- Extreme risk aversion in tax administrators due to vigilance fear
- Ulterior motives in certain cases

## **INTERNATIONAL PERSPECTIVE**

11. Three tax systems and their efforts at reform were studied – SUNAT of Peru, IRS of US and VAT system of Canada to understand the approach of the tax administrations of other countries in dealing with the twin aspects of transparency and vigilance in efficient tax administration.

12. In the late '80s Peru was in serious financial crisis with tax collections declining as a percentage of the GDP. Further, the tax administration was beset with number of problems. Among the problems the General Department of Contributions as the revenue collecting agency was known were political recruitment of staff, lack of training and consequent unprofessional approach, lack of professional leadership, narrow tax base and lack of proper IT infrastructure. In 1988 the GDC was rechristened as National Tax Administration Superintendency (SUNAT) and given financial autonomy. In 1991, independent professional leadership from the Central Bank was brought up headed by Manuel Estella Belevidis and Superintendent Arias. They pruned the bloated staff, initiated a recruitment program which was merit based and professional. They also expanded the tax base by bringing in informal sectors of economy which was operating outside the tax system. As a consequence, the number of registrations swelled, substantial amounts of goods were confiscated and taxes recovered. The organization was also de-centralized to ensure efficiency in tax collections. Customer service was improved by creating one stop shops. The SUNAT achieved popularity which was next only to the Catholic Church. However, conflicts with the Ministry and the lack of political backing for the successors of Estella resulted finally in the sacking of one of the successor Revella when he publicly opposed the program of the Ministry for payment of tax arrears in instalments.

13. In the case of the IRS of the US which is a direct tax collection agency, reforms were initiated in the light of severe public dissatisfaction with the agency. The reforms were structural, professional and attitudinal. It started by changing the top by bringing a professional from the private sector. He found that the reason for the dissatisfaction among the tax payers essentially related to the complexity of the organization, the lack of a customer centric approach, lack of dissemination of the obligations of the tax payers etc. He changed the whole structure, made it accountable. He also initiated several programs where customer is the centre of the focus and not confiscations and cases. He also introduced large scale information technology changes, introduced payment by e-payment methods and reduced the hostile interface between the officers and the public. He also ensured that anyone found to be indulging in any corrupt practices was punished immediately and promptly. The result was an efficient, transparent and tax payer friendly organization.

14. The Canadian experience relates to the transition from a manufacture tax to a general GST system where all the transactions of sale were levied to tax. The transition was well prepared for by a program of outreach by the department, where the changes were

explained to the public at large by various means like personal contact, public media etc. The organization was also converted from being a part of the government to that of an agency of collection. The agency signed a MOU with the government which specified various duties and obligations. A different personnel policy was followed where the employees would not be transferred but were shifted only on demand by them. The employees were also would have to declare every year that there is no conflict of interest between the work they perform and their private occupations. Any violation of the declarations was treated with immediate retribution. And where the officers were found to be conspiring with the tax payers they were prosecuted.

## **LESSONS LEARNT**

15. The lessons learnt from the international experiences of reforms in tax administrations as relevant to the current topic in sum are:

- The Peru experience showed that merit based recruitment, strict enforcement of law and professional handling of the tax payers made the SUNAT extremely popular in an economic crisis; but balancing this with the ministry and political executive can be ignored only at one's peril
- The IRS reforms indicated that values like professional leadership, customer centricism and simplicity of tax mechanisms backed by strong technology can be of universal application
- The IRS reforms also showed that a quick and exemplary punishment of deviant officers will go a long way in restoring the faith of the tax payers in the system
- The Canadian experience while in the domain of transparency concentrated on the programs like customer outreach to popularize the changes being made, with regard to vigilance has two components viz. where the officers conspire in evasion of tax and where there is breach of professional standards
- In the first case, the officers are prosecuted along with the evaders. The quick disposal and punitive punishments act as deterrents
- In the second case, the officers sign a code of ethics highlighting specific aspects like conflict of interest every year. Any deviation is viewed negatively inhibiting their promotional prospects and growth in the organization. There is no concept of transfers as a part of the personnel policy. In an ethics conscious work environment, the negative perception acts as a sufficient deterrent

16. In the light of these international experiences and review of the existing system by the TARC, to reconsider the topic afresh, it may be useful to visit the current understanding of the expressions transparency as applied only to the tax payer and vigilance as applied

only to the officers of the department and this approach on the efficiency of the tax administration. It is felt that the approach of transparency one seeks to adopt with the tax payer has also to be applied as much to the employees of the organization. The approach has had a beginning in the administration by way of communicating the annual assessment performance, numerical grading and review for up-gradation of the grading in contrast to the expunging of adverse remarks only. The limited approach with regard to the performance management system needs to be further widened. Similar approach to the punitive aspects like disciplinary proceedings needs to be adopted. Specific recommendations would be made in the following paragraphs. Similarly there must be an ethical code prescribed for the trade the adherence of which in contrast to mere compliance with the law should be used as a tool to assess the trade. At the same time, it is required that the tax payers' rights must be specifically codified so that departmental officers also have a clear understanding of the same.

## **RECOMMENDATIONS**

17. The specific recommendations that the group proposes to make are the following taking into consideration the gaps in the promise and performance pointed out by the TARC, the international experiences and the need to change the compartmentalized approach of transparency only to the tax payer and exemplified conduct only to the officers of the department

18. It is opined that a Tax Payers' Rights Bill may be introduced to specifically delineate the rights of the tax payers so that there is clarity about the role of the officers *vis a vis* the trade. There can also be a code of ethics/best practices to be adopted by the trade which would enable the compliance rating of the assessee. This may include not merely the adherence to the letter of the law but also the general conduct like whether there are defaults in payment of duties, submission of all returns in time, accuracy of declarations, voluntary correction of errors, payment of arrears etc. This would enable the department to take any complaints/suggestions made by these entities more seriously.

19. We must concentrate on reducing the friction areas between the departmental officers and the trade by

- streamlining procedures as a continuous process keeping in mind the changed position in statute or in the legal position as enunciated by the Higher judiciary
- Consult all stakeholders in structured and unstructured meetings proactively about any procedures impeding ease of business and addressing the same quickly and effectively

- Putting any new changes in procedure in the public domain including cyber space and actively soliciting suggestions
- By adhering strictly to laid down procedures and not permitting any deviations
- Disseminating all procedures both national and local by not only putting them in the traditional modes like Public Notices but also in newer platforms like Facebook, Twitter etc.
- Creating systems especially in Central Excise and Service Tax for real-time verification of the status of assessee's business

20. An enlightened personnel policy which distinguishes between genuine errors and deliberate and motivated infractions should be evolved which would instil a sense of security in legitimate discharging of the duties. It should also evolve a sense of belonging by the officers. Such a policy could include:

- Formulating a clear personnel policy for all levels so that dissatisfaction with conditions of work and promotion prospects is minimized
- Transfer Policy should not be built as preventive vigilance tool. Present policy necessitates rotation from one area of work to other resulting in generalist approach rather specialist approach.
- Formulating clear guidelines as to the actions that will lead to punitive consequences
- Expeditiously concluding the proceedings to ensure that the process doesn't become the punishment. Specific timelines should be prescribed for concluding proceedings, failing which the charges would be automatically be deemed to be withdrawn, if the charges are for minor punishment.
- fostering a positive culture of decision making and publicly recognizing such officers to encourage similar behaviour and
- Where clear evidence is available by awarding exemplary punishment by concluding the process expeditiously so that live link with the event is established

21. It may be recognized that in a pan-India organization like ours there is a need to develop common ethos and codes of behaviour among officers coming from diverse backgrounds. Such an effort would have to be done by attitudinal changes. Features of such an effort could include:

- Constitution of a committee for reviewing the training needs at all levels and training them continuously and periodically. Also along with centralized training to inculcate correct attitudes, officers should also be trained at all levels in a decentralized manner at the divisional, Commissionerate and Zonal to deal with local variations

- introducing a 360 degree assessment of APR ;
- giving due weightage to feedback by stakeholders

22. One of the reasons why many avoidable errors are committed leading to disciplinary proceeding is the shortage of staff and over burdening leading to judgmental errors. Currently there is acute shortage at the Inspector level after the cadre review. Effort should be made wherever possible to deal with this issue by:

- taking a onetime waiver on the percentages of special categories like compassionate appointment and physically challenged categories
- Shortening the gap between the date of vacancy and filling by adopting modern means of examination and
- revoking suspensions beyond 3 months

## **CONCLUSION**

23. To conclude, a multi-pronged approach which at the same time evolves a sense of belonging along with a sense of fear for doing the wrong should be instilled in both the trade and officers for an efficient tax administration

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