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India

Tax Disputes

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This country-specific Q&A provides an overview of tax disputes laws and regulations applicable in India.

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India: Tax Disputes

1. Is it necessary for a taxpayer to register with the tax authority? Are separate registrations required for corporate income tax and value added tax/sales tax?

Yes, Indian Tax Law requires mandatory registration for compliance with the tax law. In India, there are broadly two tax authorities which administer taxes i.e. the Income Tax Department, which administers corporate income tax and Goods & Services Tax Department, which administers the Indian Value Added Tax, known as Goods & Services Tax (GST).

The registration with the Income Tax Department is called Permanent Account Number (PAN) whereas registration with Goods & Services Tax Department is called Goods & Services Tax Number (GSTN). Both the registrations can be obtained through an application, which is completely online. For obtaining a GSTN, taxpayer must already have a valid PAN, as GSTN is based on PAN.

A corporate entity is mandatorily required to avail registration with Income Tax Department if it has an income under the Indian Income-tax. Further, for running day-to-day operations also financial institutions and other stakeholder such as customers, vendors, government institutions require PAN. Similarly, a registration with Goods and Service Tax Department is mandatory for supply of goods or services.

Further, import and export of goods are also regulated by two different authorities. The Customs Department administers imposition of customs duty. Whereas the Directorate General of Foreign Trade (DGFT) regulates international trade. For carrying out import and exports transactions from India an Import Export (IEC) Code is to be obtained from the DGFT. It is to be noted that IEC Code itself is also based on PAN issued by the Income Tax Department.

2. In general terms, when a taxpayer files a tax return, does the tax authority check it and issue a tax assessment – or is there a system of self-assessment where the taxpayer makes their own assessment which stands unless checked?

In India, the tax assessment primarily operates on a self-assessment basis. When a taxpayer files their tax return, they are responsible for calculating their tax liability based on the income, deductions, and applicable tax rates (while filing the Income Tax Return). Post filing of the tax return, the assessment is completed by issuing order accepting the tax declared in the tax return filed or modifying the tax return. However, in certain cases, the tax authorities are allowed to issue notice to the entity seeking information on the disclosure made in tax returns. Basis the information furnished, the tax assessment is framed.

In case, there is modification to the return filed, the taxpayer has the right to represent and appeal before the authorities.

In the context of Indian GST, monthly filing of returns is required where sales, purchases, tax collected on supplies, i.e. output tax, tax paid on purchases, i.e. input tax, etc. are reported. Basis, the filing of tax returns, a taxpayer is liable to discharge the applicable taxes. The GST returns filed are automatically accepted by the authorities and there is no formal assessment orders issued to the taxpayer. However, the GST authorities may issue notices seeking information of transactions undertaken and to audit the financials of the taxpayer. In case of any discrepancies found during audits and tax notices may be issued against the taxpayer.

3. Can a taxpayer amend the taxpayer's return after it has been filed? Are there any time limits to do this?

The income tax returns are permitted to be revised, within a specified time limit. As per Section 263(5) of the Income Tax Act, 2025, if any person discovers any omission or any wrong statement in their return, they may furnish a revised return at any time within nine months from the end of the relevant tax year or before completion of assessment.

On the contrary, a GST returns cannot be revised. From June 2024 onwards, limited amendments to tax invoice details furnished in GST Returns have been allowed to be amended by the taxpayer. However, the time period allowed to carry out the amendment is up to 10 days post filing of the monthly GST return.

4. Please summarise the main methods for a tax authority to challenge the amount of tax a taxpayer has paid by way of an initial assessment/self-assessment.

Generally, while scrutinising the returns, notices are issued by the tax authorities to the taxpayer which requires furnishing of information, data and response. The issuance of notices seeks to disregard or dispute the tax reporting of the taxpayers in the returns, thereby effectively challenging the self-assessment of the taxpayer. Further, these notices are also issued independently if the tax authorities discover (through third party information or on basis of intelligence gathered) any transaction which has not been reported by the taxpayer.

5. What are the time limits that apply to such challenges (disregarding any override of these limits to comply with obligations to relief from double taxation under a tax treaty)?

The time limit for issuing a notice to the taxpayer has been specified under respective tax legislations. As per the Income Tax Act, 2025, under Section 282 where income has escaped assessment, a notice cannot be issued beyond four years and three months and in some situations the limitation period may extend up to six years. However, if any information indicates that the quantum of underreporting of income is more than INR 5 million, notice may be issued upto five years.

With respect to the Indian GST law, a notice could be issued upto 42 months from filing of annual return.

6. How is tax fraud defined in your law?

'Fraud' in tax generally refers to the deliberate and illegal tax reduction method. The Indian Income Tax Law does not contain a definition of 'fraud'. Thus, general meaning of 'fraud' is adopted authorities and taxpayers.

Even the Indian GST Law, does not define 'fraud' but it defines the term 'suppression', which is relevant for invoking penal consequences. The term 'suppression' has been defined under the Indian GST Law, as non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act, or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer. The term fraud is much more narrowly interpreted by the Courts

and deliberate action to evade taxes is required. As per judicial precedents, the fraud arises out of deliberate active role of representator about a fact which he knows to be untrue, yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of the fact with knowledge that it was false.

7. How is tax fraud treated? Does the tax authority conduct a criminal investigation with a view to seeking a prosecution and custodial sentence?

In India, in case of tax frauds leading to tax evasion is severely punished. The law imposes heavy penalties on the taxpayer perpetuating tax frauds, which may extend upto twice the tax amount. In addition to tax penalties, in some cases, tax fraud in India may also lead to criminal prosecution of the taxpayer and in case of corporations, prosecution of any persons responsible for such fraud and tax evasion.

The criminal prosecution include imprisonment for a term ranging from three months to seven years, along with a fine.

8. In practice, how often is a taxpayer audited after a return is filed? Does a tax authority need to have any justification to commence an audit?

The Indian Income Tax Law does not mandate audit by tax authorities. However, in the context of assessment of tax returns, a taxpayer could be subject to a scrutiny assessment, and even post such assessment, the tax authorities are also empowered to carry out re-assessment, subject to satisfaction of conditions and prescribed time limit.

Under Indian GST Law, authorities are empowered to audit the records of the taxpayers even after filing of the returns. In practice, audit could be carried out only once. However, the GST authorities are not required to furnish any justification to commence audit.

9. Does the tax authority have to abide by any standards or a code of conduct when carrying out audits? Does the tax authority publish any details of how it in practice conducts audits?

In context of Indian Income Tax Law, no audit by tax authorities is prescribed. However, with respect to assessments, the Central Board of Direct Taxes (CBDT)

which regulates the income tax authorities, from time-to-time issues instructions/ orders to regulate the assessment procedure. These instructions are supplemented with Circulars issued by the CBDT. These instructions/ orders are issued internally to the tax authorities to ensure conformity of standards while assessing the returns. The CBDT also issues circulars/ instructions/ orders for the taxpayers as well to clarify or set certain procedures correctly.

With respect to the Indian GST Law, the Central Board of Indirect Tax and Customs (CBIC), which regulates the GST Department, has issued Model All India GST Audit Manual 2023 which lays down standard on auditing taxpayers.

10. Does the tax authority have the power to compulsorily request information? Does this extend to emails? Is there a right of appeal against the use of such a power?

The Indian Tax Authorities are empowered to seek information, data and details from a taxpayer which is mandatorily required to be submitted by the taxpayer. The information could be sought by written medium including emails or through the tax portals. It is to be noted that tax authorities are also empowered to seek information from third parties who may have commercial transaction with a particular taxpayer. Further, tax authorities are empowered to issue summons to personnel of a taxpayer for the purpose of collecting financial or tax-related information.

Generally, taxpayer served with a notice requesting information does not have the right to appeal against this requisition. However, in certain scenarios it may approach High Court in its extraordinary jurisdiction challenging such notices.

11. Can the tax authority have the power to compulsorily request information from third parties? Is there a right of appeal against the use of such a power?

Yes, the tax authority can compulsorily request that any third-party person to furnish information or documents relevant to any tax enquiries and proceedings that it is conducting. No compliance with such notices may result in penal consequences.

Further, third party served with a notice requesting information does not have the right to appeal against this requisition. However, in certain scenarios it may

approach the jurisdictional High Court in its extraordinary jurisdiction challenging such notices.

12. Is it possible to settle an audit by way of a binding agreement, i.e. without litigation?

Currently, India does not have any mechanism to settle audits/assessment through a binding agreement. However, from time to time, the tax authorities do come out with a settlement scheme which allows payment of a portion of disputed tax amount and withdrawal of pending litigation.

13. If a taxpayer is concerned about how they are being treated, or the speed at which an audit is being conducted, do they have any remedies?

India currently does not have any separate grievance redressal for aggrieved taxpayers, to highlight their concerns in regard to how the audits/assessments are conducted. A taxpayer may however approach concerned superior tax officer with a grievance. In case of any arbitrary actions by the tax authorities, a taxpayer may also approach the jurisdictional High Court in its extraordinary jurisdiction seeking appropriate relief or direction against the tax authorities.

14. If a taxpayer disagrees with a tax assessment, does the taxpayer have a right of appeal?

The taxpayer aggrieved by an order passed in the tax assessment has the right to appeal against the order before the appellate authorities. The right to appeal must be exercised strictly within a prescribed time frame.

15. Is the right of appeal to an administrative body (independent or otherwise) or judicial in nature (i.e. to a tribunal or court)?

In India, the appellate route consists of quasi-judicial and judicial bodies. Typically, after the assessment, the tax disputes are raised before the appellate authority, which acts as both fact-finding authority and adjudicator. The powers of the first appellate body are co-extensive and coterminous to the primary tax authority. The second appellate body is the tax tribunals, where the appeal is heard in a manner like that of a civil court. The Tribunal typically consists of two members i.e. one judicial member and another member representing the revenue department. Accordingly, both these bodies are quasi-

judicial in nature.

The next two appellate forums are the High Court and the Supreme Court, which are judicial forums.

16. Is the hearing in public? Is the decision published? What other information about the appeal can be accessed by a third party/the public?

The court proceedings before tax tribunal, High Courts and Supreme Court of India are generally open to the public. The basic case information, orders, proceedings and judgements in these forums are published and are available to the public. They can be accessed through the official websites of the courts or various legal databases operating in India. Thus, proceedings before the tax tribunals are not open to the general public.

Third parties in India can access only access basic details of the case information which are before tax tribunals, High Courts, and Supreme Court of India. Third parties cannot access case details, details of representation and decision of the court.

17. Is the procedure mainly written or a combination of written and oral?

The court proceedings in India generally involve a combination of both written and oral procedures. The respective parties before a forum file written submission, petitions, affidavits and written arguments outlining their legal contentions. Concurrently, oral arguments are presented during proceedings before the concerned authorities.

18. Is there a document discovery process?

From a tax perspective, India does not have a formal document discovery process instituted or administered by a court. Documents relevant to a tax proceedings are taken on record at the time of audit or assessment or investigation and the same is relied upon, if any claim is made against a taxpayer. Tax Authorities are obligated to provide the all the relied upon documents while issuing a tax notice to the taxpayer. Generally, in India neither the taxpayer nor the Department, could furnish any document in its support after issuance of a tax notice.

19. Are witnesses called to give evidence?

Under the Indian Tax Law, witness can be called upon to

give evidence. However, process of obtaining evidence from a witness is limited to assessment or investigation stage. Once, a tax notice is issued no further evidence collected from a witness by way of oral testimonies. Witnesses may be called to give evidence in a criminal trial arising out of tax evasion cases.

20. Is the burden on the taxpayer to disprove the assessment the subject of the appeal?

In India, the court proceedings operate on the principle that the initial burden of proof rests with the party who has appealed the case to court. This means that the appellant carries the initial burden in tax cases. If the tax department is the appellant, it must prove that the taxpayer has evaded income. Conversely, if the taxpayer is the appellant, the burden is on them to disprove the issues raised in the assessment that is the subject of the appeal.

21. How long does an appeal usually take to conclude?

In India the time taken for an appeal to conclude depends on mainly the issue involved in the appeal as well as the forum at which the dispute is pending. In scenarios where the issue involved in tax appeal has already been decided by Courts, in practice it may take upto 2-3 years for the tax case to conclude.

However, if the tax appeal involves a substantial issue affecting an industry, it may take upto 5-7 years to resolve since in practice, the appeal travel till Supreme Court of India for a resolution.

22. Does the taxpayer have to pay the assessment pending the outcome of the appeal?

Yes, a taxpayer is typically required to pay upto 20% of the disputed tax amount while preferring an appeal upto tax tribunal. This is termed as 'pre-deposit' and is compulsorily required to be discharge while exercising the right to appeal.

With respect to appeals to High Court and Supreme Court, there is no law-prescribed pre-deposit to be discharged. Ordinarily, the taxpayer must obtain a judicial order from High Court or Supreme Court for staying the recovery of tax amount. In case, the Stay Order is not granted then the entire differential tax amount may be recovered by the tax authorities.

23. Are there any restrictions on who can conduct or appear in the appeal on behalf of the taxpayer?

Every taxpayer is entitled to representation either by itself or through an authorised representative. A taxpayer may represent himself with proper written authorisation by a Chartered Accountant or an Advocate before any quasi-judicial authorities i.e. until the tax tribunal stage. However, only an Advocate can represent a taxpayer before the High Courts and Supreme Court of India.

24. Is there a system where the "loser pays" the winner's legal/professional costs of an appeal?

No, India has no current mechanism wherein the 'loser pays' the winner's legal/professional costs of an appeal.

25. Is it possible to use alternative forms of dispute resolution – such as voluntary mediation or binding arbitration? Are there any restrictions on when this alternative form of dispute resolution can be pursued?

With respect to tax disputes in India, there is no mechanism under the law to avail alternative forms of dispute resolution.

However, under the Indian Income Tax Law, Mutual Agreement Procedure (MAP) is an alternative dispute resolution mechanism available to the taxpayers covered by the Double Taxation Avoidance Agreement (DTAA). MAP can be resorted to where the taxpayer finds that the taxation is not in accordance with the DTAA, regardless of remedies available in the ITA. The purpose behind MAP is to avoid double taxation for which negotiations occur between the tax authorities of the countries that are parties to the DTAA.

Further, under the Indian Tax Law allows availment of Advance Ruling as ex-ante option. Under Advance Ruling, a taxpayer can approach the Advance Ruling Authorities to determine the taxability of a specified transaction before entering the transaction. The ruling so delivered by the Advance Ruling Authority is binding on the taxpayer and tax authorities.

26. Is there a right of onward appeal? If so, what are all the levels of onward appeal before the case reaches the highest appellate court.

Yes, the Indian Tax Law prescribes right to onward appeal. The level of onward appeal commences from tax appellate authority, thereafter to tax tribunal, then to High Courts before reaching to the highest appellate court i.e. the Supreme Court of India.

27. What are the main penalties that can be applied when additional tax is charged? What are the minimum and maximum penalties?

Tax penalty could range from 10% of the additional tax discharged to 100% of the additional tax discharge. The quantum of penalty is dependent on nature of allegation made against the taxpayer and evidence adduced to deflect the allegations.

28. If penalties can be mitigated, what factors are taken into account?

To effectively mitigate imposition of penalties, a taxpayer is required to substantiate its bonafide to the tax authorities/ courts. The conduct of the taxpayer during assessment, records maintained, and disclosure made in the tax returns and financials are considered by authorities/ courts to reduce penalties.

29. Within your jurisdiction, are you finding that tax authorities are more inclined to bring challenges in particular areas? If so, what are these?

In corporate income tax, the Indian Tax Authorities are likely to bring challenges on tax deduction claims, application of DTAA's & Transfer Pricing

On the Indian GST Law front, tax authorities are likely to challenge availability of tax credits, Related Party Transactions and classification of goods and rate of GST. Further, from the Customs Law perspective, there could be possibility that authorities would challenge valuation of goods imported, Related Party Transaction and classification of goods.

30. In your opinion, are there any areas which taxpayers are currently finding particularly difficult to deal with when faced with a challenge by the tax authorities?

Amidst the frequently changing tax laws in India and evolving jurisprudence from the Indian Courts, taxpayers often face challenges on tax administration front which

covers multiple compliances and tax investigations. In recent times, intra-group services remain a very litigative issue both under Corporate Taxation as well as GST, wherein the issue ranges from transfer pricing and valuation of related party supplies. Further, tax treaty entitlement also remains a disputed area.

31. Which areas do you think will be most likely to be the subject of challenges and disputes in the next twelve months?

One of the significant areas for likelihood challenges in the upcoming tax panorama in the context of corporate income tax law are Transfer Pricing issues and Treaty benefits under the DTAAs.

On the Indian GST Law front, GST implications on Related Party Transactions (inbound and outbound transactions) remain contentious. Furthermore, customs disputes regarding the evidence of origin of goods for claiming benefits under Free Trade Agreements (FTAs) are an emerging area for disputes.

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