

Taxation troubles faced by India: From digital taxation to experience with tax treaties

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A collection of essays edited by Parthasarathi Shome is an illuminating read on some of the tax challenges we face today—from digital taxation to India's experience with tax treaties and multilateral instruments



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By Mukesh Butani

Challenges in Domestic and International Taxation: Emerging Indian Experience, edited by Parthasarathi Shome, is third in its series of research papers (essays rather) from International Tax Research and Analysis Foundation (ITRAF), a Bangalore-based independent and exclusive forum for tax policy research and analysis to ensure superior tax policy and effective tax administration in India, and published by OakBridge Publishing Pvt. Ltd.

The essays principally debate topics ranging from digital taxation, Indian experience with tax treaties and new multilateral instruments, which India is signatory to as part of OECD and the G20-lead BEPS, the digital taxation challenge for India extending to taxation of bitcoins/cryptocurrencies as emerging trends become reality in the near future. The essays also contain couple of interesting chapters on taxation of charitable trusts and not-for-profit endowments and an emerging topic, taxpayers' rights.

Shome, in his opening chapter, pointing out the traditional principles of tax policy, acknowledges the need for a 'straight forward and easy to interpret tax system', which should not adversely affect market confidence. Wishful thinking, though the reality becomes an insurmountable task for governments, which he acknowledges in his experience at the North Block. Given his engagement with the erstwhile empowered committee on GST, he has passionately discussed origins of GST and challenges, not hesitating to add that the Centre, in its rush to install a GST, accepted demands of the state. He has pointed out that the current GST base covers only 40% of GDP, given the exclusion of real estate and petroleum products. On international tax, Shome is skeptical about India's position in improvement of mutual agreement procedure (MAP) for resolving treaty related disputes. The chapters on digital taxation by KR Sekar make an interesting read, pointing out the imperfections in the tax policy, given plethora of cases analysed in the chapters.

Similarly, Meyyappan's well researched chapter on cryptocurrencies points towards a need for revisiting various provisions under the extant law, given features of regulations in other countries, particularly in US, UK, Australia and Japan. He points out that, given advancement in block chain technology, the backbone of a secure digital technology, it is worthwhile for countries such as China and India to regulate it instead of ban it all together.

Indraneel Choudhury's chapter on India's experience with tax treaties has thrown up historical perspectives pointing to India's commitment towards double taxation treaties dating back to pre-independence days with the 1922 Act, extending its benefit to the UK and thereafter to Pakistan, post-independence. Interestingly, it was the Finance Act of 1953 which carried an amendment empowering the executive to enter into a treaty and, way back in 1973, India committed itself to the exchange of information and tax recovery as counter tax evasion measures.

Rohit Roy's chapter on India's commitment towards multilateral instrument, signed in June 2017, points out intensive work in progress for policymakers (and tax payers) to deal with the nuanced principle of 'principal purpose test', a new concept for availing tax treaty

benefits or, rather, a new instrument for tax administration to deny treaty benefits. This test would apply alongside domestic General Anti Avoidance Regulations, which are taking shape in India.

The KR Girish chapter on taxation of charitable contributions tends to shed light on the complexity of this arm of law and how unwieldy it has become in light of current realities. It does not hesitate in pointing out how charitable institutions have become new avenues to aid tax evasion and money laundering, including how tax jurisprudence has evolved in this area.

The most interesting chapter, by Padamchand Khincha, is stored for the end, which deals with taxpayers' rights, bringing it at par with fundamental rights, specifically with reference to exchange of information under the treaty. Padam points out the noble objectives enshrined in OECD's BEPS global transparency forum, and that it should be read with fundamental rights as laid down in the Constitution and interpreted by the Supreme Court. He points to right of confidentiality, protection from fishing expedition and need for administration to demonstrate 'foreseeable relevance', in the context of invoking such exchange clauses under the treaty.

All in all, it made an interesting Christmas and New Year weekend read. I am sure the essays covered shall attract intense debate in the years ahead as, besides tax payers and tax practitioners, tax administrators and tax tribunals/courts would find the analysis interesting.

The author is Partner at BMR Legal