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A study of corporate taxation in India.

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Abstract: *The recent "Make in India" campaign of Government of India is landmark initiative by the country. The campaign makes an attempt to ensure the foreign investors that India is an apt country to manufacture and do business here. But the country has fallen from the "ease to do business" ranking .One reason for the fall is the complicated tax structure, lengthy paper work, tax disputes, tough attitude of ITD; has shaken the confidence of investors. According to the IMF report, in India, taxes favor debt over equity in raising capital. The papers discuss the corporate tax system in India which is very high, and less productive .It talks about some of the most talked about tax disputes. The cost the companies face due to lengthy litigations. The Corporate tax contributes the most to the government revenue. It is high time where various amendments in tax regime are required to make the "Make In India" work. Developing countries like India are always in a dilemma to choose between robust tax system to increase tax revenue or to encourage investments.*

Keyword: *ITD, MAT, GST, tax disputes, corporate tax.*

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I. Introduction

Companies Act of 1956 has been replaced by Companies Act 2013.Tax which is levied on companies whether domestic or foreign company is known as corporate tax. It does not include proprietary ship and partnership business. It is a direct tax. Minimum Alternate Tax (MAT), Fringe Benefit Tax (FBT), Dividend Distribution Tax (DDT), Banking Cash Transaction Tax (BCTT), Security Transaction Tax (STT), Share Buy Back Tax, and Wealth Tax etc. Taxes on income earned from royalty and fee for technical services withholding tax are the various taxes imposed under corporate tax. Next in queue is a series of indirect tax like custom duty, excise duty, VAT, CST, Entry Tax, R&D Cess and service tax. Direct Tax code is currently pending with the government. India has entered double tax avoidance treaties with 80 countries.

Objective of study:

1. To have an overview of corporate tax system in India and its flaws.
2. Tax litigations denting the image of the country worldwide.
3. Suggestions to improve the tax regime to make the country business friendly.

II. Research Methodology

To make this paper secondary data was used. Various websites, newspapers and reports were used.

Overview of corporate tax: Economics reforms of 1991 brought globalization in India and paved way for foreign companies and FDI flow in the country. Since than many MNC came in India, it had own unique kind of tax regime. Many countries while framing their tax system, took the recommendation of international bodies like IMF. but India had its own domestic setup .Corporate taxes were 55% long time back which was brought down to 40% in 1993-1994, with a further reduction to 35% in 1997-1998. Similarly the dividend tax rate kept on increasing and decreasing. Depreciation and investment allowances are some of the preferences of the companies. Some companies enjoyed tax benefits by locating there plants in underdeveloped areas. To avoid this "zero tax" situation the ITD introduced Minimum Alternative Tax in 2006-07, which stated that the company has to pay a minimum 30% tax of the book profit. Securities Transaction Tax was introduced in 2004, where 0.4% tax was levied on cash withdrawal of Rs. 25,000 from current accounts, which penalized the small and medium sized businessman. Corporate Tax rate were kept higher than personal income tax, which again deterred the investors. But with liberalization it was felt that the Indian taxation system needs improvisations to match up with the international standards, align with domestic market and more over encourage investments.

Corporate tax contribution in revenue: According to the Comptroller and Auditor General of India During the period FY 2009-10 to FY 2013-14, the average rate of growth of Corporate Tax was 15.3 per cent. Corporation Tax increased from ` 3.56 lakh crore in FY 2012-13 to ` 3.95 lakh crore in FY 2013-14. The period FY 2008-09 to FY 2012-13, the average rate of growth of Corporate Tax was 16.74 per cent. Collection from corporate tax in 2003 was 46,172 crore. Corporate tax is the highest contributor to the direct tax in India. According to the union budgets 2011-12, out of every 73 paisa collected from revenue 24 paisa comes from corporate tax. (Reddy & George.2013). In 2011-12 corporate tax contributed 65% from the total revenue. The surcharge on tax livable on income of domestic companies for FY 2015-16 exceeding Rs.1 crore is increased from 5% to 7% and if income exceeds Rs.10 crore it is increased from 10% to 12.The momentum in growth rate of corporate tax came in 1990's after the economic liberalization.

Source: www.tradingeconomics.com

Tax disputes in corporate world. Over Rs.1 trillion of taxes are locked up in various stages of litigation in service tax and central excise at the end of March 2013, according to the Press Trust of India (PTI) reported in June 2014 quoting the Comptroller and Auditor General of India (CAG). This alarming rate of tax disputes has created a fear in the minds of foreign investors. India has dropped its ranking from 140 to 142 in "EASE TO DO BUSINESS "ranking. The dispute settlement mechanism here is lengthy, time consuming and expensive. As no action can be initiated for recovery of revenue till the appeal is pending, locking up of revenue of Rs.1 lakh crore . In 2013, the Income Tax department slapped a notice of 21,000 crore for nonpayment of TDS on Chennai based **Nokia**. The company said that the tax department was indirectly expropriating the company's income. The IT department suffered a setback when the court lifted the ban on the freeze of company sale to Microsoft, with the condition to pay 2,250 crore in an escrow account. The Chennai based Nokia has closed down the business. **Vodafone** was too caught by taxman in India. India's tax office had accused Vodafone India Services of under pricing shares in a rights issue to its parent company, and had demanded tax of about 30 billion rupees. The Bombay High Court ruled in favor of Vodafone, a case worth $ 490 million. The Bombay High Court also gave decision in favor of **Royal Dutch Shell Plc** in a multi-million dollar tax dispute, ruling out the ITD plea of under valuing its stock. A rash of high-value tax claims on foreign firms, including **IBM Corp and Copal Research Limited**, has raised criticism that overly zealous tax authorities could undermine foreign investment in India. It creates an impression in the mind of foreign companies that the ITD wants to extract a lot of revenue from transfer pricing.

Permanent Establishment (PE) and Transfer Pricing (TP) are also a matter of hassle in India, as there is no clear definition to it. Permanent Establishment is the location of the MNC, which is a debatable issue with ITD. Moreover with the advent of E-Commerce it has now become essential to redefine the concept of PE as it is the government of India and outside countries that are grappling how to catch hold the companies doing business online and evading tax. Similarly TP is the transfer prices that occur between two companies of two countries. If any manipulation happens it raises the eyebrows of ITD. Vodafone and Shell are all TP disputes with ITD.70% of the IT cases are all TP based, which tarnishes the image of the 3rd largest economy and ITD.

Hindrance in "Ease to do business": The taxation system in India is very complicated and lengthy, which is a hindrance in the" ease to do business", dropping the ranking from India from 140 to 142th. The corporate tax rate in India happens to be the highest on an average, making the ranking low to 158th in the overall ranking of paying taxes, in "paying tax list 2014",above Brazil (159th) and below the Russian Federation (56th) and China, which was ranked 120th.

	Rank	Payments (number per year)	Time (hours per year)	Profit tax (%)	Labour tax and contributions (%)	Other taxes (%)	Total tax rate (% profit)
UAE	1	4	12	0	14.1	0.8	14.9
Qatar	2	4	41	0	11.3	0	11.3
Saudi Arabia	3	3	72	2.1	12.4	0	14.5
Hong Kong	4	3	78	17.5	5.3	0.1	22.9
Singapore	5	5	82	4.9	17.6	4.7	27.1
Russia	56	7	177	8	36.7	6.1	50.7
China	120	7	318	6.2	49.6	7.9	63.7
India	**158**	**33**	**243**	**24.4**	**20.7**	**17.8**	**62.8**
Brazil	159	9	2,600	24.9	39.6	3.8	68.3

Source: World Bank. 2013. Doing Business 2014: Understanding Regulations for Small and Medium-Size Enterprises. Washington, DC: World Bank Group.

Source: World Bank 2013.Doing Business 2014.

The corporate tax in India is 35% which is relatively high in Asian market. Dealing with tax authorities settling tax disputes, complying with the procedure, availing tax benefits, transfer pricing regulation and obtaining service tax refunds are all complicated. According to the CII-KPMG survey 2014, 90% of the respondents feel that the tax authorities are not pro-active to investments. The neutralization of the tax decision by the Supreme Court through a retrospective amendment is likely to have damaging effect on investment sentiments. The transfer pricing hassle and the hasty introduction of the General Anti-Avoidance Rules (GAAR) in 2012, It was introduced by ITD to avoid Vodafone situation. GAAR was devised to avoid tax by using India's tax treaties, and deny all tax benefits that may arise if one of the purposes of the transaction or arrangement was to avail of a tax benefit, which was just contrast to GAAR 2008. Shame committee presented its recommendation and GAAR was again introduced in 2015. Another adverse decision was taxing R&D departments in the company. It created apprehensions in the minds of investors as to the uncertainty and instability in government rules regarding tax regime and was unwelcome to FII and MNC. Some other matters of concerns for corporate sectors are taxation of overseas M&A deals, which are stuck in litigation. Stringent enforcement of withholding tax rules by Indian Tax Authorities. Settlement of employee's arrangements by MNC Tax withholding mandated on overseas salary payments to expatriates working in India.

Corporate tax reforms for ease to do Business:

The present government of India plans to reduce the basic corporate tax rate from 30% to 25%. The reason for bringing down the tax rate is as follows. Corporate Tax to GDP percentage is the ratio of total corporate tax collections against the Gross Domestic Product of the country. Though basic rate is 30%, the Corporate Tax to GDP percentage ratio is at a mere 7.30%. In the case of Canada the rate is 15%, and contribution to GDP is 30.20%. In UAE corporate tax is zero and its contribution to GDP is 7.20%, as same as India. The tax regime in India is unable to capture many economic activities. It allows a lot of exemptions, which leads to smart tax evasion; tax holidays, making it less competitive and unproductive. The total tax rate in India is as high as 62.8 per cent, there are as many as 33 payments under the head of profit, labour and other taxes, and the time taken to comply with taxation requirements could be as much as 243 hours. The tax base should be made broad. Some argue that by reducing the corporate tax and by lowering the tax base will decrease the revenue of the government. But on the flip side the money than shall stay with the company and will be invested again by them, increasing their profit again. When the share price will go up, personal income tax will also increase. The various tax exemptions should be reduced from exports, free trade zones, and technology parks, to make the tax system more productive. The chamber also suggested that MAT should be reduced to 15 % as it started at 7.5 % and has been steadily increased to 18.5 %. There has to be clarity in tax policy to avoid ambiguous .The transfer pricing (TP) definition must be made clear. Tax system should be made moderate and simple along with MAT and GAAR. The government had implemented APA (Advance Pricing Agreement) through Finance Act 2012, to ease out the controversial TP and reduce litigation and its cost and time consumption. This would help to avoid tax leakage because of double taxation. But BAPA and MAPA associated with APA are itself time consuming. Taxpayers had to do a lot of formalities, which were more than a normal audit. ITD plans not to renew the sunset clause in tax exemption.

Implementation of GST: GST is Goods & Service Tax. It is a tax levied on manufacture, sale and consumption of goods and services at a national level. The implementation of GST will reduce multiple central and state taxes, which will simplify the tax regime complexity, compliance cost and administration, which is the requirement of the economic conditions. GST will have both Central level and state level taxes. Even though VAT has been successful it still had its shortcoming, like for example state charges VAT on the excise duty, which is double taxation. Many areas are not covered in service tax, which creates a cascading effect, can be corrected by GST.

III. Conclusion

India has a plethora of skill and talent. It has a cheap labor which is conducive for doing business in India. It is but the taxation system which is a big hindrance in the business environment. The tax structure should be simplified. The definition like PE & TP mentioned in IT should be clearly defined so that there are no tax disputes. US has more than 100 tax dispute including companies like IBM, Microsoft etc. The US government has raised its voice against this. Retrospective tax decision like implementation of GAAR has shaken the confidence of investors. The decision was taken after the Vodafone court's decision, GAAR needs clarity and amendments. It has also urged for rationalization of domestic transfer pricing provisions and as well sought simplification of Section 72A relating to amalgamation and de-mergers and suggested that (corporate social responsibility) CSR expenditure should be allowed as an expense of the corporate. The industry body has also demanded that the ceiling of Dividend Distribution Tax and Minimum Alternate Tax be set at 12.5 per cent and 15 per cent respectively in the Budget. The shah committee has recommended that MAT should not be levied in FII and FPI. BRIC countries do not levy it, OECD countries does but not to those companies that do not have PE in that particular country. India is the only economy with a complete online system for filing and paying taxes. However, the time taken for tax payments is relatively less in India, which is rated ahead of China and Japan where it takes 318 hours and 330 hours, respectively, to comply with tax regulations, according to a World Bank and PwC report. The ITD looks the tax payer with distrust and as tax evaders. Many countries have amended their tax regime and simplified it, so that the foreign countries find it easy to operate business. To make "Make In India" a success serious amendments are required to avoid this tax-terrorism.

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