

IMPROVING EASE OF DOING BUSINESS IN INDIA: **100 REFORMS IN INDIRECT TAXES**

A set of indirect tax reforms can remove many hurdles in doing business in India, improve investment climate and help kick-start the economy.

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It is now widely believed that Indian Tax environment is complex and falls far short of inspiring requisite confidence for an investment-friendly regime. India's ranking on the World Bank's index of "Ease of Doing Business" has further slipped to 142 out of a total of 189 economies. The rank on Ease of Paying Taxes is even worse: an abysmal 156.

Despite significant liberalization from time-to-time, it is now widely believed that massive changes in business environment over the last many years necessitate another major overhaul of the tax structure.

The next budget, therefore, is a golden opportunity to take one giant leap by launching a series of initiatives that will promote "MAKE IN INDIA" by reducing tax-complexity, cutting down costs and improving competitiveness.

Individually these measures may not appear to be headline reform, but collectively they are sure shot recipe for restoring investor confidence, improving productivity and finally improving India's ranking on the index of ease of doing business in India.

These are suggested as follows:

A. PROMOTE MAKE IN INDIA

I. Tax policy, rates and exemptions

1. Give GST-orientation to policy initiatives in Central Excise and Service Tax to bring the prevailing tax environment as close as possible to impending GST.

2. Lower Central Excise peak rate to 11%: to boost consumption and production and get closer to eventual GST rate.
3. Abolish various Cesses and NCCD (if needed adjust the peak rates of Central Excise and Service Tax rates appropriately): to remove complexities.
4. Encourage construction of new factories registered under Central Excise and waive service tax on such new constructions (in any case it is largely Cenvatabl).
5. Reduce the taxable portion of value in composition schemes relating to insurance cum investment products from 3% of the gross amount to an amount closer to actual (2%): to encourage savings in insurance products.
6. Reduce taxable portion of works contracts for contracts other than “original works” from 70% to closer to actuals (not more than 50%): to correct anomalies.
7. Compensate for revenue loss due to lowering of tax rate and removal of cesses etc. by following measures:
 - I. Converge as many as goods as possible towards this rate leaving the lower rate (of 6%) for essential goods of mass consumption: to remove tax rate disputes and improve revenues.
 - II. Raise Service Tax rate to 14%: to acclimatize consumers to a higher level of service-taxation in GST.
 - III. Increase CX rate in respect of goods covered by 2% scheme to 3%: to get closer to the eventual GST and compensate for loss due to reduction in standard rate.
 - IV. Tax exempt businesses that are likely to be subjected to GST e.g. textiles, garments, pharma, packaged food, jewelry (follow 2/6 scheme and now 3/6): to acclimatized industry and consumers.
 - V. Tax minerals (CX allows taxation of produced goods e.g. coal already done) allowing completion of tax credit chain in this sector and to mobilize revenue): to acclimatized industry and consumers.

- VI. Impose an additional levy on socially or environmentally unfriendly goods to compensate for revenue from lower tax rates (HSD, tobacco, aerated beverages, and junk foods): improve revenues.
- VII. Review all Central Excise and ST exemptions from GST perspective: to remove tax rate disputes and improve revenues.
8. Make CX duty on Motor Spirit and HSD ad valorem (6%) plus specific (ensuring existing level of taxation) on the lines of the proposed GST: to get closer to GST; likewise for other commodities with specific rates.
9. Impose service tax on transportation of goods by road (and not merely confine to GTA) with an abatement of 50% (presently exempt creating disputes and scope for evasion). Reduce abatement of GTA from 75% to 50%: to get closer to GST and equitable treatment of various modes of transportations.
10. Similarly reduce abatement for all other means of transport, including railway and air, to a uniform 50%. Bring domestic travel also on similar level of taxation: %: to get closer to GST and equitable treatment of various modes of transportations.
11. Improve tax compliance in an unobtrusive way so that the peak rates are lowered:
- ✓ Introduce Cenvat credit verification relying on automated systems and thus strengthening IGST-based environment in GST;
 - ✓ Work on 360 degree profiling by linking data bases of direct and indirect taxes and setting up a common investigation wing for major frauds;
 - ✓ Provide information support to State VAT authorities by regular sharing of imports (particularly high sea sales) to ensure that there is proper payment of state taxes.
12. Move towards zero rating of primary education and public health by exempting services and inputs ordinarily used by these sectors.
13. Provide right amount of duty protections in Customs to local businesses:
- ✓ Impose a one-time surcharge of 10% of the basic Customs duty (net impact less than 1%) on specified goods (non-essentials) but within WTO bindings to allow additional protection to Indian businesses;
 - ✓ Use additional revenue to cut duty rates on thrust sectors and attract FDI;
 - ✓ Rationalize Customs tariffs for all major imports where the level of protection is negative or Nil. Also correct anomalies where protection is less than 2.5% (keep cheap imports from eastern countries in view).

II. Remove undesirable cascading; rationalize input tax credit system:

14. Design a robust input tax credit scheme that removes undesirable cascading and anomalies (refer MK Gupta Committee Report, 2012 and global best practices).
15. As a matter of principle all legitimate business expenditure should to be made eligible for tax credits; denial only in cases of activities meant for exempt businesses or personal use.
16. Remove distinction between capital goods and inputs for the purpose of period of credits. However continue to allow full credits of capital goods meant for mixed use.
17. Credit available to plant and machinery (Ch. 82, 84, 85 and 90) is outdated in the context of service-oriented economy and should to be extended to all legitimate capital assets, as per GAAP, irrespective of the chapter heads.
18. All goods (capital as well as inputs) should be eligible for tax credits irrespective of the manner of using them (e.g. even if used after being affixed to ground as immovable).
19. To encourage expansion of production capacities (and recognizing shortage of space in existing factories) allow credit of capital goods used outside the factory (e.g. already done in 2011 for power generation).
20. Allow credit on civil structures, cement, steel etc. subject to the safeguard that the sale of civil structure so constructed within 5 years of taking such credits to require reversal of specified amount of the sale price of such property (not exceeding the credits originally taken).
21. Allow credit on input services used for pre-operative expenses and setting up of business (remove existing ambiguity and restore position prior to 2011).
22. Allow credit of taxes paid on business promotion including service tax paid for commission agents (to remove ambiguity and legal disputes) as long the eventual taxable value factors such charges.
23. Mixed use credit of input services (e.g. rent-a cab) may be allowed to the extent of 50% (in fact allow full credits as was prevalent till 2011).
24. Staff welfare be made a legitimate business expense (at least that is uniformly provided to all employees) and tax paid on such activities allowed credit.
25. Allow input tax credit of Central Excise paid under 2/6 scheme (and now being proposed 3/6).

26. **Input tax credits should be allowed even in situations of misconduct. Only penalties and interest to be imposed in such cases.**
27. **Maximum period for taking input credit to be increased from 6 months to one year and that too from the date of first eligibility to take such credit (rather than date of invoice/Challan).**
28. **The second proviso to rule 4(7) does not allow input tax credits in cases of partial reverse charge until full payment is made to the supplier (unlike full reverse charge where such credit is allowed once service tax alone has been). The two should be aligned and credit may be allowed after the service tax by the recipient has been paid (as the credits will be debarred if not taken within six months).**
29. **The recipient factory should be allowed to avail the Cenvat credit first and reverse the credit when transferred to another factory. Such transactions should not be considered as “Trading” for the purpose of reversal of Common Credits.**
30. **Allow credit of input services without linking it to the condition of making payment by the recipient to the supplier ((just like credit on input and capital goods).**
31. **Reversal of credit under Rule 6 of CCR, 2004 to be revised such that P means common use services (i.e. between taxable and exempt business) rather than all services (which is mathematically incorrect and reduces legitimate entitlements).**
32. **Rule 6 (6) to be harmonized to ensure that Cenvat credit is not required to be reversed for goods:**
 - ✓ **Exempted against utilization of duty free scrips e.g. SFIS;**
 - ✓ **Which are otherwise taxable but Government has given end-used based exemption to promote the said industry.**
33. **Manufacturer should be allowed full Cenvat credit on input services in relation to exports if cost of such services were included in the value of exports (rather than seeking refunds later).**
34. **To correct existing anomaly, amend Rule 7 of CCR (relating to input service distributor) to allow distribution of credits:**
 - **To non-excisable business (e.g. SEZ); and**
 - **Across such businesses (only) where a service is actually used in common (rather than to all businesses) so that sanctity of such distribution is maintained giving no unfair advantage or disadvantage to anyone.**

35. Service Provider's invoice for removal of inputs/capital goods should be recognized as a valid document for availment of credit on the lines of manufacturer's invoice.
36. Service Provider should be permitted to remove and export its inputs and capital goods without payment of duty under Letter of Undertaking/Bond or Refund of such duty paid needs to be granted (as allowed to manufacturers).

III. Improving cost competitiveness

37. Lay down provisions in Central Excise for common storage of inputs and spares by multiple location entities by allowing registration of a common warehouse on the lines of a dealer.
38. EPCG provisions to be changed to allow sourcing of spares on a common basis for more than one factory and allowing filing of installation certificate against Single B/E by more than one factory.
39. Permit warehousing, re-warehousing and Customs bonding liberally for manufacturing and exports, including deemed exports.
40. Allow disposal of extra spares sourced at concessional duties for setting up of projects that may become unused after a long period of time (and are rendered of no economic usage) on payment of applicable duties (without interest or penalties).

IV. Boost Exports

41. As a matter of principle full refund of taxes to be allowed on inputs/input services used for export of goods and services.
42. Exempt applicability of NCCD for imports under advance licenses.
43. Place of Provision of Service Rules, 2012 to be revised to recognize a number of activities rendered to foreign recipients against earning in foreign currency as exports e.g. intermediaries and suppliers of online information and data base service providers (will also help in providing level playing field to Indian IT sector by taxing foreign internet content entities as applicable in EU).
44. Requirement of receiving export proceeds in convertible currencies to be waived in respect of export of services to neighbouring countries (Nepal/Bhutan).
45. Exempt Service Tax on input services used for repair and maintenance of foreign going aircrafts and vessels to encourage setting up of such businesses in India.

46. Period of refund of taxes on input services used for exports to be reduced to a maximum of one month; 80% of the final refund to be given provisionally.

V. Modernize Business processes and operations:

47. Design fast-track procedures based on global best practices and make them available on optional basis to priority sectors (manufacturers above specified thresholds and export oriented sectors). Level of facilitation to be much higher with accompanying higher penalties in cases of violations; special procedures to be withdrawn for willful defaults of serious nature.

48. Harmonize different indirect tax laws (Customs, Central Excise and Service Tax) in respect of common attributes e.g. appeals, interest rates, and penalties. In fact put the common law in a separate enactment which should apply to all the three statutes uniformly to ensure it remains constant in future.

49. Harmonize indirect and direct taxes to the extent feasible so that complexities across taxes are minimized e.g.:

Income tax	Indirect taxes
Permanent establishment	Business/fixed establishment in Service Tax
Manufacture	Manufacture in CENTRAL EXCISE
Transfer pricing	Transfer pricing in Customs
Assessment, best judgment	CENTRAL EXCISE and ST
Disallowance of certain expenses	Ineligible Cenvat credits
Cash-based accounting	Cash-based point of taxation in Service Tax
Offences, Dispute resolution	Similar provisions

50. Central Excise and Service Tax registrations need to be granted instantly (as existing with the allotment of registration number through automated system: ACES) rather than on subsequent verification processes. Proceedings can be initiated if any wrong is discovered subsequently.

51. Single registration for multiple factories may be permitted in Central Excise on the lines of similar registration in Service Tax.

52. Number of returns filed in Central Excise to be reduced:

- ER-4, ER-5, ER-6 & ER-7 to be done away
- ER-1 periodicity of filling every month to be increased to six monthly. This will facilitate better verification of compliance.

53. Interest for delayed payment of refunds in all taxes to be increased to 9% so as bring in accordance with RBI borrowing rate.
54. Refunds of taxes to be streamlined:
- Amend Rule 18 of the Central Excise Rules to provide clarity that rebate of taxes paid on inputs as well as taxes paid on finished goods is admissible.
 - Credit Draw back into the account of exporter at the time of allowing let export – the system of sanction of draw back by separate authority shall be abolished.
 - Grant automatic interest for delay in grant of refund.
55. Review the system of clearance of import cargo:
- ✓ Each loading of value in B/E shall be deemed to be appealable order even if loading is accepted by the importer.
 - ✓ The practice of assessment of B/E by appraiser and endorsement by AC/DC abolished. There shall be single authority for assessment.
 - ✓ All the Bs/E shall be appraised at one place where central server is located.
 - ✓ No customs intervention at the port in respect of BEs passed through RMS.
 - ✓ The importers entitled to take delivery directly from the Custodian. Customs intervention based on intelligence basis or random selection basis.
56. Authorize Customs brokers without elaborate procedure of appointment subject to prescribed requirements e.g. financial soundness (to encourage competition).
57. No interest payment on the duty from the date of clearance in cases of escalation clause in the agreement. (Interest is a financial compensation and tax-payer has not derived any benefit at the time of clearance, and hence recovery should be limited to differential duty on the additional value recovered at a later date).
58. Bring stability of tax regime by formalizing a system of introducing major changes with a notice period of at least one year and after extensive consultation with tax-payers.

VI. Promote Small Scale Sector:

59. An optional composition scheme may be announced in Central Excise for small scale sector on the lines of the proposed GST (say tax @ 1% for turnover between 75 Lakh to 1.5 crore for CX tax-payers) with minimal formalities.

60. The benefit of small scale exemption may be given to an independent factory (with full capacity to manufacture goods on its own) irrespective of same ownership.
61. Audit of small scale sector up to a turnover of Rs 25 crore in Central Excise and 5 crore in Service Tax to be done away.
62. Periodicity of returns by this sector to be increased from quarterly in CX to six-monthly.
63. A web-based help centre to guide small businesses; portal to enroll voluntary retired officers (albeit suitable disclaimer to advice given).
64. Allow training academy to impart training to SMEs in important towns (free or at nominal charge); involve retired officials.
65. No penalty on new registrants in this sector for technical lapses in the first two if the amends are made within 2 years of commencement.

VII. Make Large Tax Payers' Units (LTUs) partners in progress

66. Encourage LTUs by giving them some attractive non-tariff benefits:
 - ✓ Single registration in Central Excise ;
 - ✓ Transfer of capital goods, inputs and finished goods across factories without payment of duty without any further restriction / conditions to be complied by receiving factory except that finished goods manufactured from the inputs should not be exempted (other than exports, deemed exports, etc)
 - ✓ Installation of capital goods outside the factory;
 - ✓ Refund of taxes within 15 days or else provisional refunds;
 - ✓ Utilization of input tax credits across all entities;
 - ✓ No proceedings through summons except with previous sanction of Chief Commissioner;
 - ✓ Fast track process for adjudication (preferably within 3 months of notice but not more than 6 months);
 - ✓ Select LTUs (by rotation every year) to be invited to quarterly meetings on issues of concern by CBEC
67. Top 1000 tax payers (even when not registered as LTU) to be identified (based on sum of all indirect taxes paid in Previous year) and to be facilitated (alternatively all tax payers above a specified threshold):
 - ✓ Each member of CBEC to be allotted nearly 150 top tax payers and to act as national facilitator on all issues of concern to such tax payers;

- ✓ To be consulted on all major changes in law or procedure through email; representatives of select entities (nearly 30) to be represented on CBEC consultative forum for policy challenges;
- ✓ To constantly obtain feedback on cost of compliance and reduce it by pro-active initiatives.

B. Reform Service Tax to remove some key irritants

68. Remove dual levy of taxes on same activities e.g.:

- Customs duties and Service Tax e.g. on franchisee fee/royalties etc.;
- VAT and Service Tax on transfer of IPRs and transfer of right to use goods

(Grant exemption from service tax if CVD @ rate of equal tax has been paid on such component of the value or vice versa)

69. Efforts be made to achieve consensus with States on double taxation of services to both VAT and service tax such that the total tax does not exceed more than full value of the supply (works contract , catering).

70. Do not subject the following activities to service tax: to simplify compliance without compromising effectively any revenue:

- ✓ Cross-border transactions between branch and head offices of same entity (for mere payment of establishment overheads).
- ✓ Transactions amongst group entities of same management as they do not really generate any additional revenue, being eligible for input tax credit, but add unnecessary compliance costs (as in many countries).
- ✓ Transactions between unincorporated 'Association of Persons' and its members in relation to sharing of common expenses.
- ✓ Employer to employee services in the course of employment (as CTC). E.g. recoveries by Employer from Employee towards Notice Pay, Transportation Charges, Personal Phone Calls, Canteen Food.

71. To reduce compliance burden, partial reverse charge taxation in Service Tax may be done away. Full reverse charge only in cases of grave administrative inconvenience.

72. Service Tax Valuation provisions need some amendments:

- ✓ To prescribe value of service in cases of sale of constructed buildings, including land (method to be prescribed for segregating non-taxable components of land and materials on the lines of State VAT);
 - ✓ Specify that of the total advance received in composite contracts (e.g. works contracts) the portion towards service portion will be proportionate to its taxable value to the total value of contract.
 - ✓ To provide for non-taxability of:
 - Materials supplied by recipient in relation to use of service (based on recent judgments);
 - Expenses borne by a recipient of service (or otherwise to neutralize Delhi HC judgment so that issue is crystal clear).
73. Remove the requirement of date of completion of the provision of a service in Point of Taxation Rules as it is not a recorded event and most countries have already done away with it.
74. Remove positive list classifications for the purpose of filing ST-3 returns and replace by simpler revised classifications in about 20 categories of services for the purpose of statistics.
75. CBEC to issue clarifications on all major contentious issues (where hundreds of notices have been issued) which are being litigated nipping laborious litigation in bud, recognizing global practices (set up a competent committee, if necessary).
76. A recommendation may be sent to States (who tax many services) to follow Place of Supply Rules, 2012 so that cases of double taxation or double non-taxation are minimized (will also help States).

C. Promote Digital India

77. Digital Signature on any Excise, Service Tax, and Customs documents should be permitted (specifically under the respective laws though provided generally under Information Technology Act).
78. Cenvat Credit on digitally signed and electronically received should be permitted, subject to safeguard measures.
79. Similarly Digital copies of relied upon documents be made acceptable documents.

D. Optimize enforcement and facilitation

80. Harmonize penal provisions across all taxes e.g. different interest rates for delayed payment, penalty, mitigating circumstances, power to search/execute warrants.
81. Remove arrest provisions in cases of commercial frauds in Customs and all cases of Excise and Service Tax (or a very high threshold); retain only in cases involving smuggling of prohibited goods, clandestine removals and forged documents.
82. Abolish COFEPOSA (at the most retained only for prohibited goods).
83. Video recording of investigations be made admissible evidence; in fact mandatory in certain situations.
84. No seizure of goods in Excise at the stage of investigations (or automatic provisional release of goods on furnishing of mere bond).
85. No seizure of import or export cargo for manufacturers unless prohibited goods.
86. No SCN shall be issued without enclosing copies of relied upon documents; date of SCN to be the date when all relied upon documents given.
87. Period of issuing demand in normal situations in Service Tax be aligned with Excise and made one year.
88. Any visit by Departmental authorities to tax payer's premises to be with written authorization from Commissioner; violation to be taken seriously.
89. Investigations to be completed within one year from the date of first seizure/first summon/date of audit; extension by Chief Commissioner by 6 months in appropriate cases.
90. Power of issue of summon in person with the written permission of Commissioner. Routine investigations to be conducted without summons (summons for seeking documented information may continue).
91. Copy of audit report to be given mandatorily to tax-payer.
92. Rate of interest for non-payment or delayed payment to be reduced from 30% in Service Tax to 15% and in Excise and Customs from 18% to 15%.

93. **Forcible pre-deposits at the stage of investigations to be done away.**
94. **Grant power to waive penalty in Excise and Customs for technical or unintentional lapses (service tax available under section 80).**

E. Dispute Resolution:

95. **Litigation on identical/similar issues (involving innumerable cases) may be clubbed on a country-wise basis and given to a common adjudicator (committee of three officers) and similarly a common bench of the CESTAT.**
96. **Looking at really huge and fast increasing backlog of litigation it is desirable to introduce a fast-track scheme for low risk cases: all pending cases involving amounts which were normally available as input tax credits at the recipient's end may be allowed to be liquidated on self-disposal basis on payment of a requisite percentage of the amount of duty as token penalty (as there is little mens rea).**
97. **All pending cases involving revenue of more than 10 crore may be listed for hearing in CESTAT within two months of filing the appeal.**
98. **Provision necessary for referring to a specially constituted disciplinary committee cases of non-application of mind by departmental authorities in observing principles of natural justice or blatant violation of superior orders without reasoned observations.**
99. **Adverse judgments by Apex Court unsettling long settled practices should be addressed with due sense of urgency neutralizing past practices on generalized basis.**
100. **Steps may be taken to complete adjudication process within three months but no later than 6 months. Provide by law that adjudication order must be issued within 30 days of last personal hearing.**