

Economic Survey 2018: Will tax litigation draw Arun Jaitley's attention in Budget 2018?

BY MANNU ARORA, ETCFO | UPDATED: JAN 29, 2018, 08.22 PM IST

If the Economic Survey is taken as an indicator of what is likely to influence Finance Minister [Arun Jaitley](#) as he presents the Budget on Thursday, then there seems to be good news brewing on the tax front.

The Economic Survey released by the Chief Economic Advisor, [Arvind Subramanian](#) on Monday pointed out that the government's efforts on widening the tax net seem to have paid off.

There is a 50% increase in "unique [indirect tax](#) payers" under Goods and Services Tax (GST) regime as compared to the previous system.

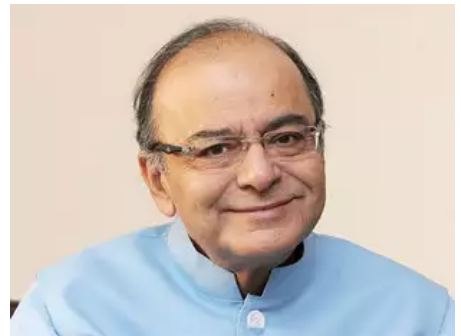
On the direct tax front, there is an addition of 1.8 million individual income tax filers since November 2016 when [demonetisation](#) of high value currency notes was undertaken. This addition, according to the Survey, is over and above the expected trend growth.

The buoyant addition to the tax base may well allow Finance Minister, Arun Jaitley to take a more lenient view of the trade-offs needed to maintain fiscal discipline. Success in plugging tax leakages may also encourage the government to attack tax-related litigation.

The EcoSurvey has taken note of something that does not endear the Tax Department to anyone -- its propensity to fight lengthy and expensive legal battles over what could well be called small change. At least the Survey calls it small change.

About 66% of pending cases, each of which is for an amount less than Rs 10 lakh, account for just 1.8% of the value at stake in litigation.

"There is substantial avoidable litigation in the tax arena which government action could reduce," says the EcoSurvey. It goes on to explain that the Department's petition rate is high despite its low rate of success in litigation.



There is a 50% increase in "unique indirect tax payers" under Goods and Services Tax (GST) regime as compared to the previous system.

Big Change:
The end of Five-Year Plans: All you need to know

Petition rate of the Tax Department, March 2017

Court	Direct tax cases	Indirect tax cases
Supreme Court	87%	63%
High Courts	83%	39%
ITAT/ CESTAT	88%*	20%

Success rate of the Tax Department, March 2017

Court	Direct tax cases	Indirect tax cases
Supreme Court	27%	11%
High Courts	13%	46%
ITAT/ CESTAT	27%*	12%

* Provisional Estimates

Tax expert Amit Singhania, Partner at law firm, Shardul Amarchand Mangaldas points out that there is already an existing circular by Central Board of Direct Taxes (CBDT) giving directions to tax officers on the monetary threshold (of Rs 10 lakh) for filing tax appeals.

However, given the current pendency, he says one needs to revisit it so that this issue can be adequately addressed. "If there is a clear policy of government on tax litigation then it will boost investor confidence and aid to ease of doing business," Singhania says.

Striking an equally circumspect note, Vaibhav Parekh, corporate lawyer at law firm, Nishith Desai Associates says, "If the government thinks it doesn't have a good case to file an appeal, they may choose not to do so at the first juncture and close the matter. That would reduce the unavoidable litigation." It can actually avoid the initiation of such cases, he adds .

Samir Gandhi, Partner, Deloitte, Haskins & Sells too stresses that it will be very appropriate that government comes with an efficient framework both to prevent and resolve the disputes.

"In the first case, we already have mechanism for Advance Ruling & Advance Pricing Agreement (APA) - we can make the framework work quicker. The objective of reaching a resolution will require a collaborative approach from both the government and the taxpayers rather than a confrontation," says Gandhi.

Experts feel government needs to have a fast resolution mechanism to resolve the same before the dispute reaches to various appellate forums - at tax tribunals, High Courts and the [Supreme Court](#).

"A voluntary settlement mechanism binding on tax authorities and tax payers (as prevalent in other countries) can be implemented at assessment stage itself where a resolution to say a Transfer Pricing (TP) dispute or a Permanent Establishment (PE) attribution is reached which is fair and equitable on both sides," says Gandhi.

"The disputes which are presently pending in litigation at various appellate forums - need a pragmatic solution. For example, disputes involving low tax impact can be withdrawn by Revenue Department, or payment of 50, 75 or 100 % of tax without penalty can be introduced. Such measures can help reduce the present number of disputes," he concludes.

The fact that tax litigation finds a mention in the Economic Survey means that it is an issue that is certainly on the Finance Minister Arun Jaitley's radar. Key question is what action will he take?