

CHAPTER 6

DIRECT AND INDIRECT TAXES

A tax may be defined as a "pecuniary burden laid upon individuals or property owners to support the government, a payment exacted by legislative authority. A tax "is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority". Taxes consist of direct tax or indirect tax, and may be paid in money or as its labour equivalent (often but not always unpaid labour). India has a well developed taxation structure. The tax system in India is mainly a three tier system which is based between the Central, State Governments and the local government organizations. In most cases, these local bodies include the local councils and the municipalities. According to the Constitution of India, the government has the right to levy taxes on individuals and organizations. However, the constitution states that no one has the right to levy or charge taxes except the authority of law. Whatever tax is being charged has to be backed by the law passed by the legislature or the parliament. Article 246 (SEVENTH SCHEDULE) of the Indian Constitution, distributes legislative powers including taxation, between the Parliament and the State Legislature. Schedule VII enumerates these subject matters with the use of three lists;

- List - I entailing the areas on which only the parliament is competent to makes laws,
- List - II entailing the areas on which only the state legislature can make laws, and
- List - III listing the areas on which both the Parliament and the State Legislature can make laws upon concurrently.

Separate heads of taxation are provided under lists I and II of Seventh Schedule of Indian Constitution. There is no head of taxation in the Concurrent List (Union and the States have no concurrent power of taxation). Any tax levied by the government which is not backed by law or is beyond the powers of the legislating authority may be struck down as unconstitutional. The thirteen heads List-I of Seventh Schedule of Constitution of India covered under Union taxation, on which Parliament enacts the taxation law, are as under:

- Taxes on income other than agricultural income;
- Duties of customs including export duties;
- Duties of excise on tobacco and other goods manufactured or produced in India except (i) alcoholic liquor for human consumption, and (ii) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in (ii);
- Corporation Tax;
- Taxes on capital value of assets, exclusive of agricultural land, of individuals and companies, taxes on capital of companies;
- Estate duty in respect of property other than agricultural land;
- Duties in respect of succession to property other than agricultural land;
- Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freight;
- Taxes other than stamp duties on transactions in stock exchanges and futures markets;
- Taxes on the sale or purchase of newspapers and on advertisements published therein;
- Taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;
- Taxes on the consignment of goods in the course of inter-State trade or commerce.
- All residuary types of taxes not listed in any of the three lists of Seventh Schedule of Indian Constitution.

The nineteen heads List-II of Seventh Schedule of the Indian Constitution covered under State taxation, on which State Legislative enacts the taxation law, are as under:

- Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues;
- Taxes on agricultural income;
- Duties in respect of succession to agricultural income;
- Estate Duty in respect of agricultural income;
- Taxes on lands and buildings;
- Taxes on mineral rights;
- Duties of excise for following goods manufactured or produced within the State (i) alcoholic liquors for human consumption, and (ii) opium, Indian hemp and other narcotic drugs and narcotics;
- Taxes on entry of goods into a local area for consumption, use or sale therein;
- Taxes on the consumption or sale of electricity;
- Taxes on the sale or purchase of goods other than newspapers;
- Taxes on advertisements other than advertisements published in newspapers and advertisements broadcast by radio or television;
- Taxes on goods and passengers carried by roads or on inland waterways;
- Taxes on vehicles suitable for use on roads;
- Taxes on animals and boats;
- Tolls;
- Taxes on profession, trades, callings and employments;
- Capitation taxes;
- Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling;
- Stamp duty.

Provisions have been made by 73rd Constitutional Amendment, enforced from 24th April, 1993, to levy taxes by the Panchayat. A State may by law authorise a Panchayat to levy, collect and appropriate taxes, duties, tolls etc. Similarly, the provisions have been made by 74th Constitutional Amendment, enforced from 1st June, 1993, to levy the taxes by the Municipalities. A State Legislature may by law authorise a Municipality to levy, collect and appropriate taxes, duties, tolls etc.

Direct Taxes:

A Direct tax is a kind of charge, which is imposed directly on the taxpayer and paid directly to the government by the persons (juristic or natural) on whom it is imposed. A direct tax is one that cannot be shifted by the taxpayer to someone else. The some important direct taxes imposed in India are as under:

Income Tax: Income Tax Act, 1961 imposes tax on the income of the individuals or Hindu undivided families or firms or co-operative societies (other than companies) and trusts (identified as bodies of individuals associations of persons) or every artificial juridical person. The inclusion of a particular income in the total incomes of a person for income-tax in India is based on his residential status. There are three residential status, viz., (i) Resident & Ordinarily Residents (Residents) (ii) Resident but not Ordinarily Residents and (iii) Non

Residents. There are several steps involved in determining the residential status of a person. All residents are taxable for all their income, including income outside India. Non residents are taxable only for the income received in India or Income accrued in India. Not ordinarily residents are taxable in relation to income received in India or income accrued in India and income from business or profession controlled from India.

Corporation Tax: The companies and business organizations in India are taxed on the income from their worldwide transactions under the provision of Income Tax Act, 1961. A corporation is deemed to be resident in India if it is incorporated in India or if its control and management is situated entirely in India. In case of non resident corporations, tax is levied on the income which is earned from their business transactions in India or any other Indian sources depending on bilateral agreement of that country.

Property Tax: Property tax or 'house tax' is a local tax on buildings, along with appurtenant land, and imposed on owners. The tax power is vested in the states and it is delegated by law to the local bodies, specifying the valuation method, rate band, and collection procedures. The tax base is the annual ratable value (ARV) or area-based rating. Owner-occupied and other properties not producing rent are assessed on cost and then converted into ARV by applying a percentage of cost, usually six percent. Vacant land is generally exempted from the assessment. The properties lying under control of Central are exempted from the taxation. Instead a 'service charge' is permissible under executive order. Properties of foreign missions also enjoy tax exemption without an insistence for reciprocity.

Inheritance (Estate) Tax: An inheritance tax (also known as an estate tax or death duty) is a tax which arises on the death of an individual. It is a tax on the estate, or total value of the money and property, of a person who has died. India enforced estate duty from 1953 to 1985. Estate Duty Act, 1953 came into existence w.e.f. 15th October, 1953. Estate Duty on agricultural land was discontinued under the Estate Duty (Amendment) Act, 1984. The levy of Estate Duty in respect of property (other than agricultural land) passing on death occurring on or after 16th March, 1985, has also been abolished under the Estate Duty (Amendment) Act, 1985.

Gift Tax: Gift tax in India is regulated by the Gift Tax Act which was constituted on 1st April, 1958. It came into effect in all parts of the country except Jammu and Kashmir. As per the Gift Act 1958, all gifts in excess of Rs. 25,000, in the form of cash, draft, check or others, received from one who doesn't have blood relations with the recipient, were taxable. However, with effect from 1st October, 1998, gift tax got demolished and all the gifts made on or after the date were free from tax. But in 2004, the act was again revived partially. A new provision was introduced in the Income Tax Act 1961 under section 56 (2). According to it, the gifts received by any individual or Hindu Undivided Family (HUF) in excess of Rs. 50,000 in a year would be taxable.

Indirect Tax:

An indirect tax is a tax collected by an intermediary (such as a retail store) from the person who bears the ultimate economic burden of the tax (such as the customer). An indirect tax is one that can be shifted by the taxpayer to someone else. An indirect tax may increase the price of a good so that consumers are actually paying the tax by paying more for the products. The some important indirect taxes imposed in India are as under:

Customs Duty: The Customs Act was formulated in 1962 to prevent illegal imports and exports of goods. Besides, all imports are sought to be subject to a duty with a view to affording protection to indigenous industries as well as to keep the imports to the minimum in the interests of securing the exchange rate of Indian currency. Duties of customs are levied on goods imported or exported from India at the rate specified under the customs Tariff Act, 1975 as amended from time to time or any other law for the time being in force. Under the custom laws, the various types of duties are leviable. (1) Basic Duty: This duty is levied on imported goods under the Customs Act, 1962. (2) Additional Duty (Countervailing Duty) (CVD): This is levied under section 3 (1) of the Custom Tariff Act and is equal to excise duty levied on a like product manufactured or produced in India. If a like product is not manufactured or produced in India, the excise duty that would be leviable on that product had it been manufactured or produced in India is the duty payable. If the product is leviable at different rates, the highest rate among those rates is the rate applicable. Such duty is leviable on the value of goods plus basic custom duty payable. (3) Additional Duty to compensate duty on inputs used by Indian manufacturers: This is levied under section 3(3) of the Customs Act. (4) Anti-dumping Duty: Sometimes, foreign sellers abroad may export into India goods at prices below the amounts charged by them in their domestic markets in order to capture Indian markets to the detriment of Indian industry. This is known as dumping. In order to prevent dumping, the Central Government may levy additional duty equal to the margin of dumping on such articles. There are however certain restrictions on imposing dumping duties in case of countries which are signatories to the GATT or on countries given "Most Favoured Nation Status" under agreement. (5) Protective Duty: If the Tariff Commission set up by law recommends that in order to protect the interests of Indian industry, the Central Government may levy protective anti-dumping duties at the rate recommended on specified goods. (6) Duty on

Bounty Fed Articles: In case a foreign country subsidises its exporters for exporting goods to India, the Central Government may impose additional import duty equal to the amount of such subsidy or bounty. If the amount of subsidy or bounty cannot be clearly determined immediately, additional duty may be collected on a provisional basis and after final determination, difference may be collected or refunded, as the case may be. (7) Export Duty: Such duty is levied on export of goods. At present very few articles such as skins and leather are subject to export duty. The main purpose of this duty is to restrict exports of certain goods. (8) Cess on Export: Under sub-section (1) of section 3 of the Agricultural & Processed Food Products Export Cess Act, 1985 (3 of 1986), 0.5% ad valorem as the rate of duty of customs be levied and collected as cess on export of all scheduled products. (9) National Calamity Contingent Duty: This duty was imposed under Section 134 of the Finance Act, 2003 on imported petroleum crude oil. This tax was also leviable on motor cars, imported multi-utility vehicles, two wheelers and mobile phones. (10) Education Cess: Education Cess is leviable @ 2% on the aggregate of duties of Customs (except safeguard duty under Section 8B and 8C, CVD under Section 9 and anti-dumping duty under Section 9A of the Customs Tariff Act, 1985). Items attracting Customs Duty at bound rates under international commitments are exempted from this Cess. (11) Secondary and Higher Education Cess: Leviable @1% on the aggregate of duties of Customs. (12) Road Cess: Additional Duty of Customs on Motor Spirit is leviable and Additional Duty of Customs on High Speed Diesel Oil is leviable by the Finance Act (No.2), 1998, and the Finance Act, 1999 respectively. (13) Surcharge on Motor Spirit: Special Additional Duty of Customs (Surcharge) on Motor Spirit is leviable by the Finance Act, 2002.

Central Excise Duty: The Central Government levies excise duty under the Central Excise Act, 1944 and the Central Excise Tariff Act, 1985. Central excise duty is tax which is charged on such excisable goods that are manufactured in India and are meant for domestic consumption. The term "excisable goods" means the goods which are specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act 1985. It is mandatory to pay Central Excise duty payable on the goods manufactured, unless exempted eg; duty is not payable on the goods exported out of India. Further various other exemptions are also notified by the Government from the payment of duty by the manufacturers. Various Central Excise are: (1) Basis Excise Duty: Excise Duty, imposed under section 3 of the 'Central Excises and Salt Act' of 1944 on all excisable goods other than salt produced or manufactured in India, at the rates set forth in the schedule to the Central Excise tariff Act, 1985, falls under the category of Basic Excise Duty In India. (2) Special Excise Duty: According to Section 37 of the Finance Act, 1978, Special Excise Duty is levied on all excisable goods that come under taxation, in line with the Basic Excise Duty under the Central Excises and Salt Act of 1944. Therefore, each year the Finance Act spells out that whether the Special Excise Duty shall or shall not be charged, and eventually collected during the relevant financial year. (2) Additional Duty of Excise: Section 3 of the 'Additional Duties of Excise Act' of 1957 permits the charge and collection of excise duty in respect of the goods as listed in the Schedule of this Act. (4) Road Cess: (a) Additional Duty of Excise on Motor Spirit: This is leviable by the Finance Act (No.2), 1998. (b) Additional Duty of Excise on High Speed Diesel Oil: This is leviable by the Finance Act, 1999. (5) Surcharge: (a) Special Additional Duty of Excise on Motor Spirit: This is leviable by the Finance Act, 2002. (b) Surcharge on Pan Masala and Tobacco Products: This Additional Duty of Excise has been imposed on cigarettes, pan masala and certain specified tobacco products, at specified rates in the Budget 2005-06. Biris are not subjected to this levy. (6) National Calamity Contingent Duty (NCCD): NCCD was levied on pan masala and certain specified tobacco products vide the Finance Act, 2001. The Finance Act, 2003 extended this levy to polyester filament yarn, motor car, two wheeler and multi-utility vehicle and crude petroleum oil. (7) Education Cess: Education Cess is leviable @2% on the aggregate of duties of Excise and Secondary and Higher Education Cess is Leviable @1% on the aggregate of duties of Excise. (8) Cess - A cess has been imposed on certain products.

Service Tax: The service providers in India except those in the state of Jammu and Kashmir are required to pay a Service Tax under the provisions of the Finance Act of 1994. The provisions related to Service Tax came into effect on 1st July, 1994. Under Section 67 of this Act, the Service Tax is levied on the gross or aggregate amount charged by the service provider on the receiver. However, in terms of Rule 6 of Service Tax Rules, 1994, the tax is permitted to be paid on the value received. The interesting thing about Service Tax in India is that the Government depends heavily on the voluntary compliance of the service providers for collecting Service Tax in India.

Sales Tax: Sales Tax in India is a form of tax that is imposed by the Government on the sale or purchase of a particular commodity within the country. Sales Tax is imposed under both, Central Government (Central Sales Tax) and State Government (Sales Tax) Legislation. Generally, each State follows its own Sales Tax Act and levies tax at various rates. Apart from sales tax, certain States also imposes additional charges like works contracts tax, turnover tax and purchaser tax. Thus, Sales Tax Acts as a major revenue-generator for the various State Governments. From 10th April, 2005, most of the States in India have supplemented sales tax with a new Value Added Tax (VAT).

Value Added Tax (VAT): The practice of VAT executed by State Governments is applied on each stage of sale, with a particular apparatus of credit for the input VAT paid. VAT in India classified under the tax slabs are 0% for essential commodities, 1% on gold ingots and expensive stones, 4% on industrial inputs, capital merchandise and commodities of mass consumption, and 12.5% on other items. Variable rates (State-dependent) are applicable for petroleum products, tobacco, liquor, etc. VAT levy will be administered by the Value Added Tax Act and the rules made there-under and similar to a sales tax. It is a tax on the estimated market value added to a product or material at each stage of its manufacture or distribution, ultimately passed on to the consumer. Under the current single-point system of tax levy, the manufacturer or importer of goods into a State is liable to sales tax. There is no sales tax on the further distribution channel. VAT, in simple terms, is a multi-point levy on each of the entities in the supply chain. The value addition in the hands of each of the entities is subject to tax. VAT can be computed by using any of the three methods: (a) Subtraction method: The tax rate is applied to the difference between the value of output and the cost of input. (b) The Addition method: The value added is computed by adding all the payments that is payable to the factors of production (viz., wages, salaries, interest payments etc). (c) Tax credit method: This entails set-off of the tax paid on inputs from tax collected on sales.

Securities Transaction Tax (STT): STT is a tax being levied on all transactions done on the stock exchanges. STT is applicable on purchase or sale of equity shares, derivatives, equity oriented funds and equity oriented Mutual Funds. Current STT on purchase or sell of an equity share is 0.075%. A person becomes investor after payment of STT at the time of selling securities (shares). Selling the shares after 12 months comes under long term capital gains and one need not have to pay any tax on that gain. In the case of selling the shares before 12 months, one has to pay short term capital gains @10% flat on the gain. However, for a trader, all his gains will be treated as trading (Business) and he has to pay tax as per tax sables. In this case the transaction tax paid by him can be claimed back/adjusted in tax to be paid.

The overall control for administration of Direct Taxes lies with the Union Finance Ministry which functions through Income Tax Department with the Central Board of Direct Taxes (CBDT) at its apex. The CBDT is a statutory authority functioning under the Central Board of Revenue Act, 1963. It also functions as a division of the Ministry dealing with matters relating to levy and collection of Direct Taxes. The Central Excise Department spread over the entire country administers and collects the central excise duty. The apex body that is responsible for the policy and formulation of rules is the Central Board of Excise and Customs which functions under the control of the Union Finance Ministry. The Central Excise officers are also entrusted with the administration and collection of Service tax and the Customs duty.

The information contained in this chapter is related to direct and indirect taxes imposed and collected by the Union Government. The tables giving data from 2000-01 onwards in respect direct taxes (corporation tax, income tax and other direct taxes) collected by Central Board of Direct Tax (CBDT) and indirect taxes (customs duties, union excise duties and service tax) collected by Central Board of Excise and Customs. Customs Collection Rate used in this chapter is defined as the ratio of revenue collection (basic customs duty + countervailing duty) to value of imports (in per cent) unadjusted for exemptions, expressed in percentage.

Highlights of the Direct and Indirect Taxes:

- The total revenue realization from Direct and Indirect Taxes increased from ₹ 1881.19 billion in 2000-01 to ₹ 6076.45 billion in 2008-09. The percentage share of revenue realization from direct taxes to the total revenue realization increased from 36.3% in 2000-01 to 55.7% in 2008-09, whereas, the percentage share of revenue realization from indirect taxes declined from 63.7% in 2000-01 to 44.3% in 2008-09.
- Revenue collection from direct taxes increased from ₹ 683.05 billion in 2000-01 to ₹ 3382.12 billion in 2008-09. The percentage share of revenue realization from corporation tax to the total revenue realization from direct taxes increased from 52.3% in 2000-01 to 63.2% in 2008-09, whereas, the percentage share of revenue realization from income tax decreased from 46.5% in 2000-01 to 36.7% in 2008-09.
- Revenue collection from indirect taxes increased from ₹ 1198.14 billion in 2000-01 to ₹ 2446.67 billion in 2009-10. The percentage share of revenue realization from customs duties to the total revenue realization from indirect taxes decreased from 39.7% in 2000-01 to 34.5% in 2009-10, whereas, the percentage share of revenue realization from excise duties declined from 57.2% in 2000-01 to 42.1% in 2009-10. , However, the percentage share of revenue realization from service tax to the total revenue realization from indirect taxes increased substantially from 2.2% in 2000-01 to 23.5% in 2009-10.

- The total number of effective assesseees of income tax and corporation tax increased from 23.00 million in 2000-01 to 32.65 million in 2008-09. The companies' assesseees declined from 334261 in 2000-01 to 327674 in 2008-09, whereas, the number of individual assesseees and assesseees of Hindu un-divided Families of income tax increased 20.66 million and 0.55 million respectively in 2000-01 to 30.10 million and 0.77 million in 2008-09. The assesseees of firms declined from 1.34 million to 1.31 million during same period, whereas, trusts' assesseees increased from 0.064 million in 2000-01 to 0.071 million in 2008-09. However, the other assesseees increased from 0.051 million to 0.071 million during same period.
- The customs collection rate gradually decreased from 20.2% in 2000-01 to 6.9% in 2008-09. Customs collection rate of petroleum products decreased from 10% in 2004-05 to 3% in 2008-09, whereas, customs collection rate of non-petroleum products decreased from 12% in 2004-05 to 9% in 2008-09.
- About 34% of total import duties were realized from machineries, whereas, 10.8%, 9.0%, 8.5% and 7.7% of the total import duties were realized from Gold & articles other than Gold, petroleum products, chemicals and iron & steel respectively during 2009-10.
- About 62.2% of total excise duties was realized from petroleum crude and petroleum products, whereas, 13.5% and 9.4% of the total excise duties were realized from tobacco products and Iron & steel and articles thereof respectively during 2009-10.
- 7% of total service tax was realized from telephone billing, whereas, 6.9%, 6.3% and 5.4% of the total service tax were realized from banking and other financial service, business auxiliary service and general insurance premium respectively during 2009-10.

This chapter contains the following tables:

- Table 6.1:** presents year-wise revenue realisation from direct taxes, percentage annual growth of corporation and income taxes and percentage share of corporation tax and income tax to the total direct taxes since 2000-01.
- Table 6.2:** presents year-wise revenue realisation from indirect taxes and percentage share of Custom Duties, Excise Duties & Service Tax to the total indirect taxes since 2000-01.
- Table 6.3:** presents year-wise revenue realisation from direct and indirect taxes, percentage annual growth of direct and indirect taxes and percentage share of direct taxes and indirect taxes to the total taxed revenues since 2000-01.
- Table 6.4:** presents year-wise revenue realisation from direct taxes categorized in pre assessment and post assessment revenue collections since 2000-01.
- Table 6.5:** presents year-wise revenue realisation and cost of collection of direct taxes since 2000-01.
- Table 6.6:** presents year-wise number of effective assesseees of direct taxes since 2000-01.
- Table 6.7:** presents year-wise corporation tax collected under various heads since 2000-01.
- Table 6.8:** presents year-wise income tax (other than corporation tax) collected under various heads since 2000-01.
- Table 6.9:** presents zone-wise revenue collection from customs duties since 2006-07.
- Table 6.10:** presents customs revenue collection from major commodity-groups since 2006-07.
- Table 6.11:** presents value of imports, import duties collection and collection rates since 2000-01.
- Table 6.12:** presents collection rates for selected import groups since 2004-05.
- Table 6.13:** presents zone-wise revenue collection from central excise duties since 2006-07.
- Table 6.14:** presents excise revenue from petroleum products (POL) and non-petroleum products (non-POL) since 2000-01.
- Table 6.15:** presents revenue collection from central excise duties from major commodity groups since 2006-07.
- Table 6.16:** presents service-wise revenue collection from service tax from since 2006-07.