Tax Forum Suggestions for Review of Revenue Laws

Turnover Tax, Excise, Customs and Stamp Duties, the bewildering number of taxes can leave any tax payer confused. With the existing need to properly co-ordinate certain departments of the Inland Revenue, the Sri Lanka Institute of Taxation proposes setting up a special Board of Revenue. Stanley Fernando outlines the Institute's suggestions

TAX ADMINISTRATION- THE NEED FOR A BOARD OF INLAND REVENUE

There is a need to co-ordinate the revenue collecting departments of Inland Revenue, Customs and Excise Departments to achieve a better and effective fiscal policy formulation, exchange of information and monitoring of the implementation of these taxes.

There are a number of taxes of similar character such as Turnover Tax, Excise Duty, Customs Duty, Stamp Duty leaving the taxpayer bewildered by the overlapping nature of the taxes and duties and the administration is unaware of the impact and the incidence of taxes.

The Sri Lanka Institute of Taxation proposes the setting up of a Board of Revenue comprising the commissioner general of Inland Revenue, director general of Customs and the commissioner general of Excise with one of them as the chairman for a year's period on a rotating basis. The main functions of the Board should be:

a) Formulation and review of revenue policy

b) The effective redress of taxpayer grievances

c) Coordinate the administration of the different departments

d) Improvement of relations between taxpayers and the revenue agencies.

THE BOARD OF REVIEW- INLAND REVENUE AND GOODS AND SERVICES TAX

There is a very urgent need to revitalize the Board of Review established under the Inland Revenue Act as an independent appellate tribunal. Such a need is strongly felt with the introduction of the Goods and Services Tax.

The Board of Review consisting of independent arbitrators is an administrative check in favor of the taxpayer and an additional assurance that tax liability will be correctly determined.

The appeal at the Board of Review is heard in camera and the decision of the Board of Review is final except on questions of law. The court of appeal can interfere only if there is an error in law, if a finding of fact is arrived at with no evidence to support it or if the case stated for it's opinion is on a pure question of law.

The Board of Review is thus an important quasi judicial body adjudicating on questions of fact and of law and such decisions are of value and add to existing judicial precedents and practices that can be followed in the administration of the tax laws.

However as appeals to the Board of Review are heard in camera, it's decisions and considered reasons for its determination are not available to the public. This prevents the development of the tax law being uniformly administered. Suitable amendments to the law should be made so that the determinations of the Board of Review are made available to the public.

TIME LIMITS FOR TAX COLLECTION PROCEDURES

Time limits placed for certain administrative procedures must also be extended in respect of procedures for tax collection.

There are a number of cases coming up where collection procedures have been initiated in taxes assessed more than twenty five years ago. It has also come to notice that payments made by tax- payers had not been updated, while the department insists on evidence of payment causing the taxpayer serious difficulties in proving taxes paid several years earlier. Further the correctness of the claim by the Collection Branch in most of the cases for very old years cannot be verified with the tax files, as the department has destroyed documents for old years. This is placing undue hardship on the taxpayer, the department placing the onus of proving that tax had been paid on the taxpayer.

Certain time limits have been. provided for expediency of tax administration. When the taxpayer has furnished his return and paid the tax, he has discharged his obligations. He should not be burdened with tax claims on assessments made, without limitation of time for collection of such taxes. A time limit of ten years for tax collection procedures has been proposed. Placing such a limit will ensure speedy collection, and ensure the efficiency of tax administration.

AGREEMENT OF TAX LOSSES – IMPOSITION OF A TIME LIMIT

The Practice hitherto has been for the assessor to postpone scrutiny of a tax loss incurred in a previous year until a set off of the loss is claimed against the profit of a subsequent year. This results in detailed inquiries being initiated regarding losses nearly seven to eight years after the return has been filed. In view of the amendment to the Inland Revenue Act restricting the period of set off available for losses, there is the need for timely agreement of losses so that the taxpayer will be kept informed of the agreed amount available for set off. Section 115(5) of the Inland Revenue Act prescribes a time-bar for assessments, so that subject to certain exceptions, an assessor is required to make assessments or additional assessments of income within a certain prescribed period. This time-bar should be extended to the agreement of losses as well.

CAPITAL GAINS- REDUCTION IN RATE OF TAX

While a reduction in the marginal rate of tax to 25% had been proposed, there has been no reduction in the marginal rate of tax on capital gains which still remains at 25%. A proportionate reduction in the rate of tax applicable to Capital Gains should be made.

NON-CITIZEN EMPLOYEES – REDUCTION IN RATE OF TAX

The rate of tax applicable to non-citizen employees still remains at 15% while a substantial reduction in the tax payable by a resident individual had been announced. A comparison of the tax payable by a resident individual and a non-citizen employee shows that a non-citizen employee will pay higher tax than a resident employee. The rate of tax applicable to non-citizen employees should be reduced to 10%.

SELF ASSESSMENT INSTALMENT AND PENALTY

Section 97(1) provides for the payment of self-assessment instalments of income tax for the current year of assessment on the basis of income tax payable in respect of the year preceding the year of assessment and a penalty is chargeable under section 125(2) (ii) where a person had not paid the appropriate instalment of income tax required to be paid under Section 97(1).

In order to cut down unnecessary administrative work and reduce taxpayer dissatisfaction it is proposed that this section be amended so as not to charge any penalty in cases where the actual amount of the tax payable during the current year had been paid on the due dates.

P.A. Y. E-DIRECTION TO THE EMPLOYER

The procedure to obtain a direction from the Inland Revenue to the employer is causing a lot of delay, hardship and frustration.

The employer should be allowed initially to allow the deductions claimed by the employee on documentary evidence furnished to such an employer who will make such adjustments to calculate the PAYE due. The employer will thereafter pass such documents to the Inland Revenue for processing when any incorrect application of the direction rules can be dealt with.

This will reduce a substantial work load of the department while at the same time reduce the delay and frustrations experienced by employees in obtaining the necessary direction. The employer will find it convenient to deal with all his employees when preparing the paysheets under this arrangement.

COMPANY TAXATION – REPEAL OF ADVANCE COMPANY TAX

There is an urgent need to repeal the ACT especially when full imputation is permitted in respect of dividends of a quoted public company. The principle of imputation is to eliminate the double taxation of company profits and to ensure that the company tax on such profits are paid by the company.

With the introduction of the full imputation of dividends declared by a quoted public company the ACT tax charged is an exercise which unnecessarily complicates company taxation. The objective of taxing the profits of the company only once can be achieved by declaring dividends free of tax by ensuring that the company pays its tax. Under the imputation system the main stream Company

Tax. the company nevertheless pays

GOODS AND SERVICES TAX

There are some important provisions of the Goods and Services Tax which require to be reviewed and appropriately amended to secure taxpayer acceptance and for successful implementation.

(1) RECOVERY OF TAX FROM THE PRINCIPAL OFFICER OF A CORPO RATE BODY

Section 48(1) of the Goods and Services Tax Act No: 34 of 1996 provides that where any tax assessed on a corporate body had not been paid, it is lawful to proceed against a manager, director, secretary or other principal officer of such body corporate "whether such officer is responsible or not for such default, notwithstanding anything in any other written law relating to such body corporate." The principal officer of a company is made vicariously liable for the tax payable by a body corporate. The tax payable by a company is essentially a liability of the company and the section does not provide any defense even when such principal officer had acted with due diligence. The section denies such defense and holds the principal officer vicariously liable for the default of the company WHETHER OR NOT SUCH PRINCIPAL OFFICER IS RESPONSI- BLE FOR THE DEFAULT.

Under the Inland Revenue Act and Turnover Tax Act such principal officer shall be deemed guilty unless he proves that the offence was committed without his knowledge and that he exercised all such diligence to prevent the commission of that offence as he ought to have exercised having regard to the nature of the function in such capacity and to all other circumstances.

Section 48 of the Goods and Services Tax Act denies any defense to the principal officer. This is a harsh and oppressive piece of legislation and should be repealed.

(2) THE ASSESSOR TO STATE WHY HE IS NOT ACCEPTING THE RETURN

The Goods and Services Tax operates under the scheme of Self Assessment and a return furnished by a registered person is presumed to have been furnished in good faith, unless the assessor seeks to reject that return and impose such tax by an assessment which, in his judgment, ought to have been paid.

The provisions of section 29 as it stands which empowers an assessor to reject the return and make an assessment requires an assessor to state “WHY” the return has been rejected. The word “WHY” can permit the assessor to reject the return even for any arbitrary conclusions without stating his reasons for his conclusions.

Consequent to representations made by taxpayers the provisions of the Inland Revenue Act and Turnover Tax Act provided that where an assessor seeks to reject a return made by a taxpayer the assessor must communicate his reason for such an assessment. The Supreme Court as well as the Court of Appeal have insisted that the assessor must not only state his conclusion but also the reasons for the conclusion.

The Institution considers that the giving of reasons by an assessor for the protection of taxpayers as enshrined in the Inland Revenue and the Turnover Tax Acts should continue to find its place in the Goods and Services Tax Act unadulterated. Any attempt to impair this right for the sake of administrative expediency should not be permitted.

This section should be amended and replaced by the provision in the Inland Revenue and Turnover Acts relating to giving reasons when a return is rejected.

TRANSITIONAL PROVISIONS – GOODS AND SERVICES ACT

The Transitional Provisions in section 75 do not seem to have been adequately addressed to take into account certain problems that arise on account of the change over. Although persons liable to Turnover Tax in relation to manufacturing enterprises, in certain cases may not encounter many problems, the rate to be applied and price readjustments may arise on change over. Some of the problems that may be encountered must be adequately addressed to remove any apprehensions and ensure tax payer acceptance.

REFUND OF RESIDUE OF TURNOVER TAX

The amending provisions of the Turnover Tax Act provide for the refund of the residue of the Turnover Tax deductible after the expiry of six months. This period of six months will cause hardship and cash flow difficulties.

This provision should be amended so as to provide for repayment of the unabsorbed tax credit on the appointed date within three months of the date of

application for such refund. This will permit the smooth implementation of the GST and enable registered persons who are entitled to such payment to obtain the refund in a short time.

[b] GOODS AND SERVICES TAX ASSESSED ON REVIEW OF RETURNS

The Goods and Services Tax assessed on review of the return may amount to a direct cost to the person assessed and he may not be able to recover such tax against his output tax.

Since this will amount to a direct cost to the business, provision must be made to enable such tax as deductible in computing such persons profits and income for income tax purposes.

(c) HIRING OR LEASING AGREE MENT AND CONTRACT ENTERED INTO PRIOR TO THE APPOINTED DATE

Adjustments may be required in respect of instalment payments agreed to prior to the appointed date. Where the instalment agreed to include Turnover Tax content the charge of GST to be made after the appointed date may cause hardship on existing contractual agreements. The same problem is likely to affect contract prices concluded prior to the appointed date with Turnover Tax content being subject to charge of GST after the appointed date (a)

The transitional provisions must be made so as to enable the work in progress and stock value adjustments that may arise on account of the change.

(COURTESY: Sri Lanka Institute of Taxation)