

Kluwer International Tax Blog

“Loophole Games”: understanding corporate tax avoidance in India

Shilpa Goel (Tax Lawyer) · Friday, May 24th, 2019

I wrote in my last [blog](#) that despite its impact, corporate tax avoidance is one of the lesser debated issues in India.

This is what I wrote: “Multinational tax avoidance has almost never made it to the front pages of popular Indian newspapers and has never been discussed on primetime TV news debates. That corporate tax avoidance is not ‘popular’ with the Indian voters today is also indicated by the fact that not a single question relating to “tax avoidance” or “corporate tax avoidance” was raised in the Sixteenth Lower House of Parliament (2014-2019).”

Soon after publication of the blog, a reader of the Kluwer International Tax Blog emailed me drawing my attention to a recent book written by a senior Indian Revenue Service (IRS) officer, Smarak Swain. Entitled “Loopholes Games: A Treatise on Tax Avoidance Strategies”, Swain’s book (Wolters Kluwer India, 2019) no doubt makes a provocative and compelling case for a rethink of how India should deal with aggressive tax avoidance.

The book is an important contribution to scholarship on corporate tax avoidance (from an Indian perspective) for two main reasons.

First, it discusses all the major kinds of corporate tax avoidance strategies that one can conceive of. Sure, Swain should have chosen the title of the book a little more carefully to not make it appear as a ready reckoner for taxpayers and tax advisers on how to implement abusive tax structures.

However, most (if not all) of these strategies are not unknown to businesses and their tax advisers. The idea of the book is to communicate these to the common man (and the media) in a simple, jargon-free language.

Second, Swain is one of the few IRS officers to have penned down his ideas, knowledge and experience as an IRS officer. Of course, there are books and commentaries explaining key topics but the Indian scholarship really lacked clear, insider perspectives on how the tax authority finds it difficult to tackle corporate tax avoidance.

Swain’s book – divided into six parts, spanning across 31 chapters – brings together all kinds of abusive tax structures in one place with a view to enabling the common man know and understand the most commonly used tax avoidance strategies. Some of the strategies discussed are: exploiting the mercantile system of accounting, manipulating segmental accounts, characterization of revenue

as capital receipt, rate arbitrage, capital loss harvesting, bonus stripping.

The book captures how companies engage in base erosion and profit shifting (BEPS) through bogus intra-group service fee payments, thin capitalization or debt loading, using cost sharing arrangements to transfer an IP right from a high tax to a low tax jurisdiction, among others.

Further, how companies manipulate their permanent establishment (PE) status is well captured in the book. Swain provides several examples of how companies avoid the PE status such as through splitting of contracts, commissionaire arrangements, appointing an “employer of record” to avoid service PE in India, and exploiting rules pertaining to attribution of profits to PEs.

Finally, Swain dedicates a separate chapter to the problems in taxation of e-commerce companies and the debate over how to frame laws to cope with the digital economy. How companies circumvent the recently introduced six percent equalization levy is also discussed in some detail.

There is no doubt that the existing tax system has failed to keep pace with changing business models, which rely excessively on digitalisation to make profits. The presence of a wide network of tax treaties somewhat facilitates this, especially given that most tax treaties do not have adequate anti-abuse rules.

In this sense, the book is timely and I hope that it is able to set the platform for discussions around the topic of corporate tax avoidance in India. India on May 23 selected a new government for the next five years and I hope that some of the concerns raised in the book are promptly taken stock of.

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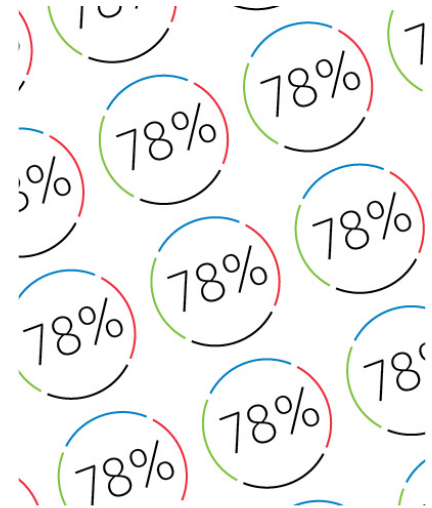
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