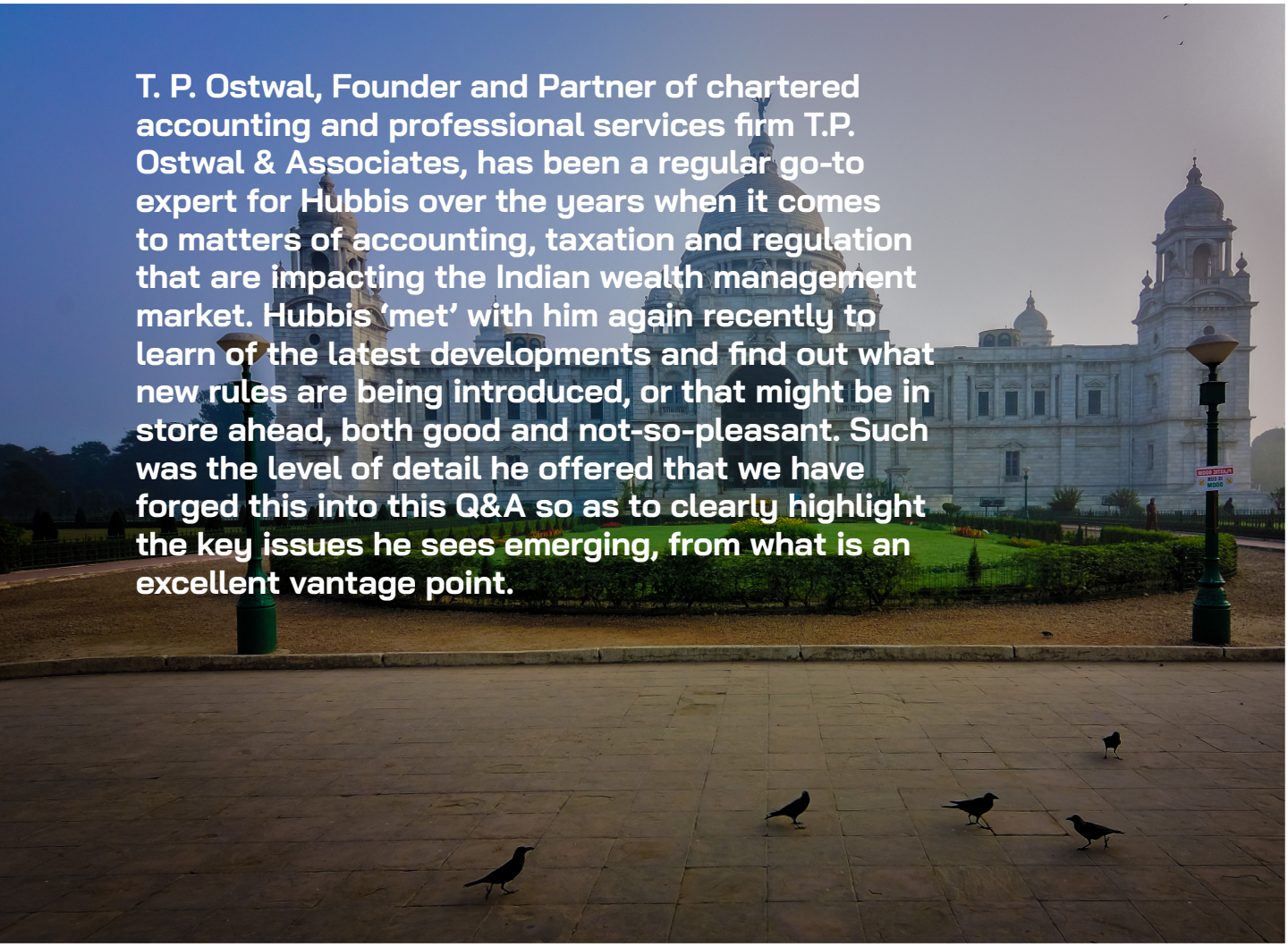
T.P. Ostwal Surveys the Rapidly Changing World of Regulation and Taxation in India



T. P. Ostwal, Founder and Partner of chartered accounting and professional services firm T.P. Ostwal & Associates, has been a regular go-to expert for Hubbis over the years when it comes to matters of accounting, taxation and regulation that are impacting the Indian wealth management market. Hubbis 'met' with him again recently to learn of the latest developments and find out what new rules are being introduced, or that might be in store ahead, both good and not-so-pleasant. Such was the level of detail he offered that we have forged this into this Q&A so as to clearly highlight the key issues he sees emerging, from what is an excellent vantage point.

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The Indian government has made changes to the criteria for which Indians could be considered non-resident for tax purposes. What has happened, why and what are the implications?

The Indian Government has been very aggressive on black money and the assessment of people with accounts abroad. In particular, there is a change in the rules regarding residential status. The residential status of a person being an Indian citizen or a person of Indian origin is now based on income criteria. Earlier the rule was, if you stay less than 182 days in a year in India, possibly you would become non-resident, if you're a citizen of India or person of Indian origin. Now, however, the new rule is for anyone with Indian income of more than Rs. 15 lakhs (approx. USD20,000), then you can stay in India only up to 119 days to be considered as a non-resident in India. That has created major issues, as HNWIs are now trying to find ways and means to reduce their Indian taxable income below Rs. 15 lakhs so that they can stay up to 181 days in India.

Other change in the rules is with respect to deemed residency. As per this rule when any Indian citizen is not liable to tax anywhere in the world or is a stateless person and his income exceeds Rs. 15 lakhs, he will automatically be deemed to be the resident of India, almost like the US Green Cardholder in USA system. As a result of these changes, a lot of HNWI have started migrating from India and also they have started taking citizenship of foreign countries.

Is there any likelihood of estate and inheritance duties in the foreseeable future?

No, my view remains as it was when we last spoke at length in 2018. In the next five years and more, there will be no inheritance tax in India, although the IMF and OECD are pressurising the country to reduce the inequalities here. However, the government did increase the tax rate on individuals with income above 5 crore rupees (approx. USD685,000) to almost 43% from 35%, i.e. an increase of almost 8% and as this is coming in every year rather than at someone's death @ 30% of Estate Passing on to successor; they have found this a better approach as it brings the income to the state coffers today.

What about changes to company taxation?

If you are an Indian owning a company abroad, whose turnover exceeds Rs. 50 crores (approx. USD6,850,000), then that company can be deemed to be resident of India, if your key managerial and commercial decisions as a whole, in substance, are made from India, and irrespective of the fact whether you pay tax somewhere else or not, you will have to file the relevant tax return in India. This is known as Place of Effective management (POEM). You can offset taxes paid abroad but will have to file the tax return in India as a resident of India. The tax rate to such companies will be @40% as against 30% for Indian companies. That is a major change, which has now started pinching the wealthy who set up the companies abroad.

What is driving all these changes?

The IMF, the OECD and others want to catch all the black money, and Automatic Exchange of Information is allowing this to happen. If for example you've setup the trust and your company is under that trust, everything has to be disclosed to the Government of India, in tax return. If you are resident of India and of course they want a share of any taxes they can get hold of. Therefore, the government felt that we must have a tax mechanism that effectively prevents people becoming non-resident, which they had been doing by staying in India only for up to 181 days. Once you become a resident and ordinarily resident, your worldwide income is taxable here, whereas if you are a non-resident only Indian income is taxable.

Wealthy Indians have been working all sorts of angles, for example they stay in India for 181 days, in Dubai for 90 days, in Spain for 80 days, and the rest of the time in the UK, and they have homes everywhere, but they are not considered as a resident of any country, because the UK and Spain allow you to stay for up to 90 days in your own house, and there is no tax in Dubai.

So the government brought it down to 120 days, and they linked it with the Indian taxable income, which as I explained is now gets restricted to 15 lakhs (approx. USD20,000), which is of course very little for these wealthy individuals.

What are some of the direct implications as you see things from your vantage point?

For example, people are looking more into overseas residency and citizenship by investment schemes, as I mentioned earlier. Hence, people are also trying to cut their citizenship ties to India itself. As we know, there are quite a number of countries offering very attractive investment-based citizenship. But of course, tax is only one consideration, and there are many other appeals, in terms of family lifestyle, security, stability, education, and so forth. Purely for tax, Bulgaria is in the targets, as that offers only 10% tax for individuals and companies and is part of the EU. You can be a citizen of that country, but actually stay elsewhere, for example at your home in London.

Dubai is a preferred location from every respect, except the summer heat. Dubai offers residence-ship to other nationals, it offers 100% ownership of a company in mainland Dubai, which was not permitted earlier, as until then a local sponsor holding 51% was needed, but no longer today. It is very easy to commute from India to Dubai, it takes less than three hours, and the Covid-19 restrictions are far less. There is a lot of wealth management taking

Getting personal with T. P. Ostwal

Ostwal was born in Rajasthan, in a village named Phalodi, in the Jodhpur district. "Incredibly, some roughly one-third of all the 300,000 accountants in India come from my district," he reports. "It is quite strange, but true..."

He studied through school and college in a town named Sholapur in Maharashtra and completed his chartered accounting qualifications in Mumbai, where he has lived and worked ever since. He has two daughters, the elder of whom has two children of nine and four, and the younger of which is not yet married and is a practicing corporate lawyer.

"If I'm not working, I love reading, cooking, and travelling, although the pandemic has curtailed the last of those pursuits, at least for now," he reports. "I also give lectures and speak regularly on accounting and other matters for our chartered accountant societies and institutes and other associations."

A recent book he thoroughly enjoyed is "*Winners Never Cheat*", which he says was recommended by the chairman of Infosys, Narayana Murthy, while he was addressing one of the conferences in the Chartered Accountants Society. "Well worth a read, a book for our times," he says.

As to travels in the future, he says that the family should decide, as he has seen the world several times over. "Of course, I have not been everywhere, but it is time for the family to choose rather than me," he comments. "It would seem that they would rather like the idea of New Zealand and Norway, the first for its sheer beauty and remoteness, and the second for the northern lights."

place in Dubai and that helps these wealthy Indian clients.

What is happening amongst the second, third and younger generations?

It is interesting because so many people around the world see India as a vast and incredibly important economy with incredible growth potential. Hence, many businesses and people are coming here. Meanwhile, as we discussed, many wealthy Indians are trying to distance themselves for tax residence reasons, but that does not mean they are shutting their businesses. The second generation, third and fourth generations are sort of maintaining the balance, staying in India and keeping the business growing. So, these families are seeking ways to get the best of both worlds, as the founders and core shareholders try to migrate their holdings in these Indian businesses to a foreign country in such a manner which achieves the lowest possible tax. They then ultimately control the businesses from overseas.

And for those second and younger generations that have enjoyed education overseas and who want to stay overseas, then they also through the family businesses controlled overseas have income, but effectively derived from the Indian-based businesses. Then they can also establish the same or other businesses overseas. In this way, they are hedging their bets and keeping their feet in at least one other jurisdiction aside from India. And that really boosts opportunity for these families for today and the future generations.

What are your key business priorities for the year or two ahead?

First, we are building the firm, hiring new talent, bringing on more partners, as the opportunities in India are phenomenal.

opportunities for every chartered accounting firm in the country have expanded greatly, as the near monopoly type environment is being dismantled. Meanwhile, the Big 4 are now concentrating on other work like tax, consultancy and so on. In short, we have seen more and more opportunity here, and therefore need to build our talent pool.

Secondly, we are expanding our digitisation. We all know that if you do not have a great digital platform and capabilities, you will struggle.

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Take for example the rules on audits. It used to be the case that the Big 4 controlled the audits of almost all of the biggest banks and non-bank financial corporations (NBFCs), but the Reserve Bank of India created a new rule under which they can audit those firms only for 3 years, and then there is a cooling off for six years, and rotation to other firms. And then there are tight rules on how many you can audit, so one firm cannot audit more than 4 banks and 8 NBFCs. The result of all this is that the

What would you offer as a final observation?

India is becoming more professional and organised, with businesses consolidating and with the economy less fragmented. And at the same time, digitisation has boosted the opportunities for creating new businesses at scale, and that creates a virtuous circle. As funding increases for these future unicorns and as wealth is created and recycled, that will surely greatly benefit the economy and society at large. ■