

Study Paper on Taxation of E-Commerce under GST

*[As contained in CHAPTER XIV of the Model GST Law
released on 26-Nov-2016]*



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Edition : February, 2017

Committee/Department : Indirect Taxes Committee

Email : idtc@icai.in

Website : www.idtc.icai.org

Price : ₹ 50/-

Published by : The Publication Department on behalf of the Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi - 110 002.

Printed by : Sahitya Bhawan Publications, Hospital Road, Agra 282 003
February/2017/500

Foreword

The paradigm shift in policies and focus in taxation laws, both at micro and macro level, on compliance and plugging possibilities of evasion has made it imperative for the professionals to be abreast with latest developments. It is indeed a pleasure that Chartered Accountants in this competitive environment have carved a niche for themselves in the field of Service tax and to a good extent in VAT, in the last decade. The phenomenal increase in e-commerce transaction has widened the ambit of Indirect Taxes specially the statutory provisions provided under upcoming regime of GST.

Knowledge of E-Commerce Models and legal framework is a pre-requisite to stand and/ or expand business and procure Foreign Direct Investment. In order to enhance the knowledge, it has become mandatory for the professionals to study, analyse, update and discuss the changes taking place in e-Commerce transactions, statutory provisions and regulatory guidelines from time to time. Hence, to enable these pursuits and grab professional opportunities lying ahead, the Indirect Taxes Committee of ICAI has launched "Study Paper on Taxation of E-Commerce under GST".

This Study Paper on Taxation of E-Commerce has been specifically designed to provide in-depth knowledge of provisions pertaining to E-Commerce Transactions under GST regime and regulatory guidelines for foreign direct investment on e-commerce prevailing at this point of time, in a very practical and simplified manner.

We appreciate the efforts put in by CA. Madhukar N. Hiregange, Chairman, CA. Sushil Kumar Goyal, Vice-Chairman and other members of the Indirect Taxes Committee for launching the "Study Paper on Taxation of E-Commerce under GST" and bringing out this well aligned and updated material. We are sure this Study Paper would facilitate our members in practice as well as in industry to acquire specialized knowledge and cope-up with the challenges and complexities relating to the E-Commerce Transactions.

We welcome the members to a fruitful and enriching experience.

CA. M Devaraja Reddy
President
ICAI

CA. Nilesh S. Vikamsey
Vice-President
ICAI

Date: 2.02.2017
Place: New Delhi

Preface

India has been witnessing an unprecedented growth in e-commerce transactions. It has now become imperative for the business to understand and adopt e-commerce to grow trade globally and economically. The Government has also been making swift changes in the taxation regime to tax the e-commerce transaction. States have been keen to capture information on goods coming in. Guarding of non taxed goods entering the State is also a country wide concern. Hence, it is prerequisite for professional like Chartered Accountants to envisage and grab this opportunities in e-commerce and cope with the challenges by updating e-commerce transaction and the legal framework governing them.

Taking these facts into account, the Indirect Taxes Committee of ICAI has taken an initiative to apprise its members of various models of E-commerce and its existing and future legal and regulatory framework including Information Technology Act, 2000; Press Note No. 3 (2016 series) dated March 29, 2016 and forthcoming provisions under GST, to combat the unique tax challenges presently posed by e-commerce. Hence, the book is designed to provide in depth practical and theoretical knowledge about detailed and thorough study of aforesaid provisions on E-Commerce which will pave a way to ease of doing business and digital India.

We would like to express our sincere gratitude and thank to CA M. Devaraja Reddy, President and CA. Nilesh Vikamsey, Vice-President, ICAI, as well as other members of the Committee for their suggestions and support in this initiative. We must also thank indirect tax experts' viz. CA. Virender Chauhan for drafting this study paper and CA. Bimal Jain and CA. V.S. Sudhir for reviewing it.

We encourage reader to make full use of this learning opportunity. Interested members may visit website of the Committee www.idtc.icai.org and join the IDT update facility. We request to share your feedback at idtc@icai.in to enable us to make this study paper more value additive and useful.

Welcome to a professionalized learning experience in Indirect Taxation.

CA. Madhukar Narayan Hiregange
Chairman
Indirect Taxes Committee

CA. Sushil Kumar Goyal
Vice-Chairman
Indirect Taxes Committee

Date: 2.02.2017

Place: New Delhi

Index

Sl. No.	Particulars	Page No.
1.	History and Growth of E-Commerce in India	1
2.	E-Commerce Challenges	2
3.	B2C E-Commerce Segments	3
4.	Online Retail in India-Market Size	4
5.	Various Models of E-Commerce	4
6.	Current Tax Regime and its Challenges	8
7.	Key Contents of Agreements with the Vendors and Customers	10
8.	FDI Regulations	11
9.	Provisions under GST Law	12
10.	Interpretation of E-Commerce Provisions as Contained in the Model GST Law	17
11.	Objections and Suggestions raised by the Stakeholders like IAMA	23
12.	International Experience-Sale of Physical/ Digital Goods via Internet	28
13.	Cyber Crimes: Uncertain Threat	29
14.	Our Recommendations	30

Marvel of E-Commerce

**“Uber, the world’s largest taxi company, owns no vehicles.
Facebook, the world’s most popular media owner, creates no content.
Alibaba, the most valuable retailer, has no inventory.
And Airbnb, the world’s largest accommodation provider, owns no real
estate.”**

[By Tom Goodwin (Sr. VP, Strategy and Innovation, Havas Media)]

1 HISTORY AND GROWTH OF E-COMMERCE IN INDIA

- (i) In recent years e-commerce in India has managed to capture the eye-balls and also the mind-space of the consumers at large such as never before and with this unprecedented growth, India has become the second largest market for e-commerce.
- (ii) India is adding three new internet users every second.
- (iii) E-commerce companies have the potential of creating 12 million new jobs in the next 10 years.
- (iv) The e-commerce market in India is expected to breach the \$100-billion mark by 2020.
- (v) To tap the opportunity, e-commerce companies are aggressively ramping up their technology.
- (vi) In line with the ensuing GST law, companies like Snapdeal, Zomato, Urban-Clap, redBus and Cleartrip have started venturing into e-business in flight and bus ticket bookings, hotel reservations and food ordering, recharges and bill payments on their platform to augment their Gross Supply Volume.
- (vii) E-commerce is still less than 2% of the overall consumption in India, as against 14% in China.
- (viii) India can also take a leaf out of the example of Taobao village program in China created by Chinese internet giant Alibaba. From 20 such villages in 2013, the number has grown to 780 by 2015. These digital villages are spread over 17 provinces in China, and cover more than 2,00,000 active online shops. In India, more than 800 million people live in 640 lacs villages.
- (ix) Over the last couple of years, India has changed the way it shops and trades. The unprecedented growth of the e-commerce sector has been largely driven by rapid technology adoption and access to

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the internet through broadband, 3G/ 4G etc., resulting into an increased online consumer base. Due to this digital revolution, the e-commerce sector in India has recorded a four-fold increase in its size in 2009. The industry is growing at a compound annual growth rate (CAGR) of more than 35%.

- (x) The explosive growth in the e-commerce sector has given rise to multiple tax issues. The e-commerce companies besides their normal challenges such as rising competition, rapidly changing technology, shrinking margins etc., are now facing litigation owing to their innovative business models.
- (xi) The Business model of leading players in the e-commerce industry in India enables thousands of small and medium enterprises to reach customers across the country to market their products while the customers are assured timely delivery and genuine products at most competitive prices. E-commerce business model also supports the key policy initiatives of “*Make in India*” and “*Digital India*” of the government in addition to providing jobs to several thousands young people in urban, semi-urban and rural areas of the country. Further, e-commerce business is having a very strong and positive ripple effect on several other industries such as commercial vehicles, two-wheelers, mobile telephony and internet services, cash handling and management services etc.
- (xii) The e-commerce market in India is expected to nearly double to Rs. 2,11,005/- crore by December 2016 and cross \$ 100 billion mark within next 5 years making significant contribution in GDP.
- (xiii) E-commerce gives a secure and cost-efficient contribution in the growth of SMEs and SMEs contribute 17% of the Nation’s GDP and 40% in the total exports from the country.
- (xiv) E-commerce also provides and supports the thought process to encourage cashless transactions which will greatly help the Government’s long term vision to curb black money.

2 E-COMMERCE CHALLENGES

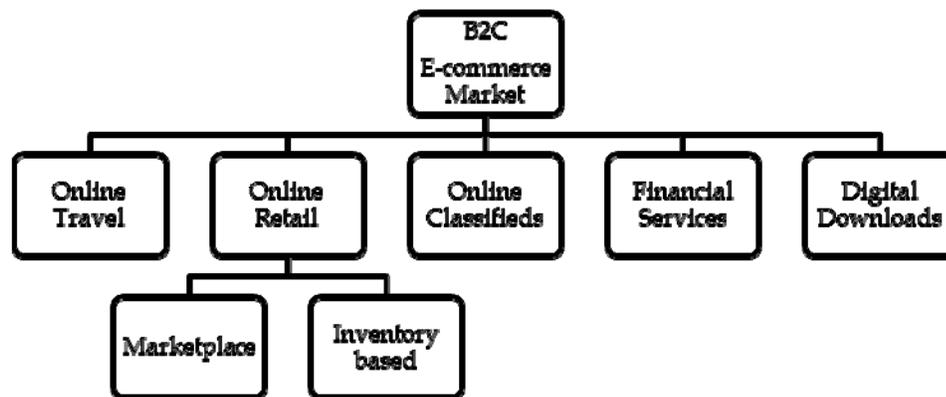
- (i) Customer mindset
- (ii) High cash-on-delivery (COD)
- (iii) Payment Gateways have a failure rate and also has a cost associated
- (iv) Internet connectivity

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- (v) Reachability
- (vi) Poor Courier Services
- (vii) Policy Related Issues
- (viii) Aggressive Pricing Strategies
- (ix) Heavy Discounts
- (x) Free Delivery
- (xi) High Commissions to vendors
- (xii) Poor Logistics & Supply Chain
- (xiii) Storage of goods
- (xiv) High Cost of Customer Acquisition
- (xv) Return of Goods
- (xvi) High technical barriers to market entry
- (xvii) Low level of digital literacy
- (xviii) Regulatory Challenges–Taxation viz. VAT or Entry tax applicability

3 B2C E-COMMERCE SEGMENTS

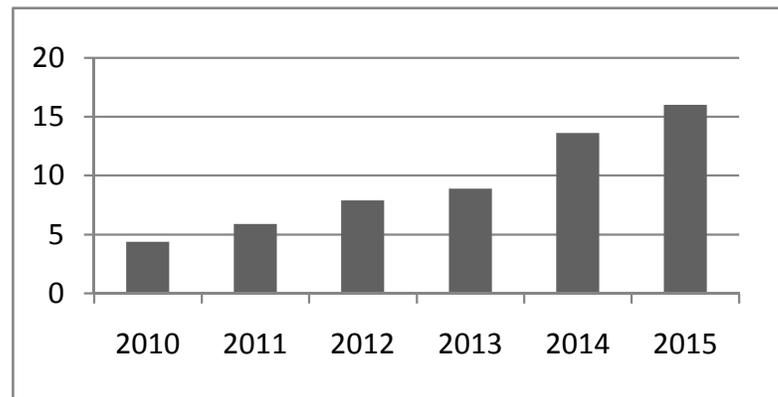
Flowchart 1



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4 ONLINE RETAIL IN INDIA-MARKET SIZE (\$ BILLION)

Graph 2



5 VARIOUS MODELS OF E-COMMERCE

- (i) The need for e-commerce companies to adopt and innovate in the light of technological challenges and rising competition, has led to the evolution of multiple business models resulting into a very crowded and complex market. Various models adopted by e-commerce players include – managed marketplace model (MMP), open market place model (OMM), inventory led model, social networks, aggregator model etc. and many more hybrid models still developing.
- (ii) MMP is the most prevalent and preferred business model in the online retailing space. Under MMP, fast moving goods are held on consignment basis wherein the e-tailor typically controls order fulfillment and exert pricing through complex structures falling in regulatory grey area. On the other hand the OMM, wherein no inventory is maintained by online retailer and goods are directly shipped by reseller to customer, is considered to be the most compliant option from the FDI standpoint.
- (iii) Taking a holistic view of industry trends, with progressive liberalizations in the FDI policy, evolution of tax laws governing digital channels and advent of secure technology, e-commerce is poised for an exciting period of growth in times to come with simpler and legally compliant business structures.

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5.1 Graphical view of various E-Commerce Models

(i) Principal to Principal [P2P]

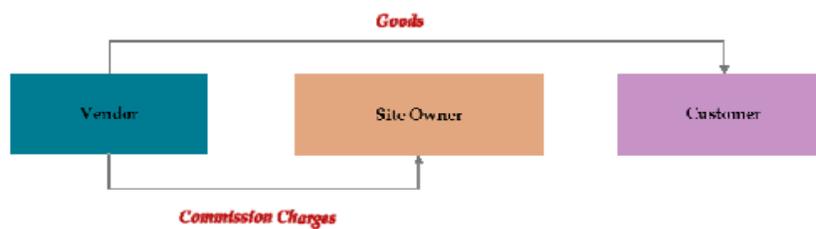
Flowchart 3



Example: Urbanladder

(ii) Principal to Agents [P2A]

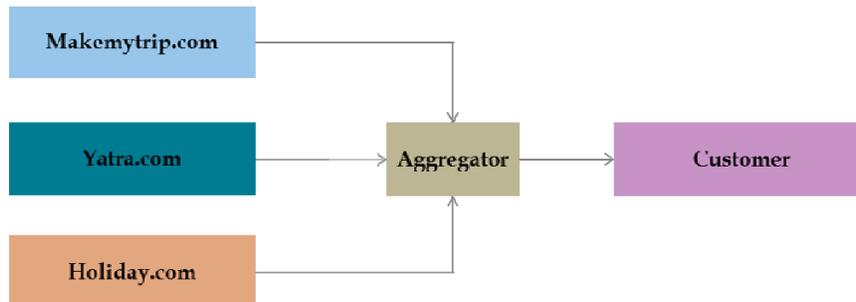
Flowchart 4



Example: Flipkart, Snapdeal, Amazon

(iii) Aggregator

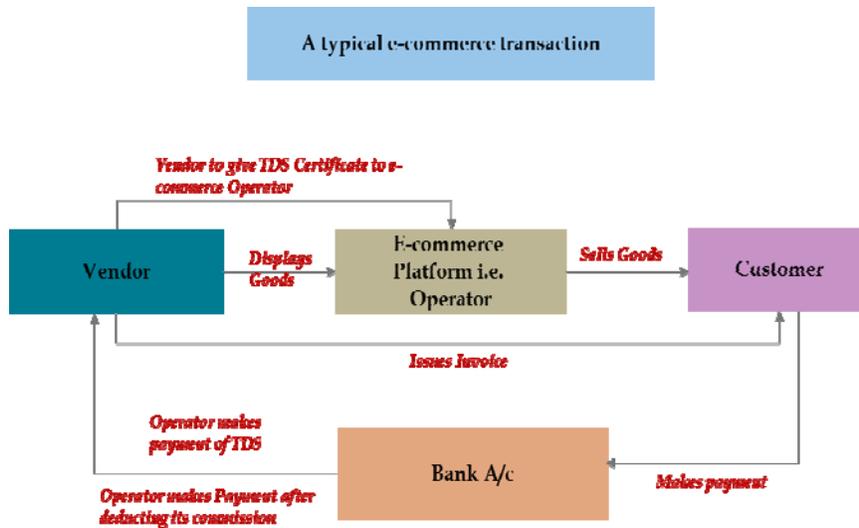
Flowchart 5



Example: Trivago.com, Ola Cabs, Uber etc.

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Flowchart 6



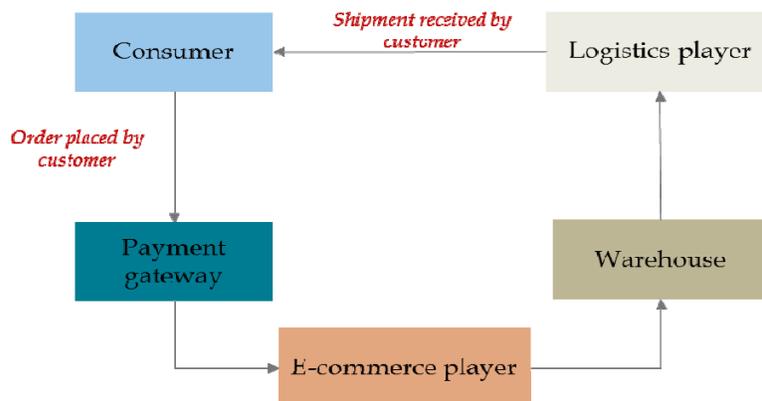
5.2 Pictorial View of Various E-Commerce Models

(a) Inventory Led Model

Salient features-

- Inventory maintained by online retailer
- Superior quality assurance to consumers
- Timely delivery to consumers as stocks are maintained and monitored
- Capital Intensive model

Flowchart 7



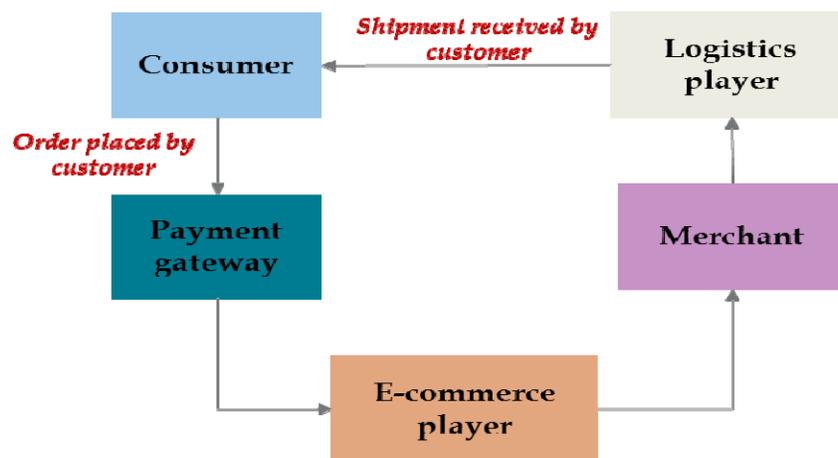
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(b) **Open Market Place Model (OMP)**

Salient features-

- Product is directly shipped by re_seller to customer
- No influence on pricing
- No inventory maintained by the online retailer
- Prone to quality and delivery issues
- Minimal capital investment required
- As regulations currently stand, OMP is seen to be the most compliant from the FDI standpoint
- Example: eBay

Flowchart 8



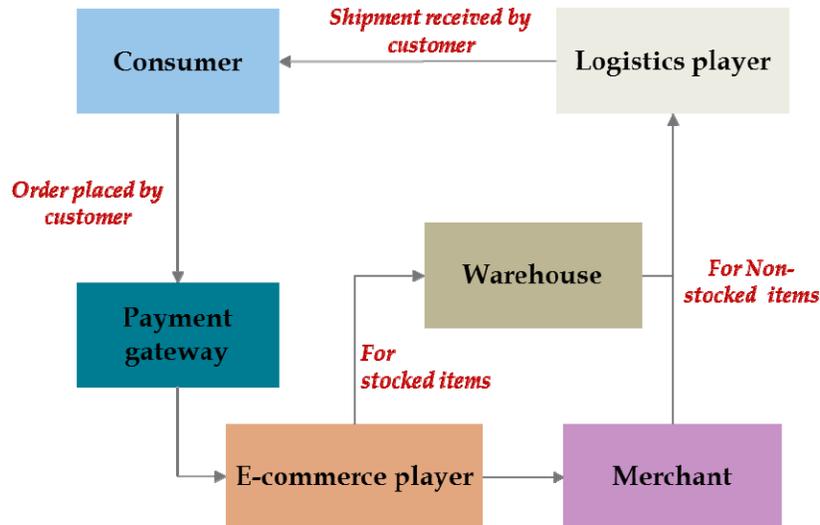
(c) **Managed Market Place (MMP)**

Salient features-

- Marketplace typically controls fulfillment
- Fast moving goods held on consignment
- Indirect influence on pricing and discounts
- Some products are also sold at marketplace by sellers
- Lower Inventory and warehousing cost
- Owing to the nascence of the ecosystem, companies typically look to MMP model to control customer experience
- Through this model, portals are seen to exert indirect pricing control through complex structures falling within regulatory grey area
- Example: Amazon

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Flowchart 9



6 CURRENT TAX REGIME AND ITS CHALLENGES

- (i) **VAT/CST on e-commerce transactions**-E-commerce transactions in India suffer from lots of complexities in regard to indirect taxation. One of the major concerns for the e-commerce operator is the implementation of Value Added Tax (VAT) on online marketplace companies in some States. Further, disputes have arisen in case of e-commerce companies that undertake storage of goods procured from various sellers in their warehouses before dispatching them to the respective buyers. The tax authorities are perplexed whether this movement of goods from supplier to warehouse would fall under the ambit of sale of goods and chargeable to VAT/CST. Further, these complexities worsen, in as much as a question arises as to whether the transaction is chargeable to VAT or CST, in case of transactions triggering events related to sales in multiple States.

The Kerala State Commercial Department has issued a demand notice to various e-tailers like Flipkart and Myntra demanding VAT on sale of goods hosted on their web portals. However, the said demand was quashed by the Kerala High Court subsequently. The same issue arose in the State of Karnataka, where the State VAT department demanded VAT on sale of goods from the warehouse of e-tailers.

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- (ii) **Service tax on e-commerce transactions**-Service tax is leviable on an activity by one person for another for a consideration, unless the same is specifically excluded under the Negative List of Services given under Section 66D of the Finance Act, 1994 or exempt vide the Mega Exemption Notification No. 25/2012-ST dated 20-06-2012. Further, service tax is payable on services relating to access of online information, database access and retrieval services, as well as the development and supply of digital content and software. Furthermore, levy of service tax on e-commerce transactions under aggregator model (restricted to aggregator of service only) has been brought into w.e.f. 01-03-2015 vide the Union Budget 2015-16.
- However, the taxability of transactions in digital mode is prone to divergent views and litigation. Online market place faces double taxation and end up paying both VAT/CST as well as service tax on transactions in digital content etc.
- VAT authorities are of the view that the e-commerce companies are involved in supplying and distribution of goods and, therefore, would qualify as 'dealers'. The authorities are also of the view that these companies act as commission agents or consignment agents of sellers. Therefore, these companies are covered under the definition of 'dealers' and, therefore, are liable to discharge VAT liability.
- (iii) **Entry tax on e-commerce transactions**-Some States such as Orissa, Uttarakhand, Mizoram and West-Bengal have rules to charge e-commerce companies, additional taxes for "delivering" products to customers in their State.
- Imposition of entry tax on goods purchased online has added more woes for e-commerce industry as they already face lot of problems and imposition of entry tax has led to impediments in speedy delivery of goods in inter-State transactions.
- (iv) **Equalization Levy**-At a time when the Government is pushing the concept of "Ease of doing" business in the country, the imposition of equalization levy may affect adversely in terms of increasing the compliance cost and accounting hassles for e-commerce industry. Although, the so-called "Google Tax" is aimed at indirectly taxing internet giants such as Facebook, Whatsapp, Truecaller, Twitter, LinkedIn, and Google, on the income they earn on account of soliciting advertisements from Indian advertisers. However, the onus for deducting and depositing and making further compliances are to be done by the Indian advertisers. In effect, companies like

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Facebook may shift the burden on Indian entrepreneurs. In the ensuing law GST tax rate is expected to be somewhere around 18% (It is pertinent to note that the GST council in its meeting dated 03-11-2016 has decided four-tier GST tax structure of 5%, 12%, 18% and 28%, with zero rate for essential items and the highest rate for luxury and de-merits goods that would also attract an additional cess on specified items) and such a high rate when coupled with the equalization levy may become a substantial burden for the Indian entrepreneurs.

The equalization levy seems to be just a beginning and the government seems in offing to levy tax on digital transactions such as mobile application, TV advertisements on international channels etc., in the future.

7 KEY CONTENTS OF AGREEMENTS WITH THE VENDORS AND CUSTOMERS (NORMAL TERMS OF AGREEMENT BETWEEN THE VENDORS AND THE E-COMMERCE OPERATORS)

- (i) That a debit note shall be raised against the vendor in all cases where the goods supplied by it are found defective at any stage and such defective goods shall be sent back to it. All expenses relating to such sale like cost of transportation, all kinds of discounts allowed at the time of sale including cash discounts shall be borne by the vendor.
- (ii) That a debit note shall be raised against the vendor in all cases where the goods supplied by it are returned to it at any stage and all expenses relating to such sale and sales returned like cost of transportation, all kinds of discounts allowed at the time of sale including cash discount shall be borne by the Vendor.
- (iii) That during the course of specific event or promotion or any other marketing activity undertaken by the e-commerce operator, any planned liability on the sale of merchandise or services shall be communicated to the vendor and a decision on shared liability shall be taken on case to case basis and shall be communicated to and debited to the account of the vendor from time to time.
- (iv) That the purchase order or the amended purchase order shall be deemed to have been accepted by the vendor, if the same is not otherwise communicated to the e-commerce operator within three common working days from the date of placement of such order.

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- (v) That all goods and/ or services shall be delivered by the Vendor in accordance with the time and delivery terms as contained in the Purchase Order/ Amended Purchase Order. Else, the same may be accepted at a discounted price at the discretion of the concerned manager of the e-commerce operator.
- (vi) That in case of change in price or MRP the vendor should give minimum 15 days-time to the e-commerce operator.

8 FDI REGULATIONS

The regulatory environment for e-commerce retail sector in India is constantly evolving and being liberalised given the huge potential to attract foreign investment and benefits to consumers.

In terms of the extant Foreign Direct Investment (FDI) Policy¹, 100 per cent FDI is allowed under the automatic route in Business-to-Business (B2B) trading activities including through e-commerce, which refer to buying and selling of goods and services including digital products over digital and electronic network. Such companies are only permitted to engage in B2B trading through e-commerce and not in Business-to-Consumer (B2C) e-commerce activities.

Until 2016, there were ambiguities in foreign investment in B2C e-commerce segment. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, in November 2015², permitted companies with foreign investment engaged in Single Brand Retail Trading activities to undertake B2C sales through e-commerce upon satisfaction of prescribed conditions. The key condition for carrying out online Single Brand Retail Trade sales is to setup at least one physical brick-and-mortar store (offline sales) in India. In addition to the above, *inter-alia*, FDI in SBRT activities (including via e-commerce portal) are subject to certain stipulations including compliance with the 30 per cent local sourcing clause (for FDI beyond 51 per cent), sale of products branded during manufacturing, execution of a legally tenable brand licensing agreement in India etc.

It is important to note here that the Indian brands, subject to prescribed stipulations, are equally eligible for undertaking Single Brand Retail Trade.

1 Consolidated FDI Policy,2016 issued by the Department of Industrial Policy and Promotion dated June 07, 2016

2 Press Note No. 12 (2015 series) dated November 24, 2015

Study Paper on Taxation of E-Commerce under GST

The above liberalisations in the FDI regime, especially in the context of retail trade, have significantly contributed to the revival of the foreign investor confidence in India and extended the breadth of the e-commerce sector.

Another significant development in the e-commerce space from the regulatory standpoint is the introduction of guidelines [vide Press Note No. 3 (2016 series) dated March 29, 2016] governing FDI in marketplace e-commerce models. The new guidelines clearly lay down the definition of 'inventory based model of e-commerce' [inventory of goods and services is owned by the e-commerce entity and is sold to consumers directly] and 'market place model of e-commerce' [provision of information technology platform by an e-commerce entity on a digital and electronic network to act as a facilitator between buyer and seller], thereby permitting 100 per cent FDI in a marketplace model of e-commerce under automatic route, subject to certain prescribed conditions. Now, the marketplace e-commerce companies will be allowed to provide support services to sellers on their platform such as warehousing, logistics, order fulfillment, call centre and payment collection. FDI in inventory based model of e-commerce on B2C basis is prohibited.

The prescribed stipulations³ entail prohibition on offering of discounts or exercising ownership on inventory, no direct role in influencing pricing decisions of vendors, ceiling on each vendor/group company account to not exceed 25 per cent of total sales effected through marketplace model etc.

9 STATUTORY PROVISIONS UNDER MODEL GST LAW

(i) Section 2: Definitions

Section 2(41)-electronic commerce means supply of goods and/or services including digital products over digital or electronic network.

Section 2(42)-electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

(ii) Section 8. Levy and Collection of Central/ State Goods and Services Tax (relevant part)

Section 8(4)-The Central or a State Government may, on the recommendation of the Council, by notification, specify categories of services the tax on which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of

³ Para No. 5.2.15.2.4 of the Consolidated FDI Policy, 2016

Study Paper on Taxation of E-Commerce under GST

this Act shall apply to such electronic commerce operator as if he is the person liable for paying the tax in relation to the supply of such services:

PROVIDED that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

PROVIDED FURTHER that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

(iii) Section 56. Collection of tax at source

- (1) Notwithstanding anything to the contrary contained in the Act, every electronic commerce operator (hereinafter referred to in this section as the "operator"), not being an agent, shall collect an amount calculated at the rate of one percent of the net value of taxable supplies made through it where the consideration with respect to such supplies is to be collected by the operator.

Explanation.- For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services, other than services notified under sub-section (4) of section 8, made during any month by all registered taxable persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

- (2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.

*The amount collected under sub-section (1) shall be paid to the account of the appropriate Government by the operator within ten days after the end of the month in which such collection is made in the manner as may be prescribed.

- (3) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services effected through it, including the supplies of goods or services returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

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- (4) The supplier who has supplied the goods or services through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section ** (4), in the manner prescribed.
- (5) The details of supplies furnished by every operator under sub-section ** (4), shall, in the manner and within the period prescribed, be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under the Act.
- (6) Where the details of outward supplies furnished by the operator under sub-section ** (4) do not match with the corresponding details furnished by the supplier under section 32, the discrepancy shall be communicated to both persons in the manner and within the time as may be prescribed.
- (7) The amount in respect of which any discrepancy is communicated under sub-section ** (7) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in the manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.
- (8) The concerned supplier shall, in whose output tax liability any amount has been added under sub-section ** (8), be liable to pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 45 on the amount so added from the date such tax was due till the date of its payment.
- (9) Any authority not below the rank of Joint Commissioner may serve a notice, either before or during the course of any proceeding under this Act, requiring the operator to furnish such details relating to—
 - (a) supplies of goods or services effected through such operator during any period, or
 - (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operators and declared as additional places of business by such suppliers -
as may be specified in the notice.
- (10) Every operator on whom a notice has been served under sub-

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section 43C shall furnish the required information within fifteen working days of the date of service of such notice.

- (11) Any person who fails to furnish the information required by the notice served under sub-section 43C shall, without prejudice to any action that is or may be taken under section 85, be liable to a penalty which may extend to twenty-five thousand rupees.

Explanation.- For the purposes of this section, the expression 'concerned supplier' shall mean the supplier of goods and/or services making supplies through the operator.

(iv) Schedule V (Person Liable To Be Registered) (Relevant Part)

- (6) Notwithstanding anything contained in paragraph 1 and 3 above, the following categories of persons shall be required to be registered under this Act-

- (vii) persons who are required to collect tax under 56, whether or not separately registered under the Act;
- (x) persons who supply goods and/or services, other than supplies specified under sub-section (4) of section 8, through such electronic commerce operator who is required to collect tax at source under section 56, irrespective of the threshold specified in paragraph 1;
- (xi) every electronic commerce operator, irrespective of the threshold specified in paragraph 1;
- (xii) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered taxable person;

(v) GST Return Rules (Relevant part)

(Rules are not modified as per new law released on 26-Nov-16)

As such wherever reference to section 43C comes, it may be read as section 56.

Form and manner of submission of statement of supplies effected through e-Commerce [Rule 8]

- (1) Every e-Commerce operator required to collect tax at source under section 43C shall furnish a statement in FORM GSTR-8 electronically through the Common Portal, either directly or from a Facilitation Centre, notified by the Board or Commissioner, containing details of supplies effected through such operator and

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the amount of tax collected as required under sub-section (1) of section 43C.

- (2) The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers in Part D of FORM GSTR-2A on the Common Portal after the due date of filing of FORM GSTR-8.

Matching of details furnished by the e-Commerce operator with the details furnished by the supplier [Rule 19]

The following details relating to the supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1

- (a) GSTIN of the supplier
- (b) GSTIN/UIN of the recipient, if the recipient is a registered taxable person
- (c) State of place of supply
- (d) Date of invoice of the supplier
- (e) Invoice Number of the supplier
- (f) Tax rate
- (g) Taxable value
- (h) Tax amount

Provided that for all supplies where the supplier is not required to furnish the details separately for each supply, the following details relating to such supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1

- (a) GSTIN of the supplier
- (b) State of place of supply
- (c) Tax rate
- (d) Total taxable value of all supplies made in the State
- (e) Tax amount on all supplies made in the State

Provided further that where the time limit for furnishing FORM GSTR-1 under sub-section (1) of section 25 has been extended, the date of matching of the abovementioned details shall be extended to such date as may be notified by the Board/Commissioner.

Study Paper on Taxation of E-Commerce under GST

Communication and rectification of discrepancy in details furnished by the e-Commerce operator and the supplier [Rule 20]

- (1) Any discrepancy in the details furnished by the operator and those declared by the supplier shall be made available to both electronically in FORM GST ITC-1 through the Common Portal on or before the last date of the month in which the matching has been carried out.
- (2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.
- (3) An operator to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement to be furnished for the month in which the discrepancy is made available.
- (4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier in his return in FORM GSTR-3 for the month succeeding the month in which the details of discrepancy are made available and such addition to the output tax liability and interest payable thereon shall be made available to the supplier electronically on the Common Portal in FORM GST ITC-1.

* It may be a drafting error. It seems to be sub-section (3) of section 56

** It may be a drafting error. In fact due to a drafting error stated at footnote 1, these errors may be consequential.

10 INTERPRETATION OF E-COMMERCE PROVISIONS AS CONTAINED IN THE REVISED MODEL GST LAW

10.1 Major Definitions [Section 2]

(a) *Definition of electronic commerce [Section 2(41)]*

Section 2(41) says that electronic commerce means supply of goods and/or services including digital products over digital or electronic network.

(b) *Definition of electronic commerce operator [Section 2(42)]*

Section 2(42) says that electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Study Paper on Taxation of E-Commerce under GST

10.2 Levy of tax on e-commerce operator [Section 8(4)]

Section 8(4) says that the Central or a State Government may, on the recommendation of the Council, by notification, specify categories of services the tax on which shall be paid by the electronic commerce operator *if such services* are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the person liable for paying the tax in relation to the supply of such services.

The first proviso to section 8(4) says that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

The second proviso to section 8(4) says that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

It is very important to note here is that the liability to pay service tax would be on the e-commerce operator only for the service provided through such operator and this is not for supply of goods through such operator, which will be out of this deemed levy on the operator.

Further, it is also important to note that unlike in the existing service tax provision, where the e-commerce operator is made liable to pay service tax only in case where service is provided under the brand of the operator, whereas in the case of GST whether the service is provided under the own brand (say example Redbus, Make my trip) or under the brand of the operator (say example Uber or Ola) still the operator shall have to pay the applicable GST.

10.3 Tax collected at source [Section 56]

10.3.1 Rate of tax to be collected [Section 56(1)]

Section 56(1) says that in spite of anything to the contrary contained in the Act, every electronic commerce operator (say-operator), not being an agent, shall collect an amount calculated at the rate of one percent of the net value of taxable supplies made through it where the consideration with respect to such supplies is to be collected by the operator.

An explanation to section 56(1) says that for the purposes of this subsection, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services, other than services notified under section 8(4), made during any month by all registered taxable

Study Paper on Taxation of E-Commerce under GST

persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

The exemption for making the collection of tax at source is as under-

- (a) In case the services provided are notified under section 8(4) by which such operator is liable to pay service tax
- (b) If the operator is acting as an Agent (logistic provider)
- (c) In case the consideration has been paid directly by the recipient to the supplier [Cash on Delivery - (COD) transactions]

10.3.2 Time limit for collection of tax [Section 56(2)]

Section 56(2) says that the power to collect the amount specified in section 56(1) shall be without prejudice to any other mode of recovery from the operator.

The amount collected under section 56(1) shall be paid to the account of the appropriate Government by the operator within ten days after the end of the month in which such collection is made in the manner as may be prescribed.

10.3.3 Time limit for furnishing a statement [Section 56(3)]

Section 56(3) says that every operator who collects the amount specified in section 56(1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services effected through it, including the supplies of goods or services returned through it, and the amount collected under section 56(1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

10.3.4 Credit to be taken by supplier [Section 56(4)]

Section 56(4) says that the supplier who has supplied the goods or services through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under section 56(3), in the manner prescribed.

10.3.5 Matching of details [Section 56(5)]

Section 56(5) says that the details of supplies furnished by every operator under section 56(3), shall, in the manner and within the period prescribed, be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under the Act.

10.3.6 Discrepancy communicated to both parties [Section 56(6)]

Section 56(6) says that where the details of outward supplies furnished by the operator under section 56(3) do not match with the corresponding details

Study Paper on Taxation of E-Commerce under GST

furnished by the supplier under section 32, the discrepancy shall be communicated to both persons in the manner and within the time as may be prescribed.

10.3.7 Consequences of non-rectification [Section 56(7)]

Section 56(7) says that the amount in respect of which any discrepancy is communicated under section 56(6) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in the manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

10.3.8 Tax liability for addition [Section 56(8)]

Section 56(8) says that the concerned supplier, in whose output tax liability any amount has been added under section 56(7), shall be liable to pay the tax payable in respect of such supply along with interest, at the rate specified under section 45(1) on the amount so added from the date such tax was due till the date of its payment.

10.3.9 Issuance of notice [Section 56(9)]

Section 56(9) says that any authority not below the rank of Joint Commissioner may serve a notice, either before or during the course of any proceeding under this Act, requiring the operator to furnish such details relating to—

- (a) Supplies of goods or services effected through such operator during any period, or
- (b) Stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operators and declared as additional places of business by such suppliers -

as may be specified in the notice.

10.3.10 Time limit for furnishing details after service of notice [Section 56(10)]

Section 56(10) says that every operator on whom a notice has been served under section 56(9) shall furnish the required information within 15 working days of the date of service of such notice.

Study Paper on Taxation of E-Commerce under GST

10.3.11 Penalty for not furnishing details after service of notice [Section 56(11)]

Section 56(11) says that any person who fails to furnish the information required by the notice served under section 56(9) shall, without prejudice to any action that is or may be taken under section 85, be liable to a penalty which may extend to Rs.25000/-.

An explanation to section 56 says that for the purposes of this section, the expression 'concerned supplier' shall mean the supplier of goods and/or services making supplies through the operator.

10.4 Person liable to be registered (Schedule V)

Paragraph 6 of Schedule V

Paragraph 6 of Schedule V says that in spite of anything contained in Paragraphs 1 and 3 above, the following categories of persons shall be required to be registered under this Act-

- (a) Persons who are required to collect tax under 56, whether or not separately registered under the Act.[Paragraph 6(vii)]
- (b) Persons who supply goods and/or services, other than supplies specified under sub-section (4) of section 8, through such electronic commerce operator who is required to collect tax at source under section 56, irrespective of the threshold specified in Paragraph 1. [Paragraph 6(x)]
- (c) Every electronic commerce operator, irrespective of the threshold specified in Paragraph 1.[Paragraph 6(xi)]
- (d) Every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered taxable person.[Paragraph 6(xii)]

10.5 GST Rules applicable to E-commerce operator

10.5.1 Form and manner of submission of statement of supplies effected through e-Commerce [Rule 8]

- (a) *E-commerce operator to file FORM GSTR-8 [Rule 8(1)]*

Rule 8(1) says that every e-commerce operator required to collect tax at source under section 56 shall furnish a statement in FORM GSTR-8 electronically through the Common Portal, either directly or from a Facilitation Centre, notified by the Board or Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under section 56(1).

Study Paper on Taxation of E-Commerce under GST

- (b) *Return filed by operator made available to supplier [Rule 8(2)]*

Rule 8(2) says that the details furnished by the operator under rule 8(1) shall be made available electronically to each of the suppliers in Part D of FORM GSTR-2A on the Common Portal after the due date of filing of FORM GSTR-8.

10.5.2 Matching of details furnished by the e-Commerce operator with the details furnished by the supplier [Rule 19]

Section 19 says that the following details relating to the supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1-

- (a) GSTIN of the supplier
- (b) GSTIN/UIN of the recipient, if the recipient is a registered taxable person
- (c) State of place of supply
- (d) Date of invoice of the supplier
- (e) Invoice Number of the supplier
- (f) Tax rate
- (g) Taxable value
- (h) Tax amount.

The First Proviso to rule 19 says that for all supplies where the supplier is not required to furnish the details separately for each supply, the following details relating to such supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1-

- (a) GSTN of the supplier
- (b) State of place of supply
- (c) Tax rate
- (d) Total taxable value of all supplies made in the State
- (e) Tax amount on all supplies made in the State:

The Second Proviso to rule 19 says that where the time limit for furnishing FORM GSTR-1 under section 32(1) has been extended, the date of matching of the abovementioned details shall be extended to such date as may be notified by the Board/Commissioner.

Study Paper on Taxation of E-Commerce under GST

10.5.3 **Communication and rectification of discrepancy in details furnished by the e-Commerce operator and the supplier [Rule 20]**

(a) *Discrepancy to be communicated in FORM ITC-1 [Rule 20(1)]*

Rule 20(1) says that any discrepancy in the details furnished by the operator and those declared by the supplier shall be made available to both electronically in FORM GST ITC-1 through the Common Portal on or before the last date of the month in which the matching has been carried out.

(b) *Rectification by supplier [Rule 20(2)]*

Rule 20(2) says that a supplier to whom any discrepancy is made available under rule 20(1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

(c) *Rectification by operator [Rule 20(3)]*

Rule 20(3) says that an operator to whom any discrepancy is made available under rule 20(1) may make suitable rectifications in the statement to be furnished for the month in which the discrepancy is made available.

(d) *Addition to output tax liability if discrepancy not rectified [Rule 20(4)]*

Rule 20(4) says that where the discrepancy is not rectified under rule 20(2) or rule 20(3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier in his return in FORM GSTR-3 for the month succeeding the month in which the details of discrepancy are made available and such addition to the output tax liability and interest payable thereon shall be made available to the supplier electronically on the Common Portal in FORM GST ITC-1.

11 **OBJECTIONS AND SUGGESTIONS RAISED BY THE STAKEHOLDERS LIKE IAMAI**

- (i) **E-commerce operators still raising their eye-brows at the spring of GST-** Section 2(42) defines the term 'electronic commerce operator' to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. The provisions relating to levy of tax on electronic commerce operator are contained in the charging section 8(4) which says that the Central or a State Government may, on the recommendation of the

Study Paper on Taxation of E-Commerce under GST

council, by notification specify categories of services the tax on which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the person liable for paying the tax in relation to supply of such services.

The first proviso to section 8(4) says that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

The second proviso to section 8(4) further says that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

The above provisions on the one hand are broadening the horizons of levy on the electronic commerce operators and on the other hand it is expected that with the advent of the new law which may subsume most of the indirect taxes may mitigate the present issues and more particularly the tax credit issues across the border avoiding tax cascading. Further, the provisions relating to TCS may be difficult to comply with, else the rate at which tax is required to be deducted/ collected may be appropriate as otherwise it may lead to pile-up of unutilized credit in the hands of the suppliers. Hence, the number of refund cases would arise.

- (ii) **The array of the current taxation system for e-commerce operators** -The current taxation system in India at Central as well as at State's level is a nightmare in the way of growth of the e-commerce industry. The multiple types of levies across the country in the form of State level VAT having varying laws in different States, Central Sales Tax Act and the ambiguity about whether the sale is local or central, Central Excise duty having ambiguity whether packing is manufacture or not, service tax having ambiguity of forward and reverse charge and valuation issues, Entry tax having varying provisions across the States. When our able Government felt these problems were not enough for various e-commerce models operating in our country, in the last budget the Finance Minister declared the levy of Equalization tax, which probably will hit the Indian Entrepreneurs. Now, the compliance under Model GST Law

Study Paper on Taxation of E-Commerce under GST

may cause further adverse effects in the development of e-commerce companies in India.

- (iii) **Various models and their expectations** -The various e-commerce companies operating in India have varying models. Flipkart, Amazon are providing e-market? platform to the vendors and customers. Ola cabs, Uber called as aggregators are bringing together the service provider and service receiver, Facebook and Twitter are social media options are making the people aware of businesses and besides these, all the other e-commerce models prevalent are having taxation issues which are beyond even consultants' apprehension. At this juncture, hopefully the GST Law may bring a sweat drying and win-win situation both for the industry as well as to the revenue authorities at Federal and States' Levels. Therefore, unless the law is suitably drafted entailing ease of doing business the dilemma of the industry will not be mitigated.
- (iv) **Whether e-commerce operators are merely service provider-revenue authorities are perplexed** -In fact, the e-commerce operators in any given model are ready to discharge their service tax liability on the commission they earn on their services rendered to the vendors. But, the revenue authorities are perplexed whether these operators are merely service providers and they want to bring them in the ambit of traders as agents to the vendors and moreover, the Central and State's authorities are having their own rights and claims. Not only the authorities but various Courts across the country are also busy resolving the issues arising as such.
- (v) **Under the hammer of the Courts** -The State authorities while imposing Entry tax claim that they have to justify the level playing field between retail traders in their State and the e-commerce players across nation and started imposing Entry tax @ 10%. States like Assam, Bihar, Uttrakhand, Gujarat, Karnataka and Kerala have recently brought in Entry tax levy on e-commerce companies while such companies sell goods in their State from outside their State. Such practice by the States not only hamper the delivery but the cost to the consumers and give rise to competition between the local and central operators. It needs to be noted that the service tax discharged by the e-commerce operators is not creditable to the sellers and it adds to the cost of the supplies made by them. The diverse practices adopted by such companies are entailing increasing compliance cost and their tax issues are being beaten under the hammer in the Courts of Law. Suitable provision may be

Study Paper on Taxation of E-Commerce under GST

brought in the GST Law, so that the industry may feel ease of doing business in India under global competition.

- (vi) **TCS Provisions** -Section 56 of the GST Act proposes that every electronic commerce operator shall, at the time of credit of any amount to the account of the supplier of goods and/ or services or at the time of payment of any amount in cash etc., whichever is earlier, collect an amount, at the rate as may be notified. Such TCS shall be deposited by the operator within 10 days from the end of the month. The operator shall be liable to furnish an electronic statement also within 10 days from the end of the month. They also apprehend mismatch issues since the small sellers may punch their data at different times and in different manners. A full department may be needed to address the issues arising as such. Moreover, the operator has to intimate to the various State's/ Central departments about the stock of goods held by the suppliers in operator's godowns being declared as the additional places of business by such suppliers. Further, the operator is expected to furnish information which may be needed by the tax authorities within 5 working days from the date of service of any notice otherwise it may be liable to pay Rs. 25,000/-. The operators are perturbed particularly with such kind of law. What is the solution is a million dollar question.
- (vii) **Negative impact on cash flow**-Most of the transactions on e-commerce portals are generally based on cash on delivery. Under GST, introduction of provision of tax collected at source will result in working capital blockage for small supplier, who relies on huge marketplace of e-commerce to enlarge their market outreach, and further this may also discourage SMEs to optimise such platforms.
- (viii) **Mandatory Registration**-The vendors who supply goods/ services to the e-commerce operators are required to get themselves mandatorily registered under GST and the vendors are concerned about this as it will add to their compliance cost. Further, it may cause additional hardship to small traders who supply goods and/or services, other than branded services, through e-commerce operators. For some startups whose turnover is not expected to rise above the standard threshold in the initial years, the standard threshold would have provided some relief. Instead, the proposed provision is in contradiction with the much hyped concept of "Ease of Doing Business" in India.
- (ix) **Sales return/replacement treatment** -In GST, provisions should be incorporated considering the peculiar transaction structure of e-

Study Paper on Taxation of E-Commerce under GST

commerce companies to account for sales returns/cancellations/replacements and adjustment of excess tax already paid (if any).

- (x) **E-commerce operator may fall under Principal-agent relationship** -The definition of 'supply' under the Model GST law covers principal- agent relationship. Thus, the e-commerce companies may be covered within its compass where such e-commerce company stocks goods and sells the said goods to the ultimate consumer on behalf of the seller.
- (xi) **Branch Transfers**-At present when a supplier transfers his goods from one State to another without transfer of ownership of goods, the same is not liable to tax except some reversal of Input Tax Credit. However, in the proposed law such transfer would be a taxable supply. Further, if the goods are further moved from one godown to another across the State, once again it is liable for tax. It will affect the working capital requirement of the sellers.
- (xii) **Place of Supply Rules**-It is expected that as far as the Place of Supply Rules in relation to goods are concerned they may not create much confusion except that a question may arise as to whether the goods are local or central sales. But, as far as provision of services across the States are concerned, the Place of Supply Rules still are full of ambiguity which may give rise to litigation and may mop up the cost to business to the suppliers and in effect the development of e-commerce operators in the country.
- (xiii) **Free-supplies**-The e-commerce operators play into the market by offering various innovative/ attractive/ luring schemes by giving free supplies and exchange offers. Now, under the proposed law, such free supplies and exchange offers are also made taxable supplies. This is going to hamper devising mega sale days and other attractive schemes.
- (xiv) **Valuation Rules**-In the Model GST law, the 'transaction value' is taken as the value of goods/services. And inclusion or exclusion of discounts in the 'transaction value' depends on the category they fall in. Section 15(3) says that the value of the supply shall not include any discount that is given-
 - (a) before or at the time of the supply provided such discount has been duly recorded in the invoice issued in respect of such supply, and
 - (b) after the supply has been effected, provided that-

Study Paper on Taxation of E-Commerce under GST

- (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
- (ii) input tax credit has been reversed by the recipient of the supply as is attributable to the discount on the basis of document issued by the supplier.

The suggested valuation rules state that post sales discounts and goods sold at a discount may be subject to levy of GST, which may affect the growth of the e-commerce industry.

- (xv) **GST law - whether spur for e-commerce operators**-It is expected that the modern law would act as a catalyst for the growth of the e-commerce industry including *endeavoring* ease of doing business. It is expected from the sector that they should develop the required infrastructure to face the challenges of the new law and in case of contentious issues as discussed above they should come forward with alternative positive suggestions.

12 INTERNATIONAL EXPERIENCES - SALE OF PHYSICAL/ DIGITAL GOODS VIA THE INTERNET

- (i) **Local Sales of physical goods in Australia**- In case a registered tax payer in Australia supplies physical goods via internet to a customer in Australia, he is chargeable to GST @ 10%.
- (ii) **Exports of physical goods from Australia**-In case a registered tax payer from Australia supplies physical goods via internet to a customer situated overseas outside Australia, such supplies would be zero-rated. However, the supplier has to prove that the goods have been exported, and that the customer is located overseas through purchase order, delivery evidence (Bill of lading, airway bill etc.), packing list and insurance document etc.
- (iii) **Local Sales of digital goods in Australia**-In case a registered tax payer in Australia supplies digital goods like music, movies, digital books, software etc. via internet to a customer in Australia, he will charge GST @ 10%. Such digital goods are treated as services under the GST Law.
- (iv) **Exports of digital goods from Australia** -In case a registered tax payer from Australia supplies digital goods via internet to a customer situated overseas outside Australia, such supplies would be zero-rated. However, the supplier has to prove that such goods have been exported by way of-(i) the buyer's declaration that he is

Study Paper on Taxation of E-Commerce under GST

situated at a particular place and the goods would be used outside the country in which the supplier is located; (ii) evidence of payment received from overseas; (iii) credit card information; (iv) IP (Internet Protocol) address of the customer etc.

- (v) **Import of Low Value Transactions (LVT) in Australia** -Under the Australian GST Law, custom duty is not payable in case online import transaction is of a value below \$ 1,000. However, it is a matter of debate whether such leverage is against a level playing field against Australian retailers who have to pay GST, competing with overseas retailers who can supply goods online without payment of custom duty. The Australian custom authorities have devised appropriate mechanisms to monitor the payment of custom duty viz-a-viz Low Value Transactions (LVT).
- (vi) **Online shopping in New Zealand** -If you want to import and buy goods/ supplies of more than NZ\$1,000/- in New Zealand, you need a Customs Client Code. In fact, if you want to buy anything online from overseas you need to pay customs charges over and above the advertised price when goods arrive in New Zealand. Goods liable for duty and GST above NZ\$60/- cannot be released until duty is paid. To know how much duty is payable you can use "What is my Duty", i.e. the duty estimator. There are also some goods which cannot be imported like drugs, firearms etc. Therefore, before the importation one should be aware of the import regulations, normally readable online. You may also read why parcels are 'held for clearance' and what you need to do to clear it.

13 CYBER CRIME-UNCERTAIN THREAT

The advents of Information Technology, day by day are bringing surprises and revolutions by not only inventing smart phones but smart cities too, besides handling banking, airway books, hotel bookings, automation of the manufacturing sectors, space research and now almost all taxation systems as well.

However, malicious insiders, competitors, criminals, rouge nations are attacking the technology assets of the organizations and Governments and holding data for ransom.

Despite large investments in security products, cyber breach detection has been a big challenge to large organizations.

Our ensuing GSTN, working nation-wide for collection and dissemination of vital data has to undergo a scrutiny test, specifically from the insiders. It must

Study Paper on Taxation of E-Commerce under GST

bring in a crises response strategy in case of any such eventuality. Someone has rightly said that the enemy lies within the organization's perimeter. The ratio of cybercrimes is above half of the total cybercrimes from insider sources.

Therefore, to address the above challenges the organizations need to have an up to date security governance, checking its robustness, timely intelligence, periodic checks and finally how the access are granted and revoked.

14 OUR RECOMMENDATIONS

- (i) **IT System preparedness by Industry**-The IT systems of all taxpayers will be re-defined before the relevant date of implementation of the ensuing GST law. It is going to be a herculean task even for the I.T. companies since every tax payer will be requiring customization for its specific needs.

Large tax payers have to innovate their enterprise resource planning (ERP) i.e. business management software to cope with the challenges ahead of their times. ERP has been playing a vital role in the day to day conserving the major resources of an entity besides finance, supply chain and human resources as well. Now, the system of recording transactions would be more intensified and the ERP players like Oracle and SAP will have to capture the opportunity working overnight well ahead of time.

Basically, the master-data system will require a basic shift since now destination principle will make an impact on the supply chain management and the interest of the consuming States are to be taken care of.

It may be an uphill task for the IT companies to feed the changing requirement of the industry and provide them the new solutions in time as the Government is planning the relevant date for roll out of GST to be July-17. Solutions can take somewhere 6-12 months time, once the Act and rules are finally enacted. Only time will tell how such challenges will be met by the stakeholders like Government, IT companies, large and small tax payers.

- (ii) **Credit Card Industry also faced the heat** -It may be noted that for the purposes of easing the burden of TDS compliance on large number of sellers of goods and services, the CBDT issued a Notification No. 56/ 2012 dated 31-Dec-2012, whereby the commission paid to banks on credit card and several other services

Study Paper on Taxation of E-Commerce under GST

were exempted from tax deduction. On the contrary, the law makers may bring in the TCS provisions so that the compliance burden may be shifted on the large e-commerce companies instead of the smaller goods and services suppliers.

- (iii) **The definition of e-commerce is heedlessly drafted** -It is observed that the definition of e-commerce as contained under section 2(41) of the GST Act raises certain issues. This section says-"electronic commerce" means supply of goods and/ or services including digital products over digital or electronic network.

The 2009 OECD definition of 'e-commerce' is: "An e-commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments, and other public or private organizations. To be included are orders made over the web, extranet or electronic data interchange. The type is defined by the method of placing the order. To be excluded are orders made by telephone calls, facsimile or manually typed e-mail."

It may be observed that there is a clear cut distinction between the two definitions.

The issue arises as to whether electronic network which may be as small as connecting two computers or as large as the internet would also be covered. Thus, the technicalities may entangle any agent working on behalf of a principal as an Electronic Commerce Operator. The definition of 'electronic commerce' is creating such a doubt. Therefore, the legislature may bring about clarity on the issue by inserting an explanation.