

Study Paper on Taxation of E-Commerce under GST



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

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Foreword

GST roll-out finally saw the light of the day on 1st July 2017 paving the way for realization of the goal of One Nation - One Tax - One Market. This tax reform is a turning point for the economy and would benefit all stakeholder i.e. Government, Businessman and consumers. GST would boost the economy by reducing cost of goods & services and making them globally competitive. Moreover, phenomenal increase in e-commerce transaction and the statutory provisions provided under the GST regime makes it imperative for the professionals to be abreast with latest developments in this area.

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 updated publication "*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, its advantages, challenges and regulatory guidelines for foreign direct investment on e-commerce, in a very practical and simplified manner.

I 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 in revising the "*Study Paper on Taxation of E-Commerce under GST*" and bringing out this well aligned and updated material. I am sure this Study Paper would further facilitate our members in practice as well as in industry to acquire specialised knowledge and cope-up with the challenges and complexities relating to the E-Commerce Transactions.

I welcome the members to a fruitful and enriching experience.

Place: New Delhi

Date: 28.07.2017

CA. Nilesh S. Vikamsey

President, ICAI

Preface

India has along with the rest of the world 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 in India. This could also be done more economically. Tax on e-commerce is not easy due to the tax jurisdiction of the different ways this technology aided distribution channels work. The Government has also been making swift changes in the taxation of e-commerce transaction which are divided into two parts one is aggregator of services and another is goods sold through the e-commerce platform. In the first model, aggregator of services is required to take registration and pay GST whereas in the second model e-commerce operator is required to deduct TCS. It is, therefore, prerequisite for professional like Chartered Accountants to envisage and serve this part of the industry to cope with the challenges by updating them with the legal framework governing them.

The Indirect Taxes Committee of ICAI therefore has taken an initiative to apprise its members of various models of E-commerce and its pre and post legal and regulatory framework including Information Technology Act, 2000. Further 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. Nilesh Vikamsey, President and CA. Naveen N. D. Gupta, Vice-President, ICAI, as well as other members of the Committee for their suggestions and support in this initiative. We must also thank the major contributor CA. Virender Chauhan for updating this study paper which was originally also penned by him. CA. Also CA. Jatin Christopher and CA. Jayesh Gogri 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: 28.07.2017

Place: New Delhi

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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) E-Commerce is still less than 2% of the overall consumption in India, as against 14% in China.
- (vii) 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.
- (viii) 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 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%.
- (ix) 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.

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- (x) 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 of 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.
- (xi) 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.
- (xii) E-commerce gives a secure and cost-efficient contribution in the growth of SME's and SME's contribute 17% of the Nation's GDP and 40% in the total exports from the country.
- (xiii) 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. ADVANTAGES OF E-COMMERCE

- (i) **Sell Internationally:**

Using e-Commerce, organization can expand their market to national and international markets with minimum capital investment. An organization can easily locate more customers, best suppliers and suitable business partners across the globe.
- (ii) **24x7 support to customers:**

Customer can do transactions for the product or enquiry about any product/services provided, anytime and anywhere from any location.
- (iii) **Reduces cost:**

E-Commerce helps organization to reduce the cost to create process, distribute, retrieve and manage the paper based information by digitizing the information.
- (iv) **Helps Government to deliver services:**

E-Commerce helps government to deliver public services like health care, education, social services at reduced costs and in improved way.
- (v) **Shortens the product distribution chain:**

By allowing direct interaction with the final consumer, e-commerce shortens the product distribution chain, sometimes even eliminating it completely. This way, a

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direct channel between the producer or service provider and final user is created, enabling them to offer products and services that suit the individual preferences of the target market.

(vi) **Benefits customers:**

E-Commerce application provides user more options and quicker delivery of products. It provides user more options to compare and select the cheaper and better option. A customer can put review comments about a product and can see what others are buying or see the review comments of other customers before buying.

3. E-COMMERCE CHALLENGES

(i) **High cash-on-delivery (COD):**

COD is the preferred payment option in India which is risky, expensive and burdensome.

(ii) **Payment gateways have a failure rate and also has a cost associated:**

Most of the customers do not make a second attempt after a transaction fails which is a loss point for e-commerce companies using Indian payment gateways.

(iii) **Internet connectivity:**

Internet is the backbone of e-Commerce. But internet penetration in India is very low. Thus e-Commerce remains far away from common man. Cost of internet connection in India is also quite high.

(iv) **Reachability:**

Thousands of towns in India are not accessible and have poor transportation facility. A large population face an absence of seamless access, thus, e-Commerce companies loose a big portion of potential customers.

(v) **Poor logistics & supply chain:**

There are thousands of towns in India that are not easily accessible. Metropolitan cities and other major urban centers have a fairly robust logistics infrastructure. Timely delivery is a major issue. It is a time consuming process that requires much R&D.

(vi) **High cost of customer acquisition:**

The prospects for e-Commerce companies are so exciting that some investors are willing to spend irrationally high amounts to acquire market share today.

(vii) **Return of goods:**

Efficient follow-ups and timely returns/ exchange contribute to a major retention of customers. Return of goods by customers is a huge problem as it is expensive task for companies to carry out reverse logistics and it is not profitable to seller.

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(viii) **Low level of digital literacy:**

At present, digital illiteracy is one of the formidable problems faced by e-commerce in India. Most of the India lie in the rural segment and is not in line with the growing digital trend.

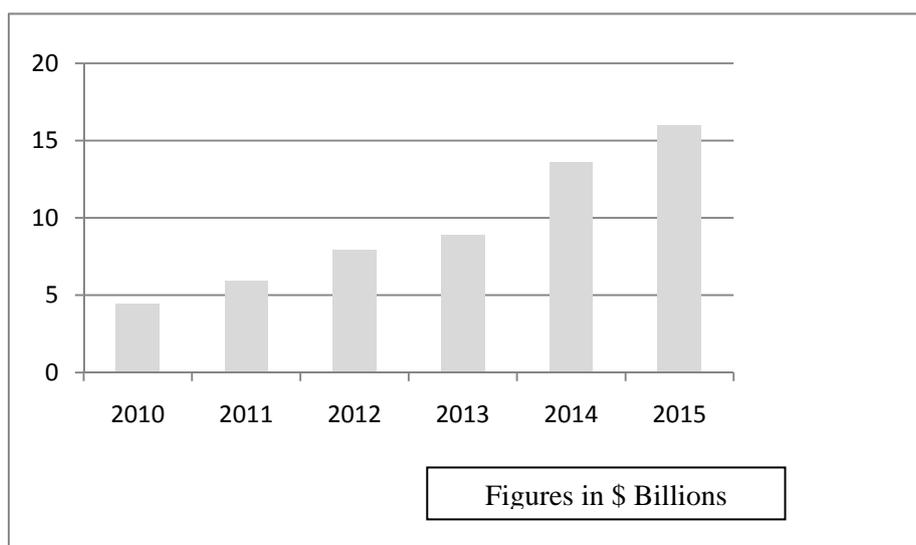
(ix) **Key issues in taxation:**

- (a) Double taxation would be unavoidable because the borderless nature of the internet makes taxation very tricky.
- (b) A significant burden would be placed on operators by requiring them to collect tax at source which would likely be spreading across all retailers.
- (c) Identifying the State or country that have tax jurisdiction over income generated by electronic transactions is also a major enforcement issue since the supplier has no presence at all in the jurisdiction of the customer.
- (d) In order to be able to tax the commerce generated on the websites its web-servers, hosting companies must have a “permanent establishment”. It may be difficult for government to track any transfer of website and its database to another country and thus taxes may be lost.

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

Online retail is the fastest growing channel globally, as confirmed by the Planet Retail’s retail panel data. The online channel is expected to grow at a much faster rate vis-a-vis more established channels as is expected to account for 10.1% of overall retail sales in 2018, up from 6.5% in 2013, and 3.5% in 2008.

Picture 1
Graph



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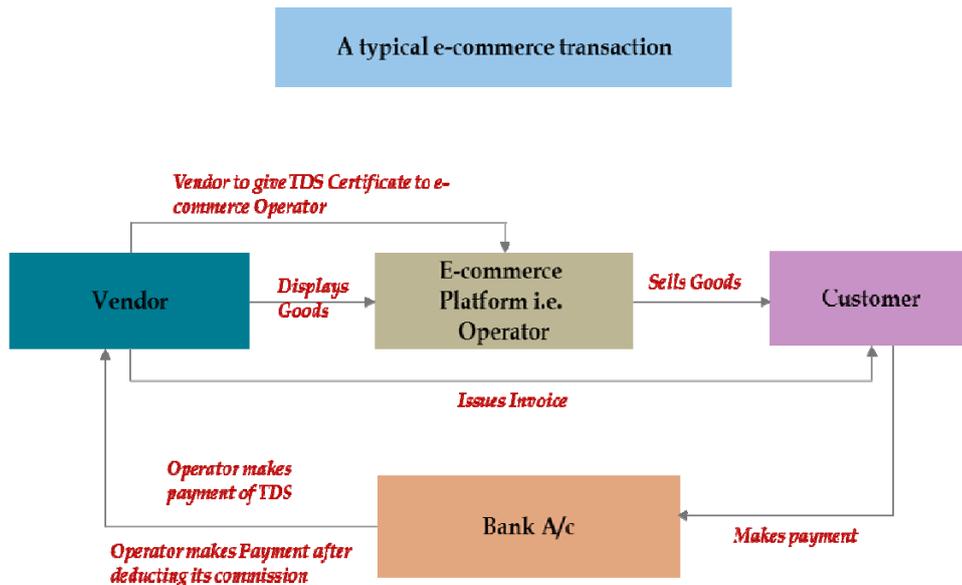
5 VARIOUS MODELS OF E-COMMERCE

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 (OMP), inventory led model, social networks, aggregator model etc. and many more hybrid models still developing.

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.

5.1 E-Commerce transaction

Picture 2
Flow Chart



5.2 Graphical view of various types of e-Commerce

- (i) Principal to Principal [P2P]

Picture 3
Flow Chart

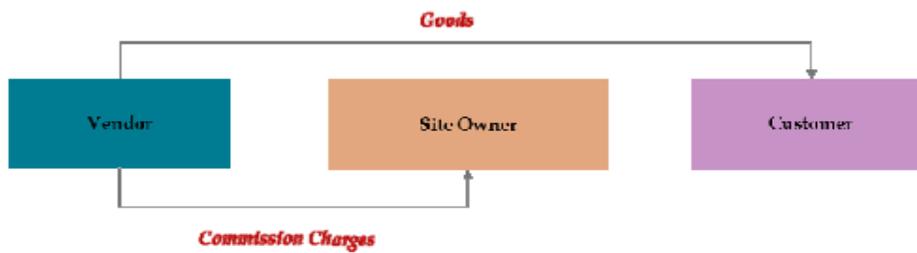


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Example: Urbanladder

(ii) Principal to Intermediary [P2I]

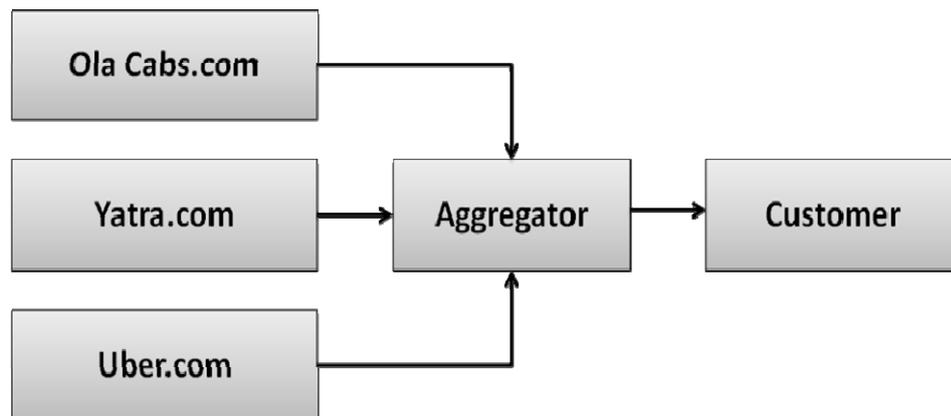
Picture 4
Flow Chart



Example: Flipkart, Snapdeal, Amazon

(iii) Aggregator

Picture 5
Flow Chart



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

5.3 Pictorial View of Various E-Commerce Models

(a) Inventory Led Model

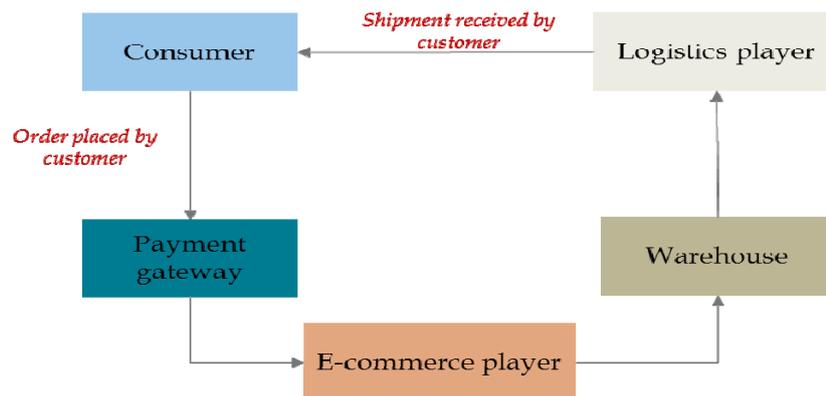
Salient features-

- 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

Picture 6

Flow Chart



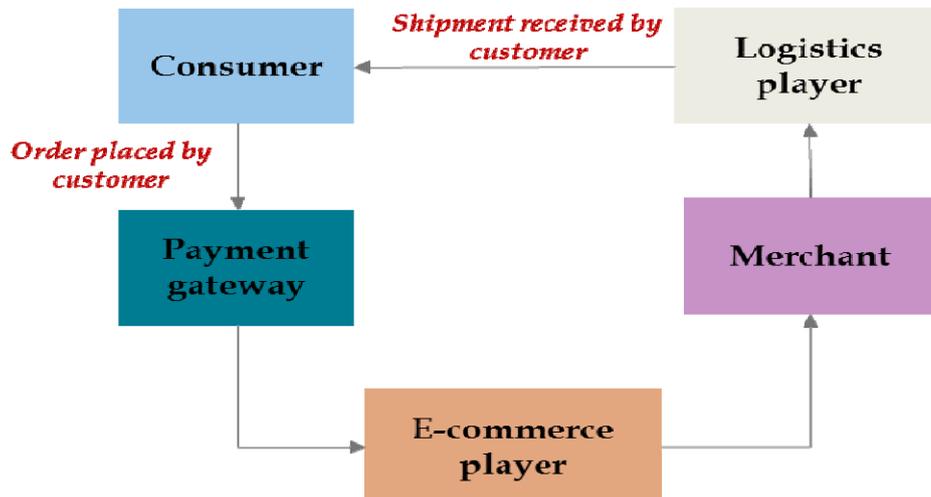
(b) Open Market Place Model (OMP)

Salient features-

- Product is directly shipped by vendor 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 most compliant from an FDI standpoint
- Example: eBay

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Picture 7
Flow Chart



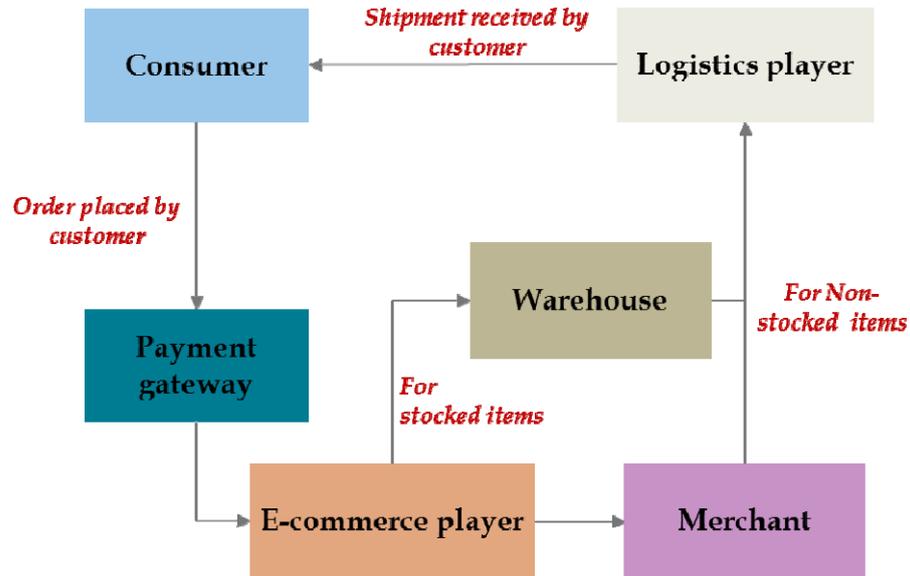
(c) Managed Market Place (MMP)

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

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Picture 8
Flow Chart



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-operator 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 operator and goods are directly shipped by vendor to customer, is considered to be the most compliant option from the FDI standpoint e.g. Flipkart, amazon.in.

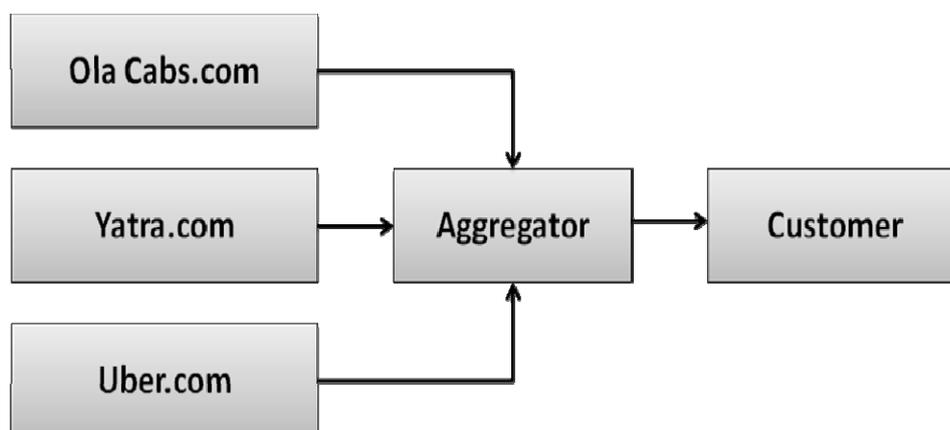
(d) **Aggregator Model:**

Salient features-

- Firm does not produce or warehouse any item
- Firm collects (aggregates) information on goods and/or services
- Collects from several competing sources at its website
- Firm creates an environment which draws visitors to its website
- Firm designs a system which allows easy matching of prices and specifications.
- Example: Amazon

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Picture 9
Flow Chart



6 PAST TAX REGIME AND ITS CHALLENGES

(i) VAT/ CST on e-Commerce transactions:

E-commerce transactions in India suffered from lots of complexities in regard to indirect taxation. One of the major concern for e-Commerce operator was 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 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-operators 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-operators.

(ii) Service tax on e-Commerce transactions:

Service tax was leviable on an activity by one person for another for a consideration, unless the same was specifically excluded under the Negative List of Services given under S.66D of the Finance Act, 1994 or exempted vide the Mega Exemption Notification No. 25/2012-ST dated 20-06-2012. Further, service tax was 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

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(restricted to aggregator of service only) had been brought in 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 faced double taxation and ended up paying both VAT/ CST as well as service tax.

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 had rules to charge e-Commerce companies, additional taxes for "delivering" products to customers in their State.

Imposition of entry tax on goods purchased online had added more woes for e-Commerce industry as they already face lot of problems and imposition of entry tax had led to impediments in speedy delivery of goods in inter-State transactions.

(iv) **Equalization Levy:**

It is commonly known as Google Tax. 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, the companies like Facebook may shift the burden on 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 CUSTOMER (NORMAL TERMS OF AGREEMENT BETWEEN THE VENDORS AND THE E-COMMERCE OPERATORS)**

There is always a significance of terms of contract between the supplier and the recipient of goods or services or both. The levy of indirect tax stems from such contract between the parties. The terms of contract decide whether the e-Commerce operator is an agent, intermediary or a principal and the levy of tax

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differs from case to case. In view of this fact, the key contents of agreements entered by the e-Commerce operators may be summarized as under-

- (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.
- (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.

As per the FDI policy, contained in the 'Consolidated FDI Policy Circular 2015' (FDI Policy) as amended from time to time, FDI upto 100% under automatic route is permitted in Business to Business (B2B) e-commerce. However, FDI in B2C e-commerce is permitted in following circumstances:

- (i) A manufacturer is permitted to sell its products manufactured in India through e-commerce retail.
- (ii) A single brand retail trading entity operating through brick and mortar stores, is permitted to undertake retail trading through e-commerce.

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- (iii) An Indian manufacturer is permitted to sell its own single brand products through e-commerce retail. Indian manufacturer would be the investee company, which is the owner of the Indian brand and which manufactures in India, in terms of value, At least 70% of its products in house, and sources, at most 30% from Indian manufacturers.

The above liberalisations in the FDI regime, especially in the context of retail trade, have significantly contributed to 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. However, post sale, delivery of goods to customers, customer satisfaction and warranty/ guarantee of goods/ services sold will be responsibility of sellers. Further, it has been prescribed that goods/ services which made available for sale electronically on website shall provide name, address, contact details of sellers. FDI in inventory based model of e-Commerce on B2C basis is prohibited.

The prescribed stipulations 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 CGST/ IGST Act

CGST Act

(i) Section 2: Definitions

Section 2(44): electronic commerce means supply of goods or services or both including digital products over digital or electronic network.

Section 2(45): electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

(ii) Section 9: Levy and Collection of Central/ State Goods and Services Tax (relevant part)

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Section 9(5)-The Government may, on the recommendation of the Council, by notification, specify categories of services the tax on intra-State supplies of 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:

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.

In view of the above provision in the Act, the Central Government has issued the following Notification:

Notification No. 17/2017- Central Tax (Rate)

In exercise of the powers conferred by sub-section (5) of section 9 of the Central Goods and Services Tax Act, 2017, the Central Government, on the recommendations of the Council, hereby notifies that in case of the following categories of services, the tax on intra-State supplies shall be paid by the electronic commerce operator –

- (i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;
- (ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act.

Explanation.- For the purposes of this notification,-

- (a) “radio taxi” means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);
- (b) “maxicab”, “motorcab” and “motor cycle” shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicles Act, 1988.

2. This notification shall come into force with effect from the 1st day of July, 2017.

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(iii) Section 52: 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 such rate not exceeding one percent, as may be notified by the Government on the recommendations of the council, 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 or both, other than services notified under sub-section (5) of section 9, made during any month by all registered 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.
- (3) The amount collected under sub-section (1) shall be paid to the 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.
- (4) 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 or both effected through it, including the supplies of goods or services or both 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.
- (5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty-first day of December following the end of such financial year.
- (6) If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

Provided that no such rectification of any omission or incorrect particulars

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shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

- (7) The supplier who has supplied the goods or services or both 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.
- (8) The details of supplies furnished by every operator under sub-section (4), shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under the Act in such manner and within such time period as may be prescribed.
- (9) 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 37, the discrepancy shall be communicated to both persons in the manner and within the time as may be prescribed.
- (10) The amount in respect of which any discrepancy is communicated under sub-section (9) 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 his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.
- (11) The concerned supplier shall, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section (50) on the amount so added from the date such tax was due till the date of its payment.
- (12) Any authority not below the rank of Deputy 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 or both 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 suppliersas may be specified in the notice.

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(13) Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.

(14) Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, 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 or services or both making supplies through the operator.

(iv) Section 24: Compulsory registration in certain cases (Relevant Part)

Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,-

- (iv) persons who are required to pay tax under sub-section (5) of section 9,
- (ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52,
- (x) every electronic commerce operator,
- (xi) 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 person, [S.2(17) of IGST Act]

Press Release, dated 26-6-2017

Postponement of provision relating to TDS (Section 51) and TCS (Section 52) of the CGST/SGST Act 2017

With the objective of ensuring smooth rollout of GST and taking into account the feedback received from the trade and industry regarding the provisions of deduction of tax at Source under Section 51 of the CGST/SGST Act 2017 and collection of tax at source under Section 52 of the CGST/SGST Act 2017, the following has been decided:—

1. The provisions of Tax Deduction at Source (Section 51 of the CGST/SGST Act 2017) and Tax Collection at Source (Section 52 of the CGST/SGST Act, 2017) will be brought into force from a date which will be communicated later.
2. Persons who will be liable to deduct or collect tax at source will be required to take registration, but the liability to deduct or collect tax will arise from the date the respective sections are brought in force.
3. The persons who were liable to be registered under clause (ix) of Section 24 of the CGST/SGST Act, 2017 (as they were supplying goods or services

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through electronic commerce operator who is required to collect tax at source under Section 52) will not be liable to register till the provision of Tax Collection at Source is brought under force. In other words, persons supplying goods or services through electronic commerce operator liable to collect tax at source would not be required to obtain registration immediately, unless they are so liable under Section 22 or any other category specified under Section 24 of the CGST/SGST Act, 2017.

(v) Chapter VIII of Central Goods and Services Tax Rules, 2017 (Relevant part)

Form and manner of submission of statement of supplies through an electronic commerce operator [Rule 67]

- (1) Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in **FORM GSTR-8** electronically on the Common Portal, either directly or from a Facilitation Centre, notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under sub-section (1) of section 52.
- (2) The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers in **Part C** 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 78]

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) State of place of supply; and
- (b) net taxable value.

Provided that where the time limit for furnishing **FORM GSTR-1** under section 37 has been extended, the date of matching of the above mentioned details shall be extended accordingly.

Provided further that the Commissioner may, on the recommendations of the council, by order, extend the date of matching to such date as may be specified therein.

Communication and rectification of discrepancy in details furnished by the e-commerce operator and the supplier [Rule 79]

- (1) Any discrepancy in the details furnished by the operator and those declared by the supplier shall be made available to the supplier electronically in **FORM GST MIS-3** and to the e-commerce portal electronically in **FORM GST MIS-4**

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on 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 MIS Annual return [Rule 80(2)]**

Every electronic commerce operator required to collect tax at source under section 52 shall furnish annual statement referred to in sub-section (5) of the said section in **FORM GSTR-9B**.

Integrated Goods and Service Tax Act, 2017

(i) Section 2: Definitions

2(17) "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,—

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming.

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(ii) Section 5: Levy and collection [Relevant Extract]

Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on **inter-State supplies** of 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 supplier 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 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.

Notification No. 14/2017-Integrated Tax (Rate)

In exercise of the powers conferred by sub-section (5) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby notifies that in case of the following categories of services, the tax on inter-State supplies shall be paid by the electronic commerce operator –

- (i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;
- (ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under clause (v) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act.

Explanation.- For the purposes of this notification,-

- (a) “radio taxi” means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);
- (b) “maxicab”, “motorcab” and “motor cycle” shall have the same meanings as assigned to them respectively in clauses (22), (25) and (26) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

2. This notification shall come into force with effect from the 1st day of July, 2017.

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(iii) Section 13(12): Place of supply of services where location of supplier or location of recipient is outside India [Relevant Extract]

The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Explanation.—For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely:—

- (a) the location of address presented by the recipient of services through internet is in the taxable territory;
- (b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;
- (c) the billing address of the recipient of services is in the taxable territory;
- (d) the internet protocol address of the device used by the recipient of services is in the taxable territory;
- (e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
- (f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;
- (g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

(iv) Section 14: Special provision for payment of tax by a supplier of online information and database access or retrieval services [Relevant Extract]

(1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:—

- (a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;

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- (b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;
- (c) the intermediary involved in the supply does not authorise delivery; and
- (d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

(2) The supplier of online information and database access or retrieval services referred to in sub-section (1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

Notification No. 2/2017-Integrated Tax, dated 19-6-2017

Seeks to empower the Principal Commissioner of Central Tax, Bengaluru West to grant registration in case of online information and database access or retrieval services provided or agreed to be provided by a person located in non-taxable territory and received by a non-taxable online recipient

In exercise of the powers conferred by sub-section (2) of section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) (hereinafter referred to as the said Act), read with sub-rule (2) of rule 14 of the Central Goods and Services Tax Rules, 2017, the Central Government hereby notifies the Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him as the officers empowered to grant registration in case of online information and database access or retrieval services provided or agreed to be provided by a person located in non-taxable territory and received by a non-taxable online recipient.

Explanation.—For the purposes of this notification,—

- (a) “online information and database access or retrieval services” has the same meaning as assigned to it in sub-section (17) of section 2 of the said Act;
- (b) “non-taxable online recipient” has the same meaning as assigned to it in sub-section (16) of section 2 of the said Act.

2. This notification shall come into force on the 22nd day of June, 2017.

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10 Interpretation of e-Commerce provisions as contained in the GST Act, 2017

10.1 Major Definitions [Section 2]

(a) Definition of electronic commerce [Section 2(44)]

Section 2(44) says that electronic commerce means supply of goods or services or both including digital products over digital or electronic network.

(b) Definition of electronic commerce operator [Section 2(45)]

Section 2(45) says that electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

FAQ 1: What is Digital Product ?:

Answer: The word “digital products” as contained in S.2(44) is not defined in the Act.

As per Wikipedia: Digital Goods Or E-goods Are **Intangible Goods** That Exist In Digital Form.

Examples Include: Articles available on the internet, Webinars, Video Tutorials, Digital Media, Such As E-books, Downloadable Music, Internet Radio, Internet Television And Streaming Media; Fonts And Graphics; Digital Subscriptions; Online Ads (As Purchased By The Advertiser); Internet Coupons; Electronic Tickets; Online Casino Tokens; Electronically Traded Financial Instruments; Downloadable Software (Digital Distribution) And Mobile Apps; Cloud Based Applications And Online Games; Virtual Goods Used Within The Virtual Economies Of Online Games And Communities; Workbooks; Worksheets; Membership Programs; Desktop Backgrounds Or Wallpaper; Planners; E-learning (Online Courses); Interviews; Blog Posts; Cards; Labels; Patterns; Prints; Clipart; Stationery; Gift Tags; Website Themes; Logos; Photos; Web Graphics; Templates, etc..

FAQ 2: Is “Digital Product” not covered under definition of “Goods” given in the Act?

Answer: It is very well covered. Definition of Goods

S.2(52) of CGST Act: “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

FAQ 3: What is the need to include this word specifically?

Answer: Just to clarify that it is there in law specifically. More or less the Digital Product is “Intangible Goods”

10.2 Levy of tax on e-Commerce operator [Section 9(5)]

10.2.1 Levy of GST

Section 9(5) says that the Government may, on the recommendation of the Council, by

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notification, specify categories of services the tax on intra-State supplies of 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.

10.2.2 Representative to pay tax

The first proviso to section 9(5) provides 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.

10.2.3 Appointment of representative

The second proviso to section 9(5) lays down 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.

The Central Government vide Notification No. 17/2017-Central Tax (Rate) dated 28-Jun-17 w.e.f. 1-Jul-17 notified that in case of services by way of transportation of passengers by a radio taxi etc. and services by way of renting of hotel accommodation, tax shall be paid by the e-commerce operator except where supplier of such service is liable to be registered. This is a new entry in addition to the list of services under RCM as approved by the GST Council.

10.2.4 Provision applies to services only

It is very important to note here that liability to pay 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.

10.2.5 Liability irrespective of brand

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 operator shall have to pay the applicable GST.

10.3 Tax collected at source [Section 52]

10.3.1 Rate of tax to be collected [Section 52(1)]

Section 52(1) prescribes that in spite of anything to the contrary contained in the Act, every electronic commerce operator (Operator), not being an agent, shall collect an amount calculated at such rate not exceeding 1%, as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it where the consideration with respect to such supplies is to be collected by Operator.

Rate of TCS = 1% CGST + 1% SGST = Total 2%

An explanation to section 52(1) explains that the expression "net value of taxable supplies"

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shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under section 9(5), made during any month by all registered persons through Operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

Net Value of Taxable Supplies =

Aggregate value of taxable supplies through Operator

Less: Supplies returned

Less: Supplies under section 9(5)

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

- (a) In case the services provided are notified under section 9(5) by which such operator is liable to pay tax
- (b) If the operator is acting as an Agent (logistic provider)

10.3.2 Power for collection of tax [Section 52(2)]

Section 52(2) says that the power to collect the amount specified in section 52(1) shall be without prejudice to any other mode of recovery from the operator.

10.3.3 Time limit for collection of tax [Section 52(3)]

Section 52(3) provides that the amount collected under section 52(1) shall be paid to the Government by the operator within 10 days after the end of the month in which such collection is made in the manner as may be prescribed in rule 67 of Central Goods and Services Tax Rules, 2017.

10.3.4 Time limit for furnishing a statement [Section 52(4)]

Section 52(4) stipulates that every operator who collects the amount specified in section 52(1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under section 52(1) during a month, in FORM GSTR-8, within 10 days after the end of such month.

10.3.5 Time limit for furnishing Annual Statement [Section 52(5)]

Section 52(5) mandates that every operator who collects the amount specified in section 52(1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under section 52(1) during the financial year before the 31st day of December following the end of such financial year.

10.3.6 Time limit for rectification of statement [Section 52(6)]

Section 52(6) further provides that if any operator after furnishing a statement under section 52(4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission

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or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in section 50(1).

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

10.3.7 Credit to be taken by supplier [Section 52(7)]

Section 52(7) specifies that the supplier who has supplied the goods or services or both 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 52(4), in the manner prescribed.

10.3.8 Matching of details [Section 52(8)]

Section 52(8) refers that the details of supplies furnished by every operator under section 52(4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under the Act as per rule 78 of Central Goods and Services Tax Rules, 2017.

10.3.9 Discrepancy communicated to both parties [Section 52(9)]

As per Section 52(9), where the details of outward supplies furnished by the operator under section 52(4) do not match with the corresponding details furnished by the supplier under section 37, the discrepancy shall be communicated to both persons in the manner and within the time as prescribed in rule 79 of Central Goods and Services Tax Rules, 2017.

10.3.10 Consequences of non-rectification [Section 52(10)]

Section 52(10) stipulates that the amount in respect of which any discrepancy is communicated under section 52(9) 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 his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed in rule 79(4) of Central Goods and Services Tax Rules, 2017.

10.3.11 Tax liability for addition [Section 52(11)]

Section 52(11) says that the concerned supplier, in whose output tax liability any amount has been added under section 52(10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under section 50(1) on the amount so added from the date such tax was due till the date of its payment.

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10.3.12 Issuance of notice [Section 52(12)]

Section 52(12) provides that any authority not below the rank of Deputy 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 or both 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.

10.3.13 Time limit for furnishing details after service of notice [Section 52(13)]

Section 52(13) stipulates that every operator on whom a notice has been served under section 52(12) shall furnish the required information within 15 working days of the date of service of such notice.

10.3.14 Penalty for not furnishing details after service of notice [Section 52(14)]

Section 52(14) mandates that any person who fails to furnish the information required by the notice served under section 52(12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to Rs.25000/-

An explanation to section 52 says that the expression 'concerned supplier' shall mean the supplier of goods or services or both making supplies through the operator.

10.4 Compulsory Registration in certain cases [Section 24]

This section provides that in spite of anything contained in section 22(1)- which lays down a limit of 10 lacs or 20 lacs for the registration, the following categories of persons shall be required to be registered under this Act-

- (a) Persons who are required to pay tax under section 9(5) – as Operator, [Section 24(iv)]
- (b) Persons who supply goods or services or both, other than supplies specified under section 9(5), through such electronic commerce operator who is required to collect tax at source under section 52, [Section 24(ix)]
- (c) Every electronic commerce operator [Section 24(x)]
- (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 person. [Section 24(xi)]

However, with the objective of ensuring smooth rollout of GST and taking into account the feedback received from the trade and industry regarding the provisions of deduction of tax at Source under Section 51 of the CGST/SGST Act 2017 and collection of tax at source under Section 52 of the CGST/SGST Act 2017, the following has been decided:—

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1. The provisions of TDS and TCS will be brought into force from a date which will be communicated later.
2. Persons who will be liable to deduct or collect tax at source will be required to take registration, but the liability to deduct or collect tax will arise from the date the respective sections are brought in force.
3. The persons who were liable to be registered under Section 24(ix) of the CGST/SGST Act, 2017 (as they were supplying goods or services through electronic commerce operator who is required to collect tax at source under Section 52) will not be liable to register till the provision of TCS is brought under force. In other words, persons supplying goods or services through electronic commerce operator liable to collect TCS would not be required to obtain registration immediately, unless they are so liable under Section 22 or any other category specified under Section 24 of the CGST/SGST Act, 2017.

10.5 CGST Rules, 2017 applicable to E-commerce operator

10.5.1 Form and manner of submission of statement of supplies by electronic commerce operator [Rule 67]

(a) E-commerce operator to file FORM GSTR-67 [Rule 67(1)]

Rule 67(1) mandates that every e-commerce operator required to collect tax at source under section 52 shall furnish a statement in FORM GSTR-8 electronically through the Common Portal, either directly or from a Facilitation Centre, notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under section 52(1).

(b) Return filed by operator made available to supplier [Rule 67(2)]

Rule 67(2) lays down that the details furnished by the operator under rule 67(1) shall be made available electronically to each of the suppliers in Part C 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 78]

A per Rule 78, 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) State of place of supply;
- (b) Net taxable value

The first proviso to rule 78 says that where the time limit for furnishing FORM GSTR-1 under section 37 has been extended, the date of matching of the above mentioned details shall be extended accordingly.

Second proviso provides that the Commissioner may, on the recommendations of the council, by order, extend the date of matching to such date as may be prescribed.

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10.5.3 Communication and rectification of discrepancy in details furnished by the e-Commerce operator and the supplier [Rule 79]

(a) Discrepancy to be communicated [Rule 79(1)]

Rule 79(1) says that any discrepancy in the details furnished by the operator and those declared by the supplier shall be made available to the supplier electronically in FORM GST MIS-3 and to e-commerce portal electronically in FORM GST MIS-4 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 79(2)]

Rule 79(2) prescribes that a supplier to whom any discrepancy is made available under rule 79(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 79(3)]

Rule 79(3) explains that an operator to whom any discrepancy is made available under rule 79(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 79(4)]

Rule 79(4) pronounces that where the discrepancy is not rectified under rule 79(2) or rule 79(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 in FORM GST MIS-3.

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Formats:

Form GSTR-8

[See Rule 67(1)]

Statement for tax collection at source

Year				
Month				

1.	GSTIN																			
2.	(a)	Legal name of the registered person	Auto Populated																	
	(b)	Trade name, if any	Auto Populated																	

3. Details of supplies made through e-commerce operator

(Amount in ` for all Tables)

GSTIN of the supplier	Details of supplies made which attract TCS			Amount of tax collected at source		
	Gross value of supplies made	Value of supplies returned	Net amount liable for TCS	Integrated Tax	Central Tax	State/UT Tax
3A. Supplies made to registered persons						
3B. Supplies made to unregistered persons						

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4. Amendments to details of supplies in respect of any earlier statement

Original details		Revised details						
Month	GSTIN of supplier	GSTIN of supplier	Details of supplies made which attract TCS			Amount of tax collected at source		
			Gross value of supplies made	Value of supply returned	Net amount liable for TCS	Integrated Tax	Central Tax	State/UT Tax
1	2	3	4	5	6	7	8	9
4A. Supplies made to registered persons								
4B. Supplies made to unregistered persons								

5. Details of interest

On account of	Amount in default	Amount of interest		
		Integrated Tax	Central Tax	State/UT Tax
1	2	3	4	5
Late payment of TCS amount				

6. Tax payable and paid

Description	Tax payable	Amount paid
1	2	3
(a) Integrated Tax		
(b) Central Tax		
(c) State/UT Tax		

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7. Interest payable and paid

description	Amount of interest payable	mount paid
(a) Integrated tax		
(b) Central Tax		
(c) State/UT Tax		

8. Refund claimed from electronic cash ledger

Description	Tax	Interest	Penalty	Other	Debit Entry Nos.
1	2	3	4	5	6
(a) Integrated tax					
(b) Central Tax					
(c) State/UT Tax					
Bank Account Details (Drop Down)					

9. Debit entries in cash ledger for TCS/interest payment [to be populated after payment of tax and submissions of return]

Description	Tax paid in cash	Interest
1	2	3
(a) Integrated tax		
(b) Central Tax		
(c) State/UT Tax		

Verification

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorized Signatory

Place: Name of Authorized Signatory

Date: Designation/Status.....

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Instructions:—

1. Terms Used:
 - (a) GSTIN: Goods and Services Tax Identification Number
 - (b) TCS: Tax Collected at source
2. An e-commerce operator can file GSTR- 8 only when full TCS liability has been discharged.
3. TCS liability will be calculated on the basis of table 3 and table 4.
4. Refund from electronic cash ledger can only be claimed only when all the TCS liability for that tax period has been discharged.
5. Cash ledger will be debited for the refund claimed from the said ledger.
6. Amount of tax collected at source will flow to Part C of GSTR- 2A of the taxpayer on filing of GSTR-8.
7. Matching of Details with supplier's GSTR-1 will be at the level of GSTIN of supplier.

10.6 Interpretation of e-Commerce provisions as contained in the IGST Act, 2017

10.6.1 Major Definitions [Section 2]

(a) Definition of online information and database access or retrieval services [Section 2(17)]

Section 2(17) articulates that online information and database access or retrieval services means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,—

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming.

10.6.2 Levy of tax on e-Commerce operator [Section 5]

(a) Levy of GST

Section 5 announces that the Government may, on the recommendation of the Council, by

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notification, specify categories of services the tax on intra-State supplies of 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.

(b) Representative to pay tax

The first proviso to section 5 mandates 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.

(c) Appointment of representative

The second proviso to section 5 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.

The Central Government vide Notification No. 14/2017-Integrated Tax (Rate) dated 28-Jun-17 w.e.f. 1-Jul-17 notified that in case of services by way of transportation of passengers by a radio taxi etc. and services by way of renting of hotel accommodation, tax shall be paid by the e-commerce operator except where supplier of such service is liable to be registered. This is a new entry in addition to the list of services under RCM as approved by the GST Council.

10.6.3 Place of supply of services where location of supplier or location of recipient is outside India [Section 13]

(a) Determination of place of supply of online information and database access or retrieval services

Section 13(12) says that the place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

(b) Persons receiving such services to be deemed to be located in the taxable territory

An explanation to Section 13(12) deems that for the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely:—

- (a) the location of address presented by the recipient of services through internet is in the taxable territory;
- (b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;
- (c) the billing address of the recipient of services is in the taxable territory;
- (d) the internet protocol address of the device used by the recipient of services is in the taxable territory;

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- (e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
- (f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;
- (g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

10.6.4 Special provision for payment of tax by a supplier of online information and database access or retrieval services [Section 14]

(a) Person liable for paying integrated tax

Section 14(1) says that on supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services.

A proviso to this sub-section says that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely—

- (a) The invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;
- (b) The intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;
- (c) The intermediary involved in the supply does not authorise delivery; and
- (d) The general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

10.6.5 Registration by supplier of online information and database access or retrieval services [Section 14]

Section 14(2) says that the supplier of online information and database access or retrieval services referred to in section 14(1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:

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A proviso to this sub-section says that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier.

Second proviso to this sub-section says that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

The Central Government vide Notification No. 2/2017-Integrated Tax dated 19-Jun-17 w.e.f. 22-Jun-17 notified the Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him as the officers empowered to grant registration in case of online information and database access or retrieval services provided or agreed to be provided by a person located in non-taxable territory and received by a non-taxable online recipient.

11. IMPACT of GST on E-COMMERCE

The provisions of GST Act will influence business strategies of both e-Commerce operators and suppliers in the following manner:-

- Both e-Commerce player and seller will have to upload invoice wise details of supplies in their respective returns and the GST system will match them. If they do not reconcile then it will be added to the liability of the seller. This will lead to additional compliances.
- TCS provisions shall be attracted on the first form of e-Commerce model, where both operator and supplier act on principal-to-principal (P2P) basis. It will lead to a lot of compliances and penalty provisions shall be applicable in case of non-compliance.
- Most of sellers registered with marketplace operators are small and medium businesses. Government has introduced composition scheme under GST Act. Section 10(2) of CGST Act prescribes that if a person is engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source, then he cannot opt composition scheme. The advantages of composition scheme is one need to file only 5 returns per annum as against 37 in a normal case.
- As per section 24, e-Commerce operators and persons who supply goods or services or both are required to be registered compulsorily under this Act. Thus the small seller having turnover up to 20 lacs who is not otherwise required to be registered, will have to be compulsorily registered under this Act.
- As per the registration provisions under Chapter-VI of CGST Act, every business involved in E-commerce is required to get registered in each State in which they making taxable supplies. Since the e-commerce business model is as such that the seller expects order from all the states, they are liable to obtain registration in all the states.
- Market places will have to make necessary changes to their ERPs to handle the new requirements emerging due to GST:

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- Each Order or Invoice will now need to carry HSN or SAC code as well. However initially government is lenient for HSN or SAC codes.
- Place of Supply has to be determined and mentioned in every invoice (based on GSTIN for B2B and delivery address for B2C).
- Invoice issued by vendor should contain comprehensive details as per Rule 46 of Chapter VI of CGST Rules.

12. OBJECTIONS AND SUGGESTIONS RAISED BY THE STAKEHOLDERS 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 optimize such platforms.

(i) Sales return/ replacement treatment:

In GST, provisions should be incorporated considering the peculiar transaction structure of e-Commerce companies to account for sales returns/ cancellations/ replacements and adjustment of excess tax already paid (if any).

(ii) E-commerce operator may fall under Principal-agent relationship:

The definition of 'supply' read with Schedule I in the GST Act 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.

(iii) 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, under GST 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.

(iv) Place of Supply Provisions:

As far as the Place of Supply provisions in relation to goods are concerned they may not create much confusion except question may arise whether the goods are local or central sales. But, as far as provision of services across the States are concerned, the place of supply provisions 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.

(v) 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 GST

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law, such free supplies and exchange offers are also made taxable supplies or are subject to input tax credit reversals. This is going to hamper devising mega sale days and other attractive schemes.

(vi) **Valuation:**

In the GST Act, 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-
 - (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 valuation provisions under section 15 states 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.

(vii) **GST Act whether spur for e-Commerce operators:**

It is expected that the GST Act 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 the alternative positive suggestions.

13. 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.

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(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 Act.

(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 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 with 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) transactions.

(vi) **Online shopping in New Zealand:**

If you want to import and buy goods/ supplies 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 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.

14. CYBER CRIME-UNCERTAIN THREATS

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.

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

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

15. OUR RECOMMENDATIONS

(i) IT System preparedness by Industry:

The IT systems of all taxpayers will be re-defined. 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.

The 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. Only the 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 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.

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(iii) **The definition of e-commerce is heedlessly drafted:**

It is observed that the definition of e-commerce as contained under section 2(44) 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 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 make clarity on the issue by inserting explanation.